



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 1602

Date Filmed _____ Camera No. --- 2

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FEDERAL ELECTION COMMISSION

Memo to file from R. PearsonMemo to file from R. Pearson (2)12 Day Reports for MUR 1596/1602Blue routing slipsRPAI's sent by RAD - already public but irrelevant to MUR

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

- | | |
|--|---|
| <input type="checkbox"/> (1) Classified Information | <input type="checkbox"/> (6) Personal privacy |
| <input type="checkbox"/> (2) Internal rules and practices | <input type="checkbox"/> (7) Investigatory files |
| <input type="checkbox"/> (3) Exempted by other statute | <input type="checkbox"/> (8) Banking Information |
| <input type="checkbox"/> (4) Trade secrets and commercial or financial information | <input type="checkbox"/> (9) Well Information (geographic or geophysical) |
| <input checked="" type="checkbox"/> (5) Internal Documents | |

Signed

R. Pearson

date

3/8/85

FEC 9-21-77

3/8/85

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 8, 1985

Roger M. Witten, Esquire
Wilmer, Cutler and Pickering
1666 K Street, N.W.
Washington, D.C. 20006

RE: MUR 1602

Dear Mr. Witten:

This is in reference to the complaint you filed with the Commission on November 22, 1983, concerning the Dan Evans for Senate Committee, the National Republican Senatorial Committee (NRSC), the Republican National Independent Expenditure Committee (RNIEC), Rodney Smith and Senator Heinz.

Based on your complaint, the Commission determined there was reason to believe that the NRSC, the RNIEC and Rodney Smith, as treasurer, violated 2 U.S.C. § 441a(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter. The Commission also voted on July 10, 1984, to take no action at that time with respect to Senator Heinz and to find no reason to believe that the Dan Evans for Senate Committee violated the Act. After an investigation was conducted and briefs of the General Counsel and the respondent were considered, the Commission concluded on February 12, 1985, that there was no probable cause to believe that the NRSC, the RNIEC, or Mr. Smith violated the Act. The Commission also voted on that date that there was no reason to believe that Senator Heinz violated the Act, thereby concluding this matter. Accordingly, the file in this matter, numbered MUR 1602, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

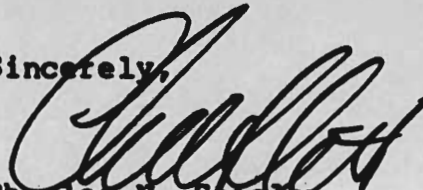
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Roger M. Witten, Esquire
Page 2

The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact Robert Pease, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,



Charles N. Steele
General Counsel

Enclosure
General Counsel's Report

85040514100



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 8, 1985

J. Brian Atwood
Martin O. Franks
Democratic Senatorial Campaign Committee
400 North Capitol Street, N.W.
Suite 319
Washington, D.C. 20001

RE: MUR 1602

Dear Messrs. Atwood and Franks:

This is in reference to the complaint you filed with the Commission on November 7, 1983, concerning the Dan Evans for Senate Committee, the National Republican Senatorial Committee (NRSC), the Republican National Independent Expenditure Committee (RNIEC), Rodney Smith and Senator Heinz.

Based on your complaint, the Commission determined there was reason to believe that the NRSC, the RNIEC and Rodney Smith, as treasurer, violated 2 U.S.C. § 441a(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter. The Commission also voted on July 10, 1984, to take no action at that time with respect to Senator Heinz and to find no reason to believe that the Dan Evans for Senate Committee violated the Act. After an investigation was conducted and briefs of the General Counsel and the respondent were considered, the Commission concluded on February 12, 1985, that there was no probable cause to believe that the NRSC, the RNIEC, or Mr. Smith violated the Act. The Commission also voted on that date that there was no reason to believe that Senator Heinz violated the Act, thereby concluding this matter. Accordingly, the file in this matter, numbered MUR 1602, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

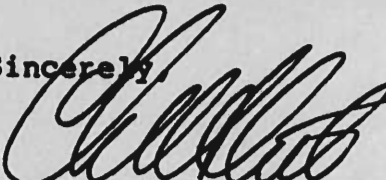
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J. Brian Atwood
Martin O. Frankes
Page 2

The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact Robert Pease, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,



Charles N. Steele
General Counsel

Enclosure
General Counsel's Report

85040314102



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 15, 1985

Jan W. Baran, Esquire
Baker & Hostetler
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

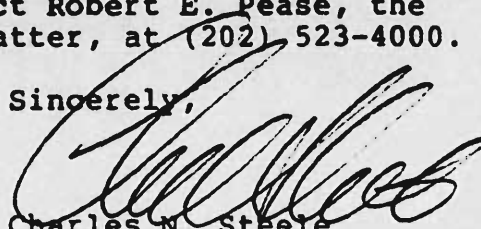
RE: MUR 1602
National Republican
Senatorial Committee

Dear Mr. Baran:

This is to advise you that after an investigation was conducted, the Commission concluded on February 12, 1985, that there is no probable cause to believe that your client violated the Act. Accordingly the file in this matter, numbered MUR 1602, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

If you have any questions, contact Robert E. Pease, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,


Charles W. Steele
General Counsel

85040514103



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 15, 1985

Carol C. Darr, Esquire
Skadden, Arps, Slate,
Meagler & Flom
818 18th Street, N.W.
Washington, D.C. 20006

RE: MUR 1602
Republican National Independent
Expenditure Committee

Dear Ms. Darr:

This is to advise you that after an investigation was conducted, the Commission concluded on February 12, 1985, that there is no probable cause to believe that your client violated the Act. Accordingly the file in this matter, numbered MUR 1602, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

If you have any questions, contact Robert E. Pease, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

85040514104



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 15, 1985

Stuart M. Gerson, Esquire
Epstein, Becker, Borsody & Green
1140 19th Street, N.W.
Washington, D.C. 20036

RE: MUR 1602
Senator John Heinz

Dear Mr. Gerson:

On November 28, 1983, the Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on February 12, 1985, determined that on the basis of the information in the complaint, and the information provided by your client, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles M. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

85040514105

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The Republican National) MUR 1602
Independent Expenditure)
Committee, et al.)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the
Federal Election Commission executive session of
February 12, 1985, do hereby certify that the Commission
decided by a vote of 6-0 to take the following actions
in MUR 1602:

1. Find no probable cause to believe that the
Republican National Independent Expenditure
Committee and Rodney A. Smith, as treasurer,
violated the Act.
2. Find no probable cause to believe that the
National Republican Senatorial Committee and
Robert J. Perkins, as treasurer, violated
the Act.
3. Find no reason to believe that Senator Heinz
violated the Act.
4. Close the File
5. Send the letters attached to the General
Counsel's report dated February 5, 1985.

Commissioners Aikens, Elliott, Harris, McDonald,
McGarry, and Reiche voted affirmatively for the decision.

Attest:

2-12-85
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel ✓
DATE: February 5, 1985
SUBJECT: MUR 1602 - General Counsel's Report

The attached is submitted as an Agenda document
for the Commission Meeting of February 12, 1985

Open Session _____

Closed Session XX _____

CIRCULATIONS

48 Hour Tally Vote []
Sensitive []
Non-Sensitive []

24 Hour No Objection []
Sensitive []
Non-Sensitive []

Information []
Sensitive []
Non-Sensitive []

Other [X]

CIRCULATE ON BLUE PAPER

SENSITIVE

ON AGENDA - 2-12-85

DISTRIBUTION

Compliance [X]

Audit Matters []

Litigation []

Closed MUR Letters []

Status Sheets []

Advisory Opinions []

Other (see distribution below) []

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

In the Matter of
The Republican National
Independent Expenditure
Committee, et. al.

)
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)

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MUR 1602

EXECUTIVE SESSION

GENERAL COUNSEL'S REPORT

FEB 12 1985

I. BACKGROUND

On October 31, 1984, the Office of the General Counsel circulated to the Commission and the respondents a brief recommending probable cause to believe that the Republican National Independent Expenditure ("RNIEC") Committee violated 2 U.S.C. § 434 for failure to report in-kind contribution from Rodney Smith with respect to the contribution of a mailing list provided by Smith to RNIEC. The brief recommended no probable cause to believe that the RNIEC had violated 2 U.S.C. § 441a(a) with respect to the Dan Evans for Senate Committee in the 1983 special senatorial election in Washington State. The brief further recommended no probable cause to believe that the National Republican Senatorial Committee ("NRSC") had violated the Act with respect to the Washington senate election. No recommendation was made concerning Senator Heinz, also a respondent in this matter. The Commission previously voted on July 10, 1984, to take no action at that time with respect to Senator Heinz.

The probable cause recommendation concerning RNIEC was based on the assumption that Smith had provided free of charge a contributor mailing list, allegedly owed by him, to the RNIEC. In its brief, in response to the General Counsel's recommendation, the RNIEC disputes the contention that the list

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was provided free of charge and claims that the list was used on a barter-exchange basis.

II. LEGAL ANALYSIS

In its responding brief, supported by an affidavit from Timothy Roper of Odell, Roper & Associates, a direct mail marketing firm, the RNIEC contends that Smith permitted the RNIEC to use his list in exchange for the RNIEC adding new names, updating, correcting names and addresses and deleting incorrect names and addresses. THE RNIEC asserts that this was an exchange of equal value and, therefore, Smith made no contribution to the RNIEC when the RNIEC used the list for fundraising purposes.

Mr. Roper supports this assertion by stating that permitting an organization to use a list in exchange for cleaning up the list is a common practice in the industry. Such a cleanup is done by mailing the list via first-class mail, return receipt requested, instead of bulk rate, to secure undeliverable or incorrect names and addresses. Mailers generally mail at the lowest possible rate instead of first class. The increase in cost, from \$0.11 to \$0.20 per piece, is absorbed by the mailer. The mailing party will then correct and update the list prior to returning it to the owner.

Mr. Roper valued the list used by the RNIEC at between \$70 and \$90 per one thousand names. He reached this figure based on the availability of lists generally, current market rate, and the particular contributors on Smith's list. He concluded that the use of the list by the RNIEC in return for cleaning up the list

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was a fair exchange. He calculated the value of the list minus the increased cost in postage in reaching the conclusion.

It appears that Mr. Roper's assessment of the list is reasonable. According to the affidavit submitted by Mr. Roper, such an exchange within the mailing list industry is a common practice. His estimate of the value of the list, \$70-\$90 per one thousand names, also appears reasonable based on the rate of return the RNIEC received using the list. The RNIEC stated, in response to the Commission's questions, that the list contained approximately 223,000 names and raised \$186,616 with expenses of \$162,621.

In light of the response received from the RNIEC, it does not appear that the use of the RNIEC of the list in exchange for cleaning up the list resulted in a contribution from Smith to the RNIEC. See Advisory Opinions 1979-36, 1981-46. This Office, therefore, withdraws its previous recommendation of probable cause to believe and instead recommends that the Commission find no probable cause to believe that the RNIEC violated the Act in this matter.

The NRSC did not submit a brief in response to the General Counsel's brief. The General Counsel's recommendation of no probable cause to believe that NRSC violated the Act is based on the fact that there is insufficient evidence of affiliation between the NRSC and the Republican National Independent Expenditure Committee such that the NRSC did not violate 2 U.S.C. § 441a(a) with respect to the 1983 senatorial election in Washington State. For a full analysis, please see the Office of General Counsel's brief of October 31, 1984.

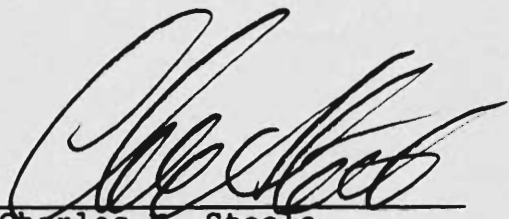
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As mentioned, the Commission did not make any findings with respect to Senator Heinz. The Senator was listed as the chairman of the RNIEC's Advisory Panel and did sign the fundraising letters on behalf of RNIEC while also a member of the NRSC. In light of the recommendation concerning the NRSC and the RNIEC, the Office of General Counsel recommends that the Commission find no reason to believe that Senator Heinz violated the Act with respect to the 1983 Washington Special Senate election.

III. **RECOMMENDATION**

1. Find no probable cause to believe that the Republican National Independent Expenditure Committee and Rodney A. Smith, as treasurer, violated the Act.
2. Find no probable cause to believe that the National Republican Senatorial Committee and Robert J. Perkins, as treasurer, violated the Act.
3. Find no reason to believe that Senator Heinz violated the Act.
4. Close the file.
5. Approve the attached letters.

5 February 1985
Date


Charles N. Steele
General Counsel

Attachments:
Letters

R 5 0 4 0 5 1 4 1 1 1



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Jan W. Baran, Esquire
Baker & Hostetler
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

RE: MUR 1602
National Republican
Senatorial Committee

Dear Mr. Baran:

This is to advise you that after an investigation was conducted, the Commission concluded on 1985, that there is no probable cause to believe that your client violated the Act. Accordingly the file in this matter, numbered MUR 1602, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

If you have any questions, contact Robert E. Pease, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

85040514112



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Carol C. Darr, Esquire
Skadden, Arps, Slate,
Meagler & Flom
818 18th Street, N.W.
Washington, D.C. 20006

RE: MUR 1602
Republican National Independent
Expenditure Committee

Dear Ms. Darr:

This is to advise you that after an investigation was conducted, the Commission concluded on , 1985, that there is no probable cause to believe that your client violated the Act. Accordingly the file in this matter, numbered MUR 1602, has been closed. This matter will become part of the public record within 30 days. Should you wish to submit any factual or legal materials to appear on the public record, please do so within 10 days.

If you have any questions, contact Robert E. Pease, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

85040514113



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Stuart M. Gerson, Esquire
Epstein, Becker, Borsody & Green
1140 19th Street, N.W.
Washington, D.C. 20036

RE: MUR 1602
Senator John Heinz

Dear Mr. Gerson:

On November 28, 1983, the Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1985, determined that on the basis of the information in the complaint, and the information provided by your client, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

85040514114

GCC#5903

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

919 EIGHTEENTH STREET, N.W.

WASHINGTON, D. C. 20006

(202) 463-8700

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(202) 293-3831

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 371-8000

ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 553-0002

ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 428-8800

515 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90071
(213) 488-4600

233 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60601
(312) 938-4000

December 7, 1984

The Honorable Lee Ann Elliot
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1596/1602
Republican National Independent
Expenditure Committee

34 DEC 7 1984
P 4: 04

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

Dear Madam Chairman:

This letter responds to your notification that the General Counsel is prepared to recommend that the Commission find probable cause to believe that our client, the National Republican Independent Expenditure Committee ("RNIEC"), may have violated 2 U.S.C. § 434 by failing to report an in-kind contribution in the form of a mailing list.

I. BACKGROUND

This Matter Under Review ("MUR") arose from complaints filed with the Commission on November 15 and 28, 1983. On July 10, 1984, the Commission determined that there was "reason to believe" that RNIEC may be affiliated with the National Republican Senatorial Committee ("NRSC") because of their overlapping personnel and the existence of a common mailing list. After reviewing the responses submitted by both RNIEC and NRSC, the General Counsel is prepared to recommend to the Commission that there is no probable cause to believe the two committees were affiliated.

The final question remaining before the Commission is whether RNIEC's use of the list constitutes a

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The Honorable Lee Ann Elliot
December 7, 1984
Page Two

reportable contribution by Rodney Smith. The General Counsel in his October 30, 1984 report, contends that "Smith made a contribution to the RNIEC by providing the list and that contribution was not reported in violation of 2 U.S.C. § 434."

In sum, the respondent's position on this point has been that Smith provided the list to RNIEC on a "barter/exchange" basis. In return for access to the Smith list, RNIEC added new names, updated and corrected names and addresses, and deleted incorrect addresses and the names and addresses of deceased contributors. In reaching the conclusion that such usage and cleaning-up did not result in a reportable contribution from Smith, RNIEC relied on previous Advisory Opinions ("AOs") that have stated that exchanges of equal value in the ordinary course of business do not constitute reportable contributions.

The General Counsel believes the respondent's reliance on these AO's is misplaced since there was no actual exchange of two mailing lists. Contrary to the General Counsel's position, however, the gravamen of the numerous opinions on the subject of mailing lists is not that there actually be two lists but rather that the exchange between the parties be of equal value and in the ordinary course of business. As the enclosed expert opinion states, in the instant case these two criteria have been amply met.

II. DISCUSSION

A. The Relevant Advisory Opinions

In AO 1979-36, the Commission was asked to determine whether a direct mail corporation that absorbed the initial cost of a mail solicitation campaign would be deemed to have made a political contribution if the extension of credit in the form of absorbing these initial costs was in the normal course of business. The requestor described this financing arrangement as an ordinary business practice within the direct mail industry and submitted an affidavit of a direct mail consultant that stated that such a financing agreement represented an ordinary mode of operation. The Commission concluded:

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The Honorable Lee Ann Elliot
December 7, 1984
Page Three

that if, in fact, (1) the proposed financial agreement . . . is of a type which is normal industry practice and contains the type of credit which is extended in the ordinary course of . . . business with terms that are substantially similar to those given to nonpolitical, as well as political, debtors of similar risk and size of obligation and if the costs charged . . . for services are at least the normal charge for services to that type, then the amounts expended . . . will not be considered to be campaign contributions. (emphasis added.)

As is evident from the rationale articulated above, an actual exchange of names was not required to avoid a contribution. Instead, the opinion turned on the question of whether the proposed agreement represented an ordinary business practice within the direct mail industry. Relying on affidavits that so stated, the Commission approved the arrangement.

AO 1981-46 concerned an exchange by a political committee for a list owned by a direct mail corporation. The Commission concluded that where the accepted practice among direct mail fundraisers is to exchange mailing lists, one being payment for the other, neither a contribution nor an illegal transaction results when one list is owned by a political committee. The Commission also took the position that "when one political committee provides names to another political committee in exchange for its own future use of a corresponding number of names which are of equal value, that this constitutes an arm's-length business transaction between the committees and is not a reportable transaction under the Act." The Commission also concluded that payment of production costs of printing address labels by the list owner is not a contribution to the list user or purchaser, provided that such assumption of cost by the list owner is an accepted business practice.

The Commission's approval of these varied arrangements has been predicated in each instance on the requestor's assertion that the agreement represented a normally accepted business practice within the direct

mail industry, and that the exchange constituted a fair trade. Similarly, the Commission has had occasion to apply these principles to other variations of direct mail list exchanges, including three-way exchanges, exchanges between candidates and party committees, and sales of lists by political committees to corporations. See AOs 1982-41, 1981-4, and 1981-53.

While the factual situations contained in these AOs as well as the two AOs previously discussed differ factually from each other and from the instant case with respect to the precise nature of the consideration, they all illustrate the same proposition -- exchanges representing ordinary and usual business transactions within the direct mail industry that are of equal value need not be treated as contributions.

B. The Present Case

The instant case contains the same two elements as the AOs cited above that the Commission has previously approved. First, as the enclosed expert opinion demonstrates, a barter/exchange involving the cleaning of a list is a customary and standard procedure in the mailing list industry and thus represents an ordinary and usual business practice. Second, RNIEC proffered adequate consideration for Smith's list, and thus in no way can be deemed to have received a reportable contribution from Smith.

1. The exchange represents an ordinary and usual business practice

As the sworn affidavit of Timothy Roper, Executive Vice-President of Odell, Roper & Associates, indicates, there are three basic variations on barter/exchanges that are customary and usual within the industry. After explaining these variations, Roper concludes that the bargain between Rodney Smith and RNIEC for the use of Smith's list is but one of the myriad variations that are customarily used in the direct mail industry.

Roper explains at some length the motivations of list owners in permitting, indeed seeking out, ostensibly "free" uses of their lists. Roper states, "the list owner constantly searches for the means to clean a

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The Honorable Lee Ann Elliot
December 7, 1984
Page Five

list at the lowest possible cost in order to maintain the list's rental value for additional resale." Roper, p. 3. "Clearly, it is not economically sound for a list owner to mail his list simply to clean it; thus for the owner of an aging list, it is a common practice to permit the use of a list in exchange for the mailer's return of corrected names and undeliverable mail." Roper, p. 3. Consequently, Roper states, "it is a common practice for a list owner to offer a list 'rent free' if the mailer agrees to cover the cost of the extra postage or clerical costs involved as a condition of use." Roper, p. 4.

The facts in this matter demonstrate that the agreement between RNIEC and Smith conforms to the customary and usual practice in the industry. Thus, the General Counsel's assertion that a contribution from Smith results from the fact that "Smith may have cleaned up this list at RNIEC's expense" evidences a misunderstanding of the practices and motivations of those involved in the direct mail industry.

2. RNIEC's actions constituted a fair trade

Roper's affidavit explains why Smith was willing to loan RNIEC his list ostensibly "rent-free" in return for RNIEC's agreement to use the best possible method -- first class mail -- of cleaning and updating the list. First class mailing allows the mailer to reach those contributors on the list who have moved within the past 12 months, unlike bulk mail which the post office disposes of if the contributor has moved. Thus, first class mailings by the renter of the list provides valuable consideration to the owner of the list by providing an efficient method of cleaning up the list.

As the affidavit sets forth, depending on whether the list is deemed to have a value of \$70 or \$90 per-thousand-names, figures that Roper confirms as reasonable, the bargain between RNIEC and Smith resulted in an equal exchange, and in fact may even have resulted in a benefit to Smith.

In other words, regardless of whether the original list is deemed to have a high fair market valuation or a lower one, the exchange resulted in a fair trade.

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The Honorable Lee Ann Elliot
December 7, 1984
Page Six

Consequently, it is clear that no amount should be reported as a contribution from Smith since he received consideration of comparable value to that which he provided.

CONCLUSION

For all the reasons set forth above and in previous filings in this matter, the respondent, RNIEC, respectfully urges that the Commission (1) find no probable cause to believe that RNIEC failed to report a contribution from Rodney Smith; (2) accept the General Counsel's recommendation that there is no probable cause to believe that RNIEC violated 2 U.S.C. § 441a(a) with respect to the Dan Evans for Senate Committee; and (3) close the file on MUR 1596/1602.

Sincerely,

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM

By Stephen A. Sharp
Stephen A. Sharp, Esq.

Carol C. Darr
Carol C. Darr, Esq.

Attorneys for the Respondent

25040314120

Odell, Roper & Associates, Inc.

November 27, 1984

Mr. Rodney A. Smith
Republican National Independent
Expenditures Committee
5085 Lowell Street, N.W.
Washington, D.C. 20016

Dear Rod:

By way of this letter, I am responding to your verbal request for an objective, professional opinion pertaining to the common business practices used by direct mail agencies such as Odell, Roper & Associates, Inc. pertaining to the use, sale, exchange and barter of direct mail fund-raising lists.

To make certain that I give an accurate assessment, let me recount the facts as I understand them:

1. In October of 1983, you permitted the RNIEC to use a mailing list on the condition that the RNIEC agreed to clean the mailing list by sending its mailing at First Class Postal rates (20¢ per letter). When sent at First Class rates, undeliverable mail is returned to the sender; this means that a mailing list can be purged of undeliverable or non-forwardable addresses. Your agreement with the RNIEC was that the RNIEC would provide you with all undeliverable/unforwardable mail packages (nixies) so that you could clean your list.
2. It is my further understanding that the list used in this case consisted of approximately 223,000 names of past contributors to the National Republican Senatorial Committee. These names were of individuals who had given \$10 or more to the NRSC prior to September 30, 1982. As this particular list had not been mailed or otherwise cleaned since that date, the RNIEC mailing would be expected to produce a considerable number of nixies.

With that understanding in mind, I would like to respond to the three questions you have asked me concerning the value of lists and such rental or exchange agreements.

Your initial question was:

"On a one-time rental basis, what was the fair market value, in October of 1983, of the mailing list used by the RNIEC in its mailing?"

Mr. Rodney A. Smith
November 27, 1984
Page Two

Let me answer that question by first addressing the subject of mailing lists in general.

First, there are literally thousands of mailing lists available to political campaigns and candidates in the commercial market. List rental services generally charge anywhere from 1¢ to 10¢ per name if a rental fee is the exclusive means of assessing a list's value.

Yet, the professional mailer recognizes that the actual value of a list fluctuates dramatically due to a variety of factors. If a list is "old" - i.e., if it has not been mailed or replenished with fresh names for some time - its value is significantly less than an up-to-date mailing list. On average, 20% of the American public moves to a new address every year; thus, any mailing list that has not been cleaned in a year's time could suffer a 25% undeliverable rate which diminishes response. If, for example, a mailing that costs \$10,000 to produce is mailed to such a list, the mailer runs the risk of seeing \$2,000 of his investment being thrown away. Thus, it is incredibly important to the mailer and to the list owner that a list be cleaned periodically.

The cost of cleaning a list can be considerable; yet, since most mailers send mailings via bulk rate postage, none of the undeliverable addresses are returned to the mailer. Thus, to secure the undeliverable names (and clean the list), it is a common practice for list owners to permit mailers to use a list at no charge if the mailer agrees to pay for the cost of cleaning the file (i.e., securing the undeliverable names, eliminating them from the computer, etc.).

Another determination to be made in assessing the value of a mailing list is the expected response rate.

Nearly every list owner claims his list to be of extremely high value; however, even if a list produces a 10-30% response per mailing by a list owner, that same list will not produce at anywhere near that level when used by a second or third organization.

In the case of the RNIET mailing, it is my understanding that the out-dated NRSC list used contained the names of contributors to the Republican Presidential Task Force. These Task Force names were acquired in a program that, essentially, sold gift items and trinkets to prospective donors as a means of attracting support. Thus, these are "premium oriented" donors, not necessarily loyal Republican Party givers. Their value, in any mailing which simply requests a political contribution, is likely to be less.

By way of example, I can cite my experience with the California Republican Party in 1981. For two years, the CRP had mailed "sweepstakes" offerings to registered Republicans. By 1981, the CRP's

house list contained 400,000 names. However, when I launched a new direct mail program that eliminated the sweepstakes system, fully 50% of those 400,000 names were worthless. From a direct mail standpoint, 200,000 people had given solely to win a trip to Tahiti, not out of political motivation. Even though the list was clean, it failed to produce as much income as it cost to mail. Thus, in my opinion, that portion of the list was worthless -- and the same analogy could be used when considering the NRSC's Task Force donors if they are mailed by any other organization except the task force.

Finally, there is the assessment of list value by market forces. As mentioned, list costs, per thousand, run roughly \$30 to \$110 per-thousand-names, with the vast majority of most rental lists offered in the \$50-per-thousand-name price. In many cases, the lists offered on the commercial market are originally acquired through public information; for example, it is a common practice for list brokers to go state by state, and collect the names of donors to state and local candidates. These names are then sold commercially. Since donors to state and local candidates are often donors to federal candidates and organizations, the duplication factor among such lists can be high. In a recent project we completed, the prospective donor lists provided by one state Republican committed to a Senate candidate were duplicated, name for name through 60% of a list provided by a commercial organization; thus, in terms of mailing purposes, the commercial list was worth less than half of its rental cost in terms of performance.

With all of the foregoing in mind, my estimate of the old NRSC list's fair market value as roughly \$70 to \$90 per-thousand-names at the time of the October, 1983 mailing.

Your second question was:

"What was the fair market value in October of 1983 of the RNIEC agreement to clean the list in question in exchange for one-time, "rent free" use of that list?"

If a mailing list has been dormant for some time - not mailed in any fashion - it has already begun to deteriorate. Since a list owner may not necessarily be the mailer of a list, the list owner constantly searches for the means to clean a list at the lowest possible cost in order to maintain the list's rental value for additional resale.

Clearly, it is not economically sound for a list owner to mail his list simply to clean it; thus, for the owner of an aging list, it is a common practice to permit use of a list in exchange for the mailer's return of corrected addresses and undeliverable mail.

However, that goal is not so easily reached. Mailers, when using prospecting lists, traditionally mail at the lowest possible bulk rate postal fee. While bulk rate fees permit a cheaper postage bill, the reduced rate is given, in part, because the postal service is permitted to dispose of undeliverable bulk rate mail rather than returning it to the sender or forwarding it to the addressee.

Thus, to successfully receive corrected or forwarding addresses for an out-of-date list, the list owner (and mailer) have two options:

1. They can mail the list at bulk rate postal charges, but imprint "Address Correction Requested" on the carrier. In this way, letters which are not deliverable are returned to the mailer. The postal service supplies the new address (via a yellow sticker or change-of-address notice) and charges 25¢ for this service.

This common method of cleaning files has one drawback: If an addressee has moved within the past 12 months, his letter is returned to the sender. That, of course, means the addressee has no opportunity to respond to the mailing; thus, the response rate to the mailing is diminished.

2. The second option is to mail the entire mailing at first-class postal rates (20¢ per letter). As with Address Correction Requested, the undeliverable letters are returned to the sender. However, for those names on file which have moved within the last 12 months, the mailing is delivered. Should an individual respond, it is likely he will notify the mailer of his new address when the reply form is sent. While this process is more costly to the mailer, it gives the list owner only those names of individuals who refuse the mailing or have changed address within the last 13 months or greater. Since more individuals respond, the mailer is likely to receive a higher response and, thus, recover his investment.

Because both systems offer advantage and drawbacks - and both may require considerable cost - it is a common practice for a list owner to offer a list "rent free" if the mailer agrees to cover the cost of the extra postage or clerical costs involved as a condition of use. In essence, this is a "barter/exchange" agreement and I can think of at least three situations in which this barter/exchange agreement is used:

- a. As described, a list owner can let a mailer use his list "rent free" on the condition that the mailer sends his letters "Address Correction Requested". Then, the mailer pays for all postage and clerical costs (and possibly, the data processing) for the list owner in lieu of fixed-rate rent.

- b. The list user could pay the standard rental fee, but still mail "Address Correction Requested". The user agrees to charge the owner 50¢ per address correction received; yet, the list user also pays for the cost of computer file correction and postal fees. The difference in the cost of updating the file and the 50¢ charge is a "profit" for the list user, thus defraying his original cost of rental.
- c. Finally, a list user may agree to help a list owner clean a list by mailing the list at First-Class postage rates in exchange for multiple use of the list at later dates. Thus, the mailer pays a higher-than-normal postage rate in the first mailing; the list is cleaned; then, the mailer is permitted to mail the list once or twice more to bring down the original investment of First-Class postage into the normal range of \$60 to \$80 per-thousand-names mailed.

As in dealing with any type of commodity, there are probably a few more barter-exchange agreements which can be worked out between list owners and mailers.

Your situation resembles that of Example "c", though it is my understanding that the RNI EC only used the list one time.

To determine the actual monetary value of such a barter-exchange agreement, I would need to know how many nixies were received and the final costs of data processing. However, even though I don't have those figures, I can make both a high and low estimate, just as I would if I were contemplating such an agreement for myself. If we assume, as I have suggested, that the list is worth \$70 or \$90 per-thousand-names on the open market, my calculations would be as follows:

(High Valuation)

- Assumes typical market value of \$70-per-thousand-names.

Number Mailed: 223,000 Names

Extra Postage: \$20,000 (Reflects extra cost of postage of mailing 1st Class over 11¢ standard bulk rate charge i.e., 9¢ x 223,000)

Less Rental Fee: (\$15,160 (223,000 x 7¢ per name)

Difference: \$4,390 (Estimated fair market value of the RNI EC agreement to clean list in exchange for one-time free rental.)

Mr. Rodney A. Smith
November 27, 1984
Page Six

If it is assumed that the list in question had a rental value of as much as \$90 per thousand, the corresponding fair market value of the barter-exchange is less:

Additional Postage:	\$20,000
Less Rental Fee:	(\$20,070) (computed at \$90 x 223 M)
Difference:	\$ 70.00 (Estimated fair market value of RNIEC agreement to clean list in exchange for one-time free rent.)

Thus, regardless of the valuation used, both parties received fair value for their consideration and, thus, the transaction was an equitable exchange for both sides.

Your final question was:

"Is it customary or standard practice for list owners and list users to enter into such barter/exchanges to clean political fund-raising lists?"

In a word, yes.

Inasmuch as our business revolves around the production of fund-raising mailings for committees and candidates, the "swapping" of lists is a very common practice. Moreover, I can cite several examples where lists have been provided to organizations in which the list user simply wanted his list cleaned and updated.

I have firsthand, personal knowledge of situations where:

1. A former Presidential candidate permitted a national organization to use his list and signature on a mailing to his "house file" on the condition that the national organization would mail it first-class, then clean the file as "payment".
2. Among Senators, it is a common practice for them to donate their lists to state and national organizations since they have little use for the list during their six-year term; should they decide to run for re-election, the organization which has been using it re-provides a "clean list" plus usage (two or three times) of their house list in exchange.
3. In addition, I can cite situations where one Senator (Howard Baker) provided his list to another Senator (Charles Percy) with the stipulation that nixies be furnished to clean the Baker list.

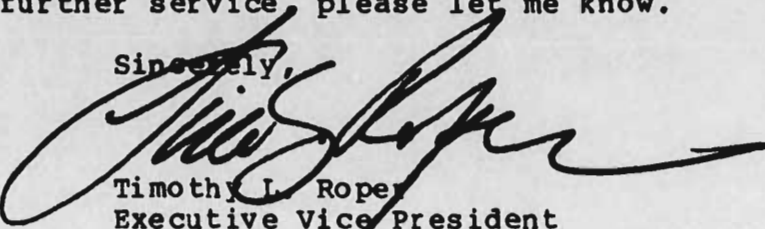
Mr. Rodney A. Smith
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There are, of course, more examples than these. However, the use of a "barter/exchange" agreement for cleaning lists is an entirely common practice and one in which we participate frequently.

Rod, the answers I have given and the statements I have made are, to the best of my knowledge, true and correct. For each question you posed, I have given my best professional judgement as the situation and facts so dictated.

If I can be of any further service, please let me know.

Sincerely,



Timothy L. Roper
Executive Vice President
Odell, Roper & Associates, Inc.

John L. Smith
Notary Public
Montgomery County, MD.

My Commission Expires 7-1-86

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December 7, 1984

The Honorable Lee Ann Elliot
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1596/1602
Republican National Independent
Expenditure Committee

Dear Madam Chairman:

This letter responds to your notification that the General Counsel is prepared to recommend that the Commission find probable cause to believe that our client, the National Republican Independent Expenditure Committee ("RNIEC"), may have violated 2 U.S.C. § 434 by failing to report an in-kind contribution in the form of a mailing list.

I. BACKGROUND

This Matter Under Review ("MUR") arose from complaints filed with the Commission on November 15 and 28, 1983. On July 10, 1984, the Commission determined that there was "reason to believe" that RNIEC may be affiliated with the National Republican Senatorial Committee ("NRSC") because of their overlapping personnel and the existence of a common mailing list. After reviewing the responses submitted by both RNIEC and NRSC, the General Counsel is prepared to recommend to the Commission that there is no probable cause to believe the two committees were affiliated.

The final question remaining before the Commission is whether RNIEC's use of the list constitutes a

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reportable contribution by Rodney Smith. The General Counsel in his October 30, 1984 report, contends that "Smith made a contribution to the RNIEC by providing the list and that contribution was not reported in violation of 2 U.S.C. § 434."

In sum, the respondent's position on this point has been that Smith provided the list to RNIEC on a "barter/exchange" basis. In return for access to the Smith list, RNIEC added new names, updated and corrected names and addresses, and deleted incorrect addresses and the names and addresses of deceased contributors. In reaching the conclusion that such usage and cleaning-up did not result in a reportable contribution from Smith, RNIEC relied on previous Advisory Opinions ("AOs") that have stated that exchanges of equal value in the ordinary course of business do not constitute reportable contributions.

The General Counsel believes the respondent's reliance on these AO's is misplaced since there was no actual exchange of two mailing lists. Contrary to the General Counsel's position, however, the gravamen of the numerous opinions on the subject of mailing lists is not that there actually be two lists but rather that the exchange between the parties be of equal value and in the ordinary course of business. As the enclosed expert opinion states, in the instant case these two criteria have been amply met.

II. DISCUSSION

A. The Relevant Advisory Opinions

In AO 1979-36, the Commission was asked to determine whether a direct mail corporation that absorbed the initial cost of a mail solicitation campaign would be deemed to have made a political contribution if the extension of credit in the form of absorbing these initial costs was in the normal course of business. The requestor described this financing arrangement as an ordinary business practice within the direct mail industry and submitted an affidavit of a direct mail consultant that stated that such a financing agreement represented an ordinary mode of operation. The Commission concluded:

that if, in fact, (1) the proposed financial agreement . . . is of a type which is normal industry practice and contains the type of credit which is extended in the ordinary course of . . . business with terms that are substantially similar to those given to nonpolitical, as well as political, debtors of similar risk and size of obligation and if the costs charged . . . for services are at least the normal charge for services to that type, then the amounts expended . . . will not be considered to be campaign contributions. (emphasis added.)

As is evident from the rationale articulated above, an actual exchange of names was not required to avoid a contribution. Instead, the opinion turned on the question of whether the proposed agreement represented an ordinary business practice within the direct mail industry. Relying on affidavits that so stated, the Commission approved the arrangement.

AO 1981-46 concerned an exchange by a political committee for a list owned by a direct mail corporation. The Commission concluded that where the accepted practice among direct mail fundraisers is to exchange mailing lists, one being payment for the other, neither a contribution nor an illegal transaction results when one list is owned by a political committee. The Commission also took the position that "when one political committee provides names to another political committee in exchange for its own future use of a corresponding number of names which are of equal value, that this constitutes an arm's-length business transaction between the committees and is not a reportable transaction under the Act." The Commission also concluded that payment of production costs of printing address labels by the list owner is not a contribution to the list user or purchaser, provided that such assumption of cost by the list owner is an accepted business practice.

The Commission's approval of these varied arrangements has been predicated in each instance on the requestor's assertion that the agreement represented a normally accepted business practice within the direct

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mail industry, and that the exchange constituted a fair trade. Similarly, the Commission has had occasion to apply these principles to other variations of direct mail list exchanges, including three-way exchanges, exchanges between candidates and party committees, and sales of lists by political committees to corporations. See AOs 1982-41, 1981-4, and 1981-53.

While the factual situations contained in these AOs as well as the two AOs previously discussed differ factually from each other and from the instant case with respect to the precise nature of the consideration, they all illustrate the same proposition -- exchanges representing ordinary and usual business transactions within the direct mail industry that are of equal value need not be treated as contributions.

B. The Present Case

The instant case contains the same two elements as the AOs cited above that the Commission has previously approved. First, as the enclosed expert opinion demonstrates, a barter/exchange involving the cleaning of a list is a customary and standard procedure in the mailing list industry and thus represents an ordinary and usual business practice. Second, RNIEC proffered adequate consideration for Smith's list, and thus in no way can be deemed to have received a reportable contribution from Smith.

1. The exchange represents an ordinary and usual business practice

As the sworn affidavit of Timothy Roper, Executive Vice-President of Odell, Roper & Associates, indicates, there are three basic variations on barter/exchanges that are customary and usual within the industry. After explaining these variations, Roper concludes that the bargain between Rodney Smith and RNIEC for the use of Smith's list is but one of the myriad variations that are customarily used in the direct mail industry.

Roper explains at some length the motivations of list owners in permitting, indeed seeking out, ostensibly "free" uses of their lists. Roper states, "the list owner constantly searches for the means to clean a

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list at the lowest possible cost in order to maintain the list's rental value for additional resale." Roper, p. 3. "Clearly, it is not economically sound for a list owner to mail his list simply to clean it; thus for the owner of an aging list, it is a common practice to permit the use of a list in exchange for the mailer's return of corrected names and undeliverable mail." Roper, p. 3. Consequently, Roper states, "it is a common practice for a list owner to offer a list 'rent free' if the mailer agrees to cover the cost of the extra postage or clerical costs involved as a condition of use." Roper, p. 4.

The facts in this matter demonstrate that the agreement between RNIEC and Smith conforms to the customary and usual practice in the industry. Thus, the General Counsel's assertion that a contribution from Smith results from the fact that "Smith may have cleaned up this list at RNIEC's expense" evidences a misunderstanding of the practices and motivations of those involved in the direct mail industry.

2. RNIEC's actions constituted a fair trade

Roper's affidavit explains why Smith was willing to loan RNIEC his list ostensibly "rent-free" in return for RNIEC's agreement to use the best possible method -- first class mail -- of cleaning and updating the list. First class mailing allows the mailer to reach those contributors on the list who have moved within the past 12 months, unlike bulk mail which the post office disposes of if the contributor has moved. Thus, first class mailings by the renter of the list provides valuable consideration to the owner of the list by providing an efficient method of cleaning up the list.

As the affidavit sets forth, depending on whether the list is deemed to have a value of \$70 or \$90 per-thousand-names, figures that Roper confirms as reasonable, the bargain between RNIEC and Smith resulted in an equal exchange, and in fact may even have resulted in a benefit to Smith.

In other words, regardless of whether the original list is deemed to have a high fair market valuation or a lower one, the exchange resulted in a fair trade.

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Consequently, it is clear that no amount should be reported as a contribution from Smith since he received consideration of comparable value to that which he provided.

CONCLUSION

For all the reasons set forth above and in previous filings in this matter, the respondent, RNIEC, respectfully urges that the Commission (1) find no probable cause to believe that RNIEC failed to report a contribution from Rodney Smith; (2) accept the General Counsel's recommendation that there is no probable cause to believe that RNIEC violated 2 U.S.C. § 441a(a) with respect to the Dan Evans for Senate Committee; and (3) close the file on MUR 1596/1602.

Sincerely,

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM

By Stephen A. Sharp
Stephen A. Sharp, Esq.

Carol C. Darr
Carol C. Darr, Esq.

Attorneys for the Respondent

85040514133

Odell, Roper & Associates, Inc.

November 27, 1984

Mr. Rodney A. Smith
Republican National Independent
Expenditures Committee
5085 Lowell Street, N.W.
Washington, D.C. 20016

Dear Rod:

By way of this letter, I am responding to your verbal request for an objective, professional opinion pertaining to the common business practices used by direct mail agencies such as Odell, Roper & Associates, Inc. pertaining to the use, sale, exchange and barter of direct mail fund-raising lists.

To make certain that I give an accurate assessment, let me recount the facts as I understand them:

1. In October of 1983, you permitted the RNIEC to use a mailing list on the condition that the RNIEC agreed to clean the mailing list by sending its mailing at First Class Postal rates (20¢ per letter). When sent at First Class rates, undeliverable mail is returned to the sender; this means that a mailing list can be purged of undeliverable or non-forwardable addresses. Your agreement with the RNIEC was that the RNIEC would provide you with all undeliverable/unforwardable mail packages (nixies) so that you could clean your list.
2. It is my further understanding that the list used in this case consisted of approximately 223,000 names of past contributors to the National Republican Senatorial Committee. These names were of individuals who had given \$10 or more to the NRSC prior to September 30, 1982. As this particular list had not been mailed or otherwise cleaned since that date, the RNIEC mailing would be expected to produce a considerable number of nixies.

With that understanding in mind, I would like to respond to the three questions you have asked me concerning the value of lists and such rental or exchange agreements.

Your initial question was:

"On a one-time rental basis, what was the fair market value, in October of 1983, of the mailing list used by the RNIEC in its mailing?"

Mr. Rodney A. Smith
November 27, 1984
Page Two

Let me answer that question by first addressing the subject of mailing lists in general.

First, there are literally thousands of mailing lists available to political campaigns and candidates in the commercial market. List rental services generally charge anywhere from 1¢ to 10¢ per name if a rental fee is the exclusive means of assessing a list's value.

Yet, the professional mailer recognizes that the actual value of a list fluctuates dramatically due to a variety of factors. If a list is "old" - i.e., if it has not been mailed or replenished with fresh names for some time - its value is significantly less than an up-to-date mailing list. On average, 20% of the American public moves to a new address every year; thus, any mailing list that has not been cleaned in a year's time could suffer a 25% undeliverable rate which diminishes response. If, for example, a mailing that costs \$10,000 to produce is mailed to such a list, the mailer runs the risk of seeing \$2,000 of his investment being thrown away. Thus, it is incredibly important to the mailer and to the list owner that a list be cleaned periodically.

The cost of cleaning a list can be considerable; yet, since most mailers send mailings via bulk rate postage, none of the undeliverable addresses are returned to the mailer. Thus, to secure the undeliverable names (and clean the list), it is a common practice for list owners to permit mailers to use a list at no charge if the mailer agrees to pay for the cost of cleaning the file (i.e., securing the undeliverable names, eliminating them from the computer, etc.).

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Nearly every list owner claims his list to be of extremely high value; however, even if a list produces a 10-30% response per mailing by a list owner, that same list will not produce at anywhere near that level when used by a second or third organization.

In the case of the RNIC mailing, it is my understanding that the out-dated NRSC list used contained the names of contributors to the Republican Presidential Task Force. These Task Force names were acquired in a program that, essentially, sold gift items and trinkets to prospective donors as a means of attracting support. Thus, these are "premium oriented" donors, not necessarily loyal Republican Party givers. Their value, in any mailing which simply requests a political contribution, is likely to be less.

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With all of the foregoing in mind, my estimate of the old NRSC list's fair market value as roughly \$70 to \$90 per-thousand-names at the time of the October, 1983 mailing.

Your second question was:

"What was the fair market value in October of 1983 of the RNIEC agreement to clean the list in question in exchange for one-time, "rent free" use of that list?"

If a mailing list has been dormant for some time - not mailed in any fashion - it has already begun to deteriorate. Since a list owner may not necessarily be the mailer of a list, the list owner constantly searches for the means to clean a list at the lowest possible cost in order to maintain the list's rental value for additional resale.

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Thus, to successfully receive corrected or forwarding addresses for an out-of-date list, the list owner (and mailer) have two options:

1. They can mail the list at bulk rate postal charges, but imprint "Address Correction Requested" on the carrier. In this way, letters which are not deliverable are returned to the mailer. The postal service supplies the new address (via a yellow sticker or change-of-address notice) and charges 25¢ for this service.

This common method of cleaning files has one drawback: If an addressee has moved within the past 12 months, his letter is returned to the sender. That, of course, means the addressee has no opportunity to respond to the mailing; thus, the response rate to the mailing is diminished.

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- c. Finally, a list user may agree to help a list owner clean a list by mailing the list at First-Class postage rates in exchange for multiple use of the list at later dates. Thus, the mailer pays a higher-than-normal postage rate in the first mailing; the list is cleaned; then, the mailer is permitted to mail the list once or twice more to bring down the original investment of First-Class postage into the normal range of \$60 to \$80 per-thousand-names mailed.

As in dealing with any type of commodity, there are probably a few more barter-exchange agreements which can be worked out between list owners and mailers.

Your situation resembles that of Example "c", though it is my understanding that the RNIEC only used the list one time.

To determine the actual monetary value of such a barter-exchange agreement, I would need to know how many nixies were received and the final costs of data processing. However, even though I don't have those figures, I can make both a high and low estimate, just as I would if I were contemplating such an agreement for myself. If we assume, as I have suggested, that the list is worth \$70 or \$90 per-thousand-names on the open market, my calculations would be as follows:

(High Valuation)

- Assumes typical market value of \$70-per-thousand-names.

Number Mailed: 223,000 Names

Extra Postage: \$20,000 (Reflects extra cost of postage of mailing 1st Class over 11¢ standard bulk rate charge i.e., 9¢ x 223,000)

Less Rental Fee: (\$15,160 (223,000 x 7¢ per name)

Difference: \$4,390 (Estimated fair market value of the RNIEC agreement to clean list in exchange for one-time free rental.)

Mr. Rodney A. Smith
November 27, 1984
Page Six

If it is assumed that the list in question had a rental value of as much as \$90 per thousand, the corresponding fair market value of the barter-exchange is less:

Additional Postage:	\$20,000
Less Rental Fee:	(\$20,070) (computed at \$90 x 223 M)
Difference:	\$ 70.00 (Estimated fair market value of RNIEC agreement to clean list in exchange for one-time free rent.)

Thus, regardless of the valuation used, both parties received fair value for their consideration and, thus, the transaction was an equitable exchange for both sides.

Your final question was:

"Is it customary or standard practice for list owners and list users to enter into such barter/exchanges to clean political fund-raising lists?"

In a word, yes.

Inasmuch as our business revolves around the production of fund-raising mailings for committees and candidates, the "swapping" of lists is a very common practice. Moreover, I can cite several examples where lists have been provided to organizations in which the list user simply wanted his list cleaned and updated.

I have firsthand, personal knowledge of situations where:

1. A former Presidential candidate permitted a national organization to use his list and signature on a mailing to his "house file" on the condition that the national organization would mail it first-class, then clean the file as "payment".
2. Among Senators, it is a common practice for them to donate their lists to state and national organizations since they have little use for the list during their six-year term; should they decide to run for re-election, the organization which has been using it re-provides a "clean list" plus usage (two or three times) of their house list in exchange.
3. In addition, I can cite situations where one Senator (Howard Baker) provided his list to another Senator (Charles Percy) with the stipulation that nixies be furnished to clean the Baker list.

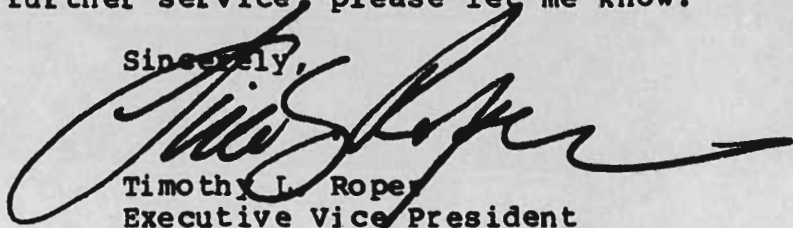
Mr. Rodney A. Smith
November 27, 1984
Page Seven

There are, of course, more examples than these. However, the use of a "barter/exchange" agreement for cleaning lists is an entirely common practice and one in which we participate frequently.

Rod, the answers I have given and the statements I have made are, to the best of my knowledge, true and correct. For each question you posed, I have given my best professional judgement as the situation and facts so dictated.

If I can be of any further service, please let me know.

Sincerely,



Timothy L. Roper
Executive Vice President
Odell, Roper & Associates, Inc.

*By: [Signature]
[Signature]
[Signature]*

Mr. [Signature] 11/28

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SKADDEN, ARPS, SLATE, MEAGHER & FLOM
919 18TH STREET, N.W.
WASHINGTON, D.C., 20006

85040514141

The Honorable Lee Ann Elliot
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

7th Floor

6CC#5702

BAKER & HOSTETTLER

ATTORNEYS AT LAW

618 CONNECTICUT AVE., N.W.

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13TH FLOOR BARNETT PLAZA
ORLANDO, FLORIDA 32801
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IN CLEVELAND, OHIO
3200 NATIONAL CITY CENTER
CLEVELAND, OHIO 44114
(216) 621-0200
TWX 610 421 6375

IN COLUMBUS, OHIO
65 EAST STATE STREET
COLUMBUS, OHIO 43215
(614) 226-1241

November 19, 1984

WRITER'S DIRECT DIAL NO.:
(202) 661-1572

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

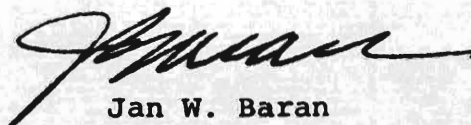
Re: MUR 1596/1602
National Republican Senatorial Committee (NRSC)

Dear Mr. Steele:

I am in receipt of your letter of October 31, 1984 and the General Counsel's brief attached thereto regarding the above-captioned matter. Please be advised that the National Republican Senatorial Committee agrees with your recommendation that the FEC find no probable cause to believe that NRSC violated 2 U.S.C. § 441a(a).

NRSC does not intend to file its own brief.

Sincerely,


Jan W. Baran

JWB:df

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GENERAL COUNSEL

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BAKER & HOSTETLER

CONNECTICUT AVE., N.W.

WASHINGTON, D. C. 20006

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

000#5674

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

919 EIGHTEENTH STREET, N.W.

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ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 429-8800
515 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90071
(213) 488-4800
233 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60601
(312) 838-4000

November 16, 1984

BY HAND

Robert E. Pease, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C.

Dear Mr. Pease:

On behalf of my client, Republican National Independent Expenditure Committee, I am writing to request an extension of 20 days within which to respond to MUR 1596/1602. The present date for a response is Monday, November 19, 1984, since the 15-day time period falls on Saturday, September 16, 1984. The proposed extension would set Friday, December 7, 1984 as the new deadline for our response.

The reason for the request for an extension is that Rodney Smith will be out of town during part of the time for response.

Sincerely,

Carol C. Darr
Carol C. Darr

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GENERAL

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Robert E. Pease, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C.

SKADDEN, ARPS, SLATE, MEACHER & FLOM
919 EIGHTEENTH STREET, N.W.
WASHINGTON, D.C. 20006



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *OK*
DATE: October 31, 1984
SUBJECT: MUR 1596/1602 - Memo and GC's Brief

The attached is submitted as an Agenda document
for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

48 Hour Tally Vote	[]
Sensitive	[]
Non-Sensitive	[]
24 Hour No Objection	[]
Sensitive	[]
Non-Sensitive	[]
Information	[X]
Sensitive	[X]
Non-Sensitive	[]

Other []

DISTRIBUTION

Compliance	[X]
Audit Matters	[]
Litigation	[]
Closed MUR Letters	[]
Status Sheets	[]
Advisory Opinions	[]
Other (see distribution below)	[]

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SENSITIVE



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

84 OCT 31 A 9:35

October 31, 1984

MEMORANDUM

TO : The Commission

FROM : Charles N. Steele
General Counsel *CNS*

SUBJECT: MUR 1596/1602

Attached for the Commission's review are briefs stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. Copies of these briefs and letters notifying the respondents of the General Counsel's intent to recommend to the Commission findings of probable cause and no probable cause to believe were mailed on October 31, 1984. Following receipt of the respondents' replies to these notices, this Office will make a further report to the Commission.

Attachments

1. Briefs (2)
2. Letters to Respondents (2)

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The National Republican)
Senatorial Committee) MUR 1602

GENERAL COUNSEL'S BRIEF

I. Statement of the Case

MUR 1602 resulted from complaints filed by the Democratic Senatorial Campaign Committee, the Democratic Congressional Campaign Committee and Common Cause. On July 10, 1984, the Commission merged the matters. The complaints contained similar allegations against the Republican National Independent Expenditure Committee ("RNIEC"), Rodney A. Smith, the president and treasurer of the RNIEC, Senator John Heinz, co-founder and chairman of the RNIEC's Advisory Panel, the National Republican Senatorial Committee ("NRSC"), and the Dan Evans Senate Committee ("Evans Committee").

The allegations in the complaints concern expenditures made by the RNIEC in connection with the special senatorial election in Washington state. The RNIEC spent over \$185,000 on behalf of Senator Evans in that election. RNIEC claims that the expenditures made qualify as independent expenditures; the complainants contend that the expenditures were not independent but rather were excessive contributions in-kind by RNIEC on behalf of Senator Evans.

The complainants allege that the RNIEC was established by a national political party, that the RNIEC and the NRSC are

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affiliated political committees subject to the same contribution limitations, that the NRSC provided the RNIEC with the plans of the Evans campaign and that the RNIEC had direct contact with the Evans campaign concerning the plans and activities of the Evans Committee. In support of these allegations the complaints state that the RNIEC has the words "Republican National" in its name, that its goal is to elect Republican candidates, the RNIEC and the NRSC have both common vendors and donors and that both committees have overlapping personnel. The complainants conclude that these allegations demonstrate that impermissible coordination of expenditures between the RNIEC, NRSC and the Evans Committee occurred such that the independence of the expenditures made by the RNIEC on behalf of Senator Evans were compromised and therefore are excessive contributions in-kind.

Based on the recommendations of the General Counsel, the Commission, on July 10, 1984, made a number of findings with respect to merged MUR 1602. The Commission found reason to believe that RNIEC and NRSC violated 2 U.S.C. § 441a(a) with respect to Dan Evans, a candidate in the special senatorial election in Washington state held on November 8, 1983. The Commission did not take any action at that time with respect to Senator John Heinz. The Commission found no reason to believe that the Dan Evans Senate Committee violated 2 U.S.C. § 441a(f) and closed the file as to that respondent. Finally, the Commission directed the General Counsel to send appropriate

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questions to the RNIEC and the NRSC pursuant to the reason to believe finding. The questions were mailed to the NRSC and the RNIEC on July 13, 1984.

The bases for the Commission's reason to believe finding that the NRSC and the RNIEC may be affiliated political committees were: the close links between the two committees (an overlapping member of both committees) and the use of a common contributor solicitation list by both committees. Because the NRSC spent the maximum permitted by law on behalf of Senator Evans in the Washington senate race and the RNIEC spent over \$185,000 on behalf of Senator Evans in the same election, both committees exceeded the limitations of 2 U.S.C. § 441a(a) if it can be shown that they are affiliated committees.

The close links between the two committees centered around the relationship of Rodney Smith to both committees. Mr. Smith was the finance director and treasurer of the NRSC from 1977 until January 1983. Prior to 1977, Mr. Smith was the finance director of the Republican National Committee. At the NRSC Mr. Smith had the responsibility of raising campaign contributions for the NRSC. Mr. Smith was instrumental in developing the NRSC's contributor mailing list. After he left the NRSC, Mr. Smith became one of the co-founders, along with Senator Heinz, of the RNIEC. The RNIEC, with Mr. Smith listed as treasurer, registered with the Commission on March 30, 1983, as a non-party political committee making independent expenditures. Because of his close links with both committees, it was alleged

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that Mr. Smith may have been in a position of direct contact with the NRSC or knew of the NRSC's plans in support of Senator Evans.

Senator Heinz's overlapping membership in both committees raises additional questions concerning the affiliation of the two committees. As of the time RNIEC registered with the FEC, Senator Heinz was also an active member of the NRSC. Senator Heinz was listed as a co-founder and the National Chairman of the RNIEC on RNIEC solicitation material. See Exhibit 1 of the NRSC August 20, 1984, response to the Commission's questions. The RNIEC, in its response to the Commission's reason to believe finding, identified Senator Heinz as the Chairman of the RNIEC's "Advisory Panel." Senator Heinz, as a member of both committees, was in a position where he may have been able to acquire information from the NRSC concerning the NRSC's plans and activities with respect to Senator Evans.

On September 15, 1983, after becoming aware of Senator Heinz's involvement with the RNIEC, Senator Lugar, chairman of the NRSC, requested that Senator Heinz either cease independent expenditure activity or resign as a member of the NRSC. On September 19, 1983, the RNIEC, while Senator Heinz was still active in both committees, formally decided to make independent expenditures on behalf of Senator Evans in the Washington senate race. On October 6, 1983, in a letter to Senator Lugar, Senator Heinz stated that he was suspending himself from all campaign-related activities pertaining to the Dan Evans race and was taking a "leave of absence" from the NRSC through and including the special senatorial election in Washington state to be decided

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on November 8, 1983. It was not until November 14, 1983, one week after the first complaint in this matter was filed, that Senator Heinz resigned from the NRSC.

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The third issue which formed the basis of the Commission's reason to believe finding against the NRSC and the RNIEC involved the use by both committees of a common contributor mailing list. Mr. Smith contends that he brought a list with him when he became associated with the NRSC, further developed that list while finance director of the NRSC, and then, after leaving the NRSC, used that list to raise contributions for the RNIEC. Mr. Smith claims that he owns the list. The contributor mailing list was instrumental in the establishment of the RNIEC. The list contains 223,064 names and addresses and the RNIEC used that list provided by Mr. Smith to raise \$186,616 in 1983. The RNIEC contends that it spent \$162,621 on fundraising costs associated with that list. The NRSC, however, believes that it owns this contributor list and that Mr. Smith's possession, custody, control or use of said list is unlawful. The NRSC bases this contention on the "common law principles of misappropriation of trade secrets or confidential matters; conversion; ... fraud; ... unjust enrichment"

On July 13, 1984, the General Counsel sent a series of questions to both RNIEC and the NRSC. The Commission received a response from the RNIEC on July 23, 1984. The NRSC, after requesting and receiving an extension of time to reply to the questions, replied on August 20, 1984, to the General Counsel's questions.

II. Legal Analysis

The main issue raised by the complaints in this matter concerns whether the expenditures made by the RNIEC qualify as independent expenditures. All of the allegations in the complaints attack the independence of those expenditures made on behalf of Senator Evans by the RNIEC.

An independent expenditure is defined at 11 C.F.R.

§ 109.1(a) as:

an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.

Section 109.1(b)(5) further provides that any expenditure not qualifying as an independent expenditure is considered a contribution in-kind to the candidate and subject to the restrictions of 2 U.S.C. § 441a.

The issues raised in the complaints can be summarized into two main allegations. First, the NRSC and the RNIEC are affiliated committees and/or that the two committees impermissibly coordinated their expenditures. Second, the RNIEC had contact with the Evans campaign, thereby negating the independence of the expenditures made by the RNIEC. If substantiated, each of these allegations results in the expenditures made by the RNIEC as being excessive in-kind contributions by the RNIEC on behalf of Senator Evans in violation of 2 U.S.C. § 441a. Section 441a limits political

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committees, such as the RNIEC, that have not qualified as multicandidate committees, to making a maximum of \$1,000 in contributions to a federal candidate per election. The Commission has already found no reason to believe that the Dan Evans for Senate Committee violated 2 U.S.C. § 441a(f) by accepting in-kind contributions from the RNIEC. The basis was that there was no contact, in any way, between the Evans Committee and the RNIEC. Thus, the only issue that remains in this matter concerns the affiliation of the RNIEC and the NRSC.

Affiliation Or Coordination of RNIEC and NRSC

In order to demonstrate affiliation in the present case it must be shown that the NRSC established or financed or maintained or controlled the RNIEC. 11 C.F.R. § 100.5(g)(2). If affiliated, the RNIEC and the NRSC would share the same contribution limitation because all affiliated political committees are treated as one committee for purposes of computing contribution limitations. 11 C.F.R. § 110.3. In addition, as a party committee, the NRSC is prohibited from making independent expenditures. 11 C.F.R. § 110.7(b)(4). This prohibition extends to all of its affiliates and therefore any expenditures made by the RNIEC, should the RNIEC and the NRSC be affiliated, must be considered contributions in-kind on behalf of the candidate. The NRSC spent the maximum amount allowed under 2 U.S.C. § 441a(d) in support of Senator Evans. The RNIEC spent over \$185,000 on behalf of Senator Evans. If the RNIEC and the NRSC are affiliated committees, then together they exceeded the

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contribution limitations of 2 U.S.C. § 441a on behalf of Senator Evans in the Washington Senate race.

Based on the responses to the General Counsel's questions, as well as previously submitted material by the respondents, it does not appear that sufficient evidence of affiliation exists for a recommendation of probable cause to believe that the RNIEC and the NRSC violated 2 U.S.C. § 441a(a) with respect to the Evans senatorial campaign.

As previously mentioned, the reason to believe finding was based on three factors: Smith's close links between both committees; the fact that Senator Heinz was involved with both committees; and the fact that the RNIEC used the same contributor list used by the NRSC.

Rodney Smith was at one time intimately involved in the operations of the NRSC and later became one of the co-founders and operators of the RNIEC. In the present case, it does not appear that he used those links to either acquire information from the NRSC or inform that organization of the RNIEC's plans concerning the Evans senate race. Smith's involvement with the contributor mailing list will be discussed below. In response to the General Counsel's questions, Mr. Smith stated that neither he "[n]or any other representative of the RNIEC ever participated in any discussions with any representatives of the NRSC concerning either committee's plans or activities in support of Senator Evans." Mr. Smith further denied receiving or transmitting any information concerning that senatorial campaign with the NRSC. The NRSC also denied any contact at all, in any manner, between

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the two committees concerning the special senatorial election in Washington state.

It appears that the NRSC attempted to distance itself from the RNIEC and its independent activities. The NRSC is a political committee composed of a chairman, sixteen members, the Majority Leader of the United States Senate, and an operational staff. The NRSC is controlled by its chairman on a day-to-day basis and the chairman does not need the approval of the members prior to authorizing expenditures or making contributions on behalf of federal candidates. The NRSC has stated that its policy is that NRSC members and personnel not communicate with any person or committee that is making, or states an intention to make, independent expenditures on behalf of Republican senatorial candidates. NRSC states that it became aware of RNIEC's fundraising activities in August 1983. On September 15, 1983, after the Senate's summer recess, Senator Richard Lugar, NRSC's chairman, met with Senator Heinz. In that meeting Senator Lugar asked Senator Heinz to resign from the NRSC or cease independent expenditure activities. As previously mentioned, Senator Heinz instead took a leave of absence from the NRSC on October 6, 1983, but did not resign until November 14, 1983.

On November 22, 1983, a meeting was held, at the request of the NRSC, between representatives of both the NRSC and the RNIEC. At that meeting the NRSC objected to the RNIEC's use of a name confusingly similar to the NRSC's registered service mark, the use by RNIEC of fundraising letters confusingly similar to NRSC's

fundraising letters, and the RNIEC's use of a list containing names and addresses of NRSC contributors. At that meeting, according to the response submitted by the NRSC, the RNIEC declined to identify what lists it used and refused to change its name but it did agree to cease using fundraising letters which were confusingly similar to NRSC fundraising letters.^{1/} The RNIEC also represented to the NRSC that it "would not conduct further direct mail fundraising activities and that it would provide NRSC with information about its fundraising lists in conjunction with a written settlement and general release between RNIEC and NRSC." NRSC response to questions, pp. 6-7. Although negotiations did take place between the committees and settlement offers were exchanged, no final agreements were reached.

Senator Heinz, as previously discussed, was at one time a member of both committees.^{2/} Senator Heinz had participated and assisted RNIEC in fundraising efforts while still an active member of the NRSC. It was not until after Senator Lugar, chairman of the NRSC, requested Senator Heinz either cease

^{1/} The NRSC provided copies of a fundraising letter used by the RNIEC, with Senator Heinz listed as National Chairman, and one used by the NRSC. The letters, in both style and formate, were virtually identical and were mailed to former NRSC contributors by the RNIEC. See NRSC response of August 20, 1984, to the General Counsel's questions.

^{2/} At this time Senator Heinz is not a member of the NRSC. In the future should he become an active member of that committee as well as active with the RNIEC, either through independent expenditures or direct contributions to federal candidates, the issue of the affiliation of the NRSC and the RNIEC would need to be reexamined.

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independent activities or resign from the NRSC and after RNIEC decided to make independent expenditures on behalf of Senator Evans, that Senator Heinz suspended his membership in the NRSC. It appears, however, that despite this overlap in memberships, Senator Heinz did not communicate in any manner with the NRSC concerning the Evans senate race.

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The circumstances and timing surrounding the special senate election in Washington were unique. Senator Jackson died on September 1, 1983, creating a vacancy in the Senate from the state of Washington. On September 12, Daniel Evans was appointed Senator, filling the vacancy created by Senator Jackson's death. Also on September 12, Senator Evans declared his candidacy for a special general election to be held on November 8, 1983. On October 6, 1983, Senator Heinz suspended his membership in the NRSC. During this period, there were no meetings of NRSC members nor did the NRSC transmit any information concerning its plans or activities concerning the special election to Senator Heinz. The exigent circumstances surrounding this special election were such that Senator Heinz was not provided with information concerning NRSC's plans and activities in Washington state. Such future dual membership of Senator Heinz, however, could, under other circumstances, lead to a presumption of affiliation between the two committees.

Finally, the question remains concerning whether the contributor list is evidence of affiliation. In light of the information received by the Commission, it appears that there is a

genuine dispute as to ownership of the list thus militating against the list as a presumption of the affiliation of the two committees. That list, along with the list RNIEC rented from Senator Heinz, was instrumental in the establishment of the RNIEC. The list contained 223,064 names and addresses and was used by the RNIEC to raise \$186,616. It does not appear, however, that the NRSC willingly provided the list to the RNIEC. It also appears that the RNIEC has not used that list, or the Heinz list, since the RNIEC's initial fundraising efforts in 1983.

The NRSC contends that Mr. Smith illegally possesses its contributor list and that the NRSC did not intentionally provide Smith or the RNIEC with that mailing list. The NRSC attempted to reach a settlement with the RNIEC whereby the RNIEC would delete the names and addresses of any and all individuals that appear on any list that is in the custody, control or possession of the NRSC. See Draft Agreement provided by NRSC in response to the General Counsel's questions. On November 22, 1983, representatives from both committees met to discuss this settlement. After counterproposals were exchanged, no agreement was reached. No discussions have been held since March 20, 1984. The NRSC contends that it was not certain at that time that the RNIEC had possession of its list and is now considering further efforts to regain possession of its contributor list. As previously mentioned, it does not appear that the RNIEC has used that list since its initial fundraising efforts.

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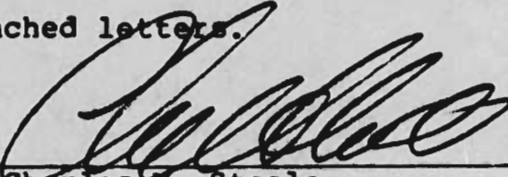
There also appears to be a factual dispute concerning the list. The RNIEC claims that prior to Smith's association with the NRSC, Smith had a list of contributor names and addresses. He provided that list for NRSC's use when he was a consultant for the NRSC. Smith claims that during his consultancy with the NRSC he continued to develop and expand this list. The RNIEC stated that "any revisions or improvements to the list made during his consultancy with the NRSC were made in exchange for Mr. Smith's providing the list in the first place, and thus did not affect Mr. Smith's ownership of the list." See response of Rodney Smith to questions, p. 1. The NRSC, however, contradicts Smith's contention and states that "persons who were at NRSC at the time Mr. Smith was retained to raise funds have informed NRSC that to their knowledge Mr. Smith did not make available for use any lists to NRSC. NRSC records do not reflect that any such lists existed or were ever made available to NRSC." The NRSC further claims that "the list of NRSC contributor names and addresses which was developed by Mr. Smith is the property solely of NRSC. Mr. Smith's contracts with NRSC never provided Mr. Smith with any property rights over such lists." See NRSC response to questions, p. 2. It appears that the ownership dispute between the NRSC and the RNIEC is legitimate, thus militating against the list as a presumption of the affiliation of the two committees.

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III. General Counsel's Recommendation

1. Find no probable cause to believe that the National Republican Senatorial Committee violated 2 U.S.C. § 441a(a) with respect to the Dan Evans for Senate Committee.
2. Approve and send the attached letters.

30 October 1984
Date


Charles N. Steele
General Counsel

Attachments

Letters to Respondents (2)

85040514161



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 31, 1984

Jan W. Baran, Esquire
Baker and Hostetler
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

RE: MUR 1596/1602
National Republican
Senatorial Committee

Dear Mr. Baran:

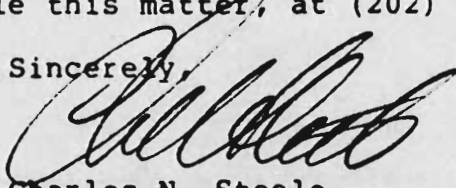
Based on a complaint filed with the Commission on December 8, 1983, and information supplied by your client, the Commission determined on July 10, 1984, that the National Republican Senatorial Committee had violated 2 U.S.C. § 441a(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation has occurred. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

Should you have any questions, please contact Robert E. Pease, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,


Charles N. Steele
General Counsel

Enclosure
Brief

85040514162

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The Republican National)
Independent Expenditure) MUR 1602
Committee, et al.)

GENERAL COUNSEL'S BRIEF

I. Statement of the Case

MUR 1602 resulted from complaints filed by the Democratic Senatorial Campaign Committee, the Democratic Congressional Campaign Committee and Common Cause. On July 10, 1984, the Commission merged the matters. The complaints contained similar allegations against the Republican National Independent Expenditure Committee ("RNIEC"), Rodney A. Smith, the president and treasurer of the RNIEC, Senator John Heinz, co-founder and chairman of the RNIEC's Advisory Panel, the National Republican Senatorial Committee ("NRSC"), and the Dan Evans Senate Committee ("Evans Committee").

The allegations in the complaints concern expenditures made by the RNIEC in connection with the special senatorial election in Washington state. The RNIEC spent over \$185,000 on behalf of Senator Evans in that election. RNIEC claims that the expenditures made qualify as independent expenditures; the complainants contend that the expenditures were not independent but rather were excessive contributions in-kind by RNIEC on behalf of Senator Evans.

The complainants allege that the RNIEC was established by a national political party, that the RNIEC and the NRSC are

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affiliated political committees subject to the same contribution limitations, that the NRSC provided the RNIEC with the plans of the Evans campaign and that the RNIEC had direct contact with the Evans campaign concerning the plans and activities of the Evans Committee. In support of these allegations the complaints state that the RNIEC has the words "Republican National" in its name, that its goal is to elect Republican candidates, the RNIEC and the NRSC have both common vendors and donors and that both committees have overlapping personnel. The complainants conclude that these allegations demonstrate that impermissible coordination of expenditures between the RNIEC, NRSC and the Evans Committee occurred such that the independence of the expenditures made by the RNIEC on behalf of Senator Evans were compromised and therefore are excessive contributions in-kind.

Based on the recommendations of the General Counsel, the Commission, on July 10, 1984, made a number of findings with respect to merged MUR 1602. The Commission found reason to believe that RNIEC and NRSC violated 2 U.S.C. § 441a(a) with respect to Dan Evans, a candidate in the special senatorial election in Washington state held on November 8, 1983. The Commission did not take any action at that time with respect to Senator John Heinz. The Commission found no reason to believe that the Dan Evans Senate Committee violated 2 U.S.C. § 441a(f) and closed the file as to that respondent. Finally, the Commission directed the General Counsel to send appropriate questions to the RNIEC and the NRSC pursuant to the

reason to believe finding. The questions were mailed to the NRSC and the RNIEC on July 13, 1984.

The bases for the Commission's reason to believe finding that the NRSC and the RNIEC may be affiliated political committees were: the close links between the two committees, an overlapping member of both committees, and the use of a common contributor solicitation list by both committees. Because the NRSC spent the maximum permitted by law on behalf of Senator Evans in the Washington senate race and the RNIEC spent over \$185,000 on behalf of Senator Evans in the same election, both committees exceeded the limitations of 2 U.S.C. § 441a(a) if it can be shown that they are affiliated committees.

The close links between the two committees centered around the relationship of Rodney Smith to both committees. Mr. Smith was the finance director and treasurer of the NRSC from 1977 until January 1983. Prior to 1977, Mr. Smith was the finance director of the Republican National Committee. At the NRSC Mr. Smith had the responsibility of raising campaign contributions for the NRSC. Mr. Smith was instrumental in developing the NRSC's contributor mailing list. After he left the NRSC, Mr. Smith became one of the co-founders, along with Senator Heinz, of the RNIEC. The RNIEC, with Mr. Smith listed as treasurer, registered with the Commission on March 30, 1983, as a non-party political committee making independent expenditures. Because of his close links with both committees, it was alleged that Mr. Smith may have been in a position of direct contact with the NRSC or knew of the NRSC's plans in support of Senator Evans.

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Senator Heinz's overlapping membership in both committees raises additional questions concerning the affiliation of the two committees. As of the time RNIEC registered with the FEC, Senator Heinz was also an active member of the NRSC. Senator Heinz was listed as a co-founder and the National Chairman of the RNIEC on RNIEC solicitation material. See Exhibit 1 of the NRSC August 20, 1984, response to the Commission's questions. The RNIEC, in its response to the Commission's reason to believe finding, identified Senator Heinz as the Chairman of the RNIEC's "Advisory Panel." Senator Heinz, as a member of both committees, was in a position where he may have been able to acquire information from the NRSC concerning the NRSC's plans and activities with respect to Senator Evans.

On September 15, 1983, after becoming aware of Senator Heinz's involvement with the RNIEC, Senator Lugar, chairman of the NRSC, requested that Senator Heinz either cease independent expenditure activity or resign as a member of the NRSC. On September 19, 1983, the RNIEC, while Senator Heinz was still active in both committees, formally decided to make independent expenditures on behalf of Senator Evans in the Washington senate race. On October 6, 1983, in a letter to Senator Lugar, Senator Heinz stated that he was suspending himself from all campaign-related activities pertaining to the Dan Evans race and was taking a "leave of absence" from the NRSC through and including the special senatorial election in Washington state to be decided on November 8, 1983. It was not until November 14, 1983, one

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week after the first complaint in this matter was filed, that Senator Heinz resigned from the NRSC.

The third issue which formed the basis of the Commission's reason to believe finding against the NRSC and the RNIEC involved the use by both committees of a common contributor mailing list. Mr. Smith contends that he brought a list with him when he became associated with the NRSC, further developed that list while finance director of the NRSC, and then, after leaving the NRSC, used that list to raise contributions for the RNIEC. Mr. Smith claims that he owns the list. The contributor mailing list was instrumental in the establishment of the RNIEC. The list contains 223,064 names and addresses and the RNIEC used that list provided by Mr. Smith to raise \$186,616 in 1983. The RNIEC contends that it spent \$162,621 on fundraising costs associated with that list. The NRSC, however, believes that it owns this contributor list and that Mr. Smith's possession, custody, control or use of said list is unlawful. The NRSC bases this contention on the "common law principles of misappropriation of trade secrets or confidential matters; conversion; ... fraud; ... unjust enrichment"

On July 13, 1984, the General Counsel sent a series of questions to both RNIEC and the NRSC. The Commission received a response from the RNIEC on July 23, 1984. The NRSC, after requesting and receiving an extension of time to reply to the questions, replied on August 20, 1984, to the General Counsel's questions.

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II. Legal Analysis

The main issue raised by the complaints in this matter concerns whether the expenditures made by the RNIEC qualify as independent expenditures. All of the allegations in the complaints attack the independence of those expenditures made on behalf of Senator Evans by the RNIEC.

An independent expenditure is defined at 11 C.F.R.

§ 109.1(a) as:

an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.

Section 109.1(b)(5) further provides that any expenditure not qualifying as an independent expenditure is considered a contribution in-kind to the candidate and subject to the restrictions of 2 U.S.C. § 441a.

The issues raised in the complaints can be summarized into two main allegations. First, the NRSC and the RNIEC are affiliated committees and/or that the two committees impermissibly coordinated their expenditures. Second, the RNIEC had contact with the Evans campaign, thereby negating the independence of the expenditures made by the RNIEC. If substantiated, each of these allegations results in the expenditures made by the RNIEC as being excessive in-kind contributions by the RNIEC on behalf of Senator Evans in violation of 2 U.S.C. § 441a. Section 441a limits political

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committees, such as the RNIEC, that have not qualified as multicandidate committees, to making a maximum of \$1,000 in contributions to a federal candidate per election. The Commission has already found no reason to believe that the Dan Evans for Senate Committee violated 2 U.S.C. § 441a(f) by accepting in-kind contributions from the RNIEC. The basis was that there was no contact, in any way, between the Evans Committee and the RNIEC. Thus, the only issue that remains in this matter concerns the affiliation of the RNIEC and the NRSC.

Affiliation Or Coordination of RNIEC and NRSC

In order to demonstrate affiliation in the present case it must be shown that the NRSC established or financed or maintained or controlled the RNIEC. 11 C.F.R. § 100.5(g)(2). If affiliated, the RNIEC and the NRSC would share the same contribution limitation because all affiliated political committees are treated as one committee for purposes of computing contribution limitations. 11 C.F.R. § 110.3. In addition, as a party committee, the NRSC is prohibited from making independent expenditures. 11 C.F.R. § 110.7(b)(4). This prohibition extends to all of its affiliates and therefore any expenditures made by the RNIEC, should the RNIEC and the NRSC be affiliated, must be considered contributions in-kind on behalf of the candidate. The NRSC spent the maximum amount allowed under 2 U.S.C. § 441a(d) in support of Senator Evans. The RNIEC spent over \$185,000 on behalf of Senator Evans. If the RNIEC and the NRSC are affiliated committees, then together they exceeded the contribution limitations of 2 U.S.C. § 441a on behalf of Senator Evans in the Washington Senate race.

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Based on the responses to the General Counsel's questions, as well as previously submitted material by the respondents, it does not appear that sufficient evidence of affiliation exists for a recommendation of probable cause to believe that the RNIEC and the NRSC violated 2 U.S.C. § 441a(a) with respect to the Evans senatorial campaign.

As previously mentioned, the reason to believe finding was based on three factors: Smith's close links between both committees; the fact that Senator Heinz was involved with both committees; and the fact that the RNIEC used the same contributor list used by the NRSC.

Rodney Smith was at one time intimately involved in the operations of the NRSC and later became one of the co-founders and operators of the RNIEC. In the present case, it does not appear that he used those links to either acquire information from the NRSC or inform that organization of the RNIEC's plans concerning the Evans senate race. Smith's involvement with the contributor mailing list will be discussed below. In response to the General Counsel's questions, Mr. Smith stated that neither he "[n]or any other representative of the RNIEC ever participated in any discussions with any representatives of the NRSC concerning either committee's plans or activities in support of Senator Evans." Mr. Smith further denied receiving or transmitting any information concerning that senatorial campaign with the NRSC. The NRSC also denied any contact at all, in any manner, between the two committees concerning the special senatorial election in Washington state.

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It appears that the NRSC attempted to distance itself from the RNIEC and its independent activities. The NRSC is a political committee composed of a chairman, sixteen members, the Majority Leader of the United States Senate, and an operational staff. The NRSC is controlled by its chairman on a day-to-day basis and the chairman does not need the approval of the members prior to authorizing expenditures or making contributions on behalf of federal candidates. The NRSC has stated that its policy is that NRSC members and personnel not communicate with any person or committee that is making, or states an intention to make, independent expenditures on behalf of Republican senatorial candidates. NRSC states that it became aware of RNIEC's fundraising activities in August 1983. On September 15, 1983, after the Senate's summer recess, Senator Richard Lugar, NRSC's chairman, met with Senator Heinz. In that meeting Senator Lugar asked Senator Heinz to resign from the NRSC or cease independent expenditure activities. As previously mentioned, Senator Heinz instead took a leave of absence from the NRSC on October 6, 1983, but did not resign until November 14, 1983.

On November 22, 1983, a meeting was held, at the request of the NRSC, between representatives of both the NRSC and the RNIEC. At that meeting the NRSC objected to the RNIEC's use of a name confusingly similar to the NRSC's registered service mark, the use by RNIEC of fundraising letters confusingly similar to NRSC's fundraising letters, and the RNIEC's use of a list containing names and addresses of NRSC contributors. At that meeting,

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according to the response submitted by the NRSC, the RNIEC declined to identify what lists it used and refused to change its name but it did agree to cease using fundraising letters which were confusingly similar to NRSC fundraising letters.^{1/} The RNIEC also represented to the NRSC that it "would not conduct further direct mail fundraising activities and that it would provide NRSC with information about its fundraising lists in conjunction with a written settlement and general release between RNIEC and NRSC." NRSC response to questions, pp. 6-7. Although negotiations did take place between the committees and settlement offers were exchanged, no final agreements were reached.

Senator Heinz, as previously discussed, was at one time a member of both committees.^{2/} Senator Heinz had participated and assisted RNIEC in fundraising efforts while still an active member of the NRSC. It was not until after Senator Lugar, chairman of the NRSC, requested Senator Heinz either cease independent activities or resign from the NRSC and after RNIEC decided to make independent expenditures on behalf of Senator Evans, that Senator Heinz suspended his membership in the NRSC.

^{1/} The NRSC provided copies of a fundraising letter used by the RNIEC, with Senator Heinz listed as National Chairman, and one used by the NRSC. The letters, in both style and format, were virtually identical and were mailed to former NRSC contributors by the RNIEC. See NRSC response of August 20, 1984, to the General Counsel's questions.

^{2/} At this time Senator Heinz is not a member of the NRSC. In the future should he become an active member of that committee as well as active with the RNIEC, either through independent expenditures or direct contributions to federal candidates, the issue of the affiliation of the NRSC and the RNIEC would need to be reexamined.

It appears, however, that despite this overlap in memberships, Senator Heinz did not communicate in any manner with the NRSC concerning the Evans senate race.

The circumstances and timing surrounding the special senate election in Washington were unique. Senator Jackson died on September 1, 1983, creating a vacancy in the Senate from the state of Washington. On September 12, Daniel Evans was appointed Senator, filling the vacancy created by Senator Jackson's death. Also on September 12, Senator Evans declared his candidacy for a special general election to be held on November 8, 1983. On October 6, 1983, Senator Heinz suspended his membership in the NRSC. During this period, there were no meetings of NRSC members nor did the NRSC transmit any information concerning its plans or activities concerning the special election to Senator Heinz. The exigent circumstances surrounding this special election were such that Senator Heinz was not provided with information concerning NRSC's plans and activities in Washington state. Such future dual membership of Senator Heinz, however, could, under other circumstances, lead to a presumption of affiliation between the two committees.

Finally, the question remains concerning whether the contributor list is evidence of affiliation. In light of the information received by the Commission, it appears that there is a genuine dispute as to ownership of the list thus militating against the list as a presumption of the affiliation of the two committees. That list, along with the list RNIEC rented from Senator Heinz, was instrumental in the establishment of the

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RNIEC. The list contained 223,064 names and addresses and was used by the RNIEC to raise \$186,616. It does not appear, however, that the NRSC willingly provided the list to the RNIEC. It also appears that the RNIEC has not used that list, or the Heinz list, since the RNIEC's initial fundraising efforts in 1983.

The NRSC contends that Mr. Smith illegally possesses its contributor list and that the NRSC did not intentionally provide Smith or the RNIEC with that mailing list. The NRSC attempted to reach a settlement with the RNIEC whereby the RNIEC would delete the names and addresses of any and all individuals that appear on any list that is in the custody, control or possession of the NRSC. See Draft Agreement provided by NRSC in response to the General Counsel's questions. On November 22, 1983, representatives from both committees met to discuss this settlement. After counterproposals were exchanged, no agreement was reached. No discussions have been held since March 20, 1984. The NRSC contends that it was not certain at that time that the RNIEC had possession of its list and is now considering further efforts to regain possession of its contributor list. As previously mentioned, it does not appear that the RNIEC has used that list since its initial fundraising efforts.

There also appears to be a factual dispute concerning the list. The RNIEC claims that prior to Smith's association with the NRSC, Smith had a list of contributor names and addresses.

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He provided that list for NRSC's use when he was a consultant for the NRSC. Smith claims that during his consultancy with the NRSC he continued to develop and expand this list. The RNIEC stated that "any revisions or improvements to the list made during his consultancy with the NRSC were made in exchange for Mr. Smith's providing the list in the first place, and thus did not affect Mr. Smith's ownership of the list." See response of Rodney Smith to questions, p. 1. The NRSC, however, contradicts Smith's contention and states that "persons who were at NRSC at the time Mr. Smith was retained to raise funds have informed NRSC that to their knowledge Mr. Smith did not make available for use any lists to NRSC. NRSC records do not reflect that any such lists existed or were ever made available to NRSC." The NRSC further claims that "the list of NRSC contributor names and addresses which was developed by Mr. Smith is the property solely of NRSC. Mr. Smith's contracts with NRSC never provided Mr. Smith with any property rights over such lists." See NRSC response to questions, p. 2. It appears that the ownership dispute between the NRSC and the RNIEC is legitimate, thus militating against the list as a presumption of the affiliation of the two committees.

Regardless of the dispute concerning the ownership of the list, there appears to be a reporting and contribution problem with respect to RNIEC's use of the list. It appears that Mr. Smith made a contribution to the RNIEC when he permitted that committee to use the list free of charge. A contribution is defined as "anything

of value" which would include providing a contribution mailing list free of charge or not at the usual and normal charge. 2 U.S.C. § 431(8)(A). The RNIEC claims that the list was provided on a "barter/exchange" basis. It stated that "in exchange for access to the Smith list, the RNIEC added some new names, updated and corrected names and addresses and deleted names and addresses of the deceased and bad addresses." Smith response to questions, p. 1. In reaching this conclusion, the RNIEC relies on Advisory Opinions 1981-46 and 1979-36. RNIEC's reliance on those opinions to reach its conclusion that the use of the list free of charge was not a contribution is misplaced. Those opinions stated that the exchange of lists of equal value would not result in a contribution nor would the exchange have to be reported. That is not the situation in the present case. The fact that Smith may have cleaned up this list at RNIEC's expense does not constitute an exchange of contributor lists. It appears that Smith has made a contribution to the RNIEC by providing the list and that the contribution was not reported in violation of 2 U.S.C. § 434.^{3/}

III. General Counsel's Recommendations

1. Find no probable cause to believe that the Republican National Independent Expenditure Committee violated 2 U.S.C. § 441a(a) with respect to the Dan Evans for Senate Committee.
2. Find probable cause to believe that the Republican National Independent Expenditure Committee violated 2 U.S.C. § 434 for failure to report an in-kind contribution from Rodney Smith with respect to the contribution of a mailing list

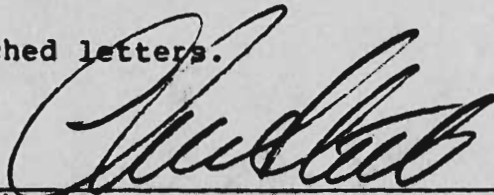
^{3/} Mr. Smith contributed a total of \$500.00 in 1983.

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provided by Smith to the Republican National Independent
Expenditure Committee.

3. Approve and send the attached letters.

30 October 1984
Date



Charles N. Steele
General Counsel

Attachments
Letters to Respondents (2)

85040514177



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 31, 1984

Carol C. Darr, Esquire
Skadden, Arps, Slate, Meagher
and Flom
918 Eighteenth Street, N.W.
Washington, D.C. 20006

RE: MUR 1596/1602
Republican National
Independent Expenditure
Committee

Dear Ms. Darr:

Based on a complaint filed with the Commission on November 15 and 28, 1983, and information supplied by your client, the Commission determined on July 10, 1984, that there was reason to believe that the Republican National Independent Expenditure Committee had violated 2 U.S.C. § 441a(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe as to a violation of 2 U.S.C. § 441a(a). However, the Office of General Counsel is prepared to recommend that there is probable cause to believe that your client violated 2 U.S.C. § 434 by failing to report an in-kind contribution in the form of a mailing list. The Commission may or may not approve the General Counsel's Recommendation.

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of General Counsel, if possible. The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

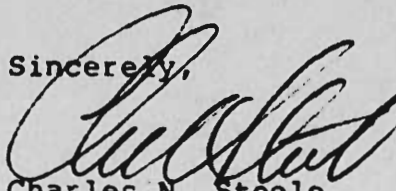
85040514178

Carol C. Darr, Esquire
Page 2

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

Should you have any questions, please contact Robert E. Pease, the attorney assigned to handle this matter, at (202) 523-4000.

Sincerely,



Charles N. Steele
General Counsel

Enclosure
Brief

85040314179

REPUBLICAN



NATIONAL

HAND DELIVERED

RECEIVED AT THE FEC

84 OCT 4 P2:50

CC 14987

INDEPENDENT EXPENDITURE COMMITTEE

SENATOR JOHN HEINZ
National Chairman
Advisory Panel

RODNEY A. SMITH
Executive Director

October 2, 1984

Mr. Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, Northwest
Washington, D. C. 20463

RE: Republican National Independent Expenditure
Committee - F.E.C. ID No. C00166298

Dear Mr. Steele:

This letter shall serve to notify you that the Board of Directors of the Republican National Independent Expenditure Committee ("the Committee") voted unanimously at their meeting on September 29, 1984, to immediately cease functioning as a federal political committee and, accordingly, to file a Termination Report with the Commission immediately after the completion of an independent audit of its financial records.

As you are aware, the Committee is the respondent in a complaint, MURs 1596/1602 which is currently pending before the Commission. The Committee is confident that the Commission will ultimately absolve it from any liability with respect to the allegations contained in MURs 1596/1602. However, the legal expenses involved in these proceedings are of such a magnitude that the Board of Directors do not feel that it is in keeping with the Committee's purpose or a prudent use of contributed money to continue operations.

Sincerely,

Rodney A. Smith
Rodney A. Smith

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4 OCT 5 AIO:14

REPUBLICAN



HAND DELIVERED
RECEIVED AT THE FEC
NATIONAL *CC #4987*
84 OCT 4 P2:58

SENATOR JOHN HEINZ
National Chairman
Advisory Panel

INDEPENDENT EXPENDITURE COMMITTEE

October 2, 1984

RODNEY A. SMITH
Executive Director

Mr. Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, Northwest
Washington, D. C. 20463

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Sincerely,

Rodney A. Smith
Rodney A. Smith

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14 OCT 5 AIO:14

REPUBLICAN



RECEIVED AT THE FEC
NATIONAL ~~NEWS~~ DELIVERED
84 OCT 15 AIO: 13

SENATOR JOHN HEINZ
National Chairman
Advisory Panel

RODNEY A. SMITH
Executive Director

INDEPENDENT EXPENDITURE COMMITTEE

October 2, 1984

Mr. Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, Northwest
Washington, D. C. 20463

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Sincerely,

Rodney A. Smith
Rodney A. Smith

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RECEIVED
OFFICE OF THE
GENERAL COUNSEL
84 OCT 15 P 1:06

REPORT OF RECEIPTS AND DISBURSEMENTS
For a Political Committee Other Than an Authorized Committee

(Summary Page)

RECEIVED AT THE FEC

ALIGN AREA

ALIGN AREA

1. Name of Committee (In Full)

Republican National Independent
Expenditure Committee

Address (Number and Street)

5085 Lowell Street N.W.

City, State and ZIP Code

Washington, D.C. 20016

☐ Check here if address is different than previously reported.

2. FEC Identification Number

C00166298

3. ☐ This committee qualified as a multicandidate committee during
this Reporting Period on _____ (Date)

4. TYPE OF REPORT (Check appropriate boxes)

(a) ☐ April 15 Quarterly Report ☒ October 15 Quarterly Report

☐ July 15 Quarterly Report ☐ January 31 Year End Report

☐ July 31 Mid Year Report (Non-Election Year Only)

☐ Monthly Report for _____

☐ Twelfth day report preceding _____ (Type of Election)

election on _____ in the State of _____

☐ Thirtieth day report following the General Election

on _____ in the State of _____

☐ Termination Report

(b) Is this Report an Amendment?

☐ YES ☒ NO

SUMMARY

5. Covering Period July 1 through Sept 30, 1984

6. (a) Cash on hand January 1, 19 84

(b) Cash on Hand at Beginning of Reporting Period

(c) Total Receipts (from Line 18)

(d) Subtotal (add Lines 6(b) and 6(c) for Column A and
Lines 6(a) and 6(c) for Column B)

7. Total Disbursements (from Line 28)

8. Cash on Hand at Close of Reporting Period (subtract Line 7 from Line 6(d))

9. Debts and Obligations Owed TO The Committee

(Itemize all on Schedule C or Schedule D)

10. Debts and Obligations Owed BY the Committee

(Itemize all on Schedule C or Schedule D)

COLUMN A
This Period

COLUMN B
Calendar Year-to-Date

\$ 84,828.46

\$ 65,718.05

\$ 1,525.58 \$ 42,553.53

\$ 67,243.63 \$ 127,381.99

\$ 19,576.97 \$ 79,715.33

\$ 47,666.66 \$ 47,666.66

\$

\$ 44,473.00

I certify that I have examined this Report and to the best of my knowledge and belief
it is true, correct and complete.

For further information contact:

Federal Election Commission

Toll Free 800-424-9530

Local 202-523-4068

Rodney A. Smith

Type or Print Name of Treasurer

SIGNATURE OF TREASURER

Oct 14, 1984
Date

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this report to the penalties of 2 U.S.C. § 437c.

All previous versions of FEC FORM 3 and FEC FORM 3a are obsolete and should no longer be used.

FEC FORM 3X (3/80)

DETAILED SUMMARY PAGE
Receipts and Disbursements
(Page 2, FEC FORM 3X)

Name of Committee (in Full)

Republican National Independ Expend Comm

Report Covering the Period:

From: July 1

To: Sept 30

COLUMN A
Total This Period

COLUMN B
Calendar Year-To-Date

I. RECEIPTS

11. CONTRIBUTIONS (other than loans) FROM:

(a) Individuals/Persons Other Than Political Committees

170.00

\$40,041.07

11(a)

(Memo Entry Unitarized \$ _____)

(b) Political Party Committees

11(b)

(c) Other Political Committees

11(c)

(d) TOTAL CONTRIBUTIONS (other than loans) (add 11(a), 11(b) and 11(c))

11(d)

12. TRANSFERS FROM AFFILIATED/OTHER PARTY COMMITTEES

12

13. ALL LOANS RECEIVED

13

14. LOAN REPAYMENTS RECEIVED

14

15. OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)

15

16. REFUNDS OF CONTRIBUTIONS MADE TO FEDERAL CANDIDATES
AND OTHER POLITICAL COMMITTEES

16

17. OTHER RECEIPTS (Dividends, Interest, etc.)

1,355.58

2,512.46

17

18. TOTAL RECEIPTS (Add 11(d), 12, 13, 14, 15, 16 and 17)

1,525.58

42,553.53

18

II. DISBURSEMENTS

19. OPERATING EXPENDITURES

19,576.97

79,715.33

19

20. TRANSFERS TO AFFILIATED/OTHER PARTY COMMITTEES

20

21. CONTRIBUTIONS TO FEDERAL CANDIDATES AND
OTHER POLITICAL COMMITTEES

21

22. INDEPENDENT EXPENDITURES (use Schedule E)

22

23. COORDINATED EXPENDITURES MADE BY PARTY COMMITTEES

23

(2 U.S.C. § 441 a(d)) (Use Schedule F)

24. LOAN REPAYMENTS MADE

24

25. LOANS MADE

25

26. REFUNDS OF CONTRIBUTIONS TO

(a) Individuals/Persons Other Than Political Committees

26(a)

(b) Political Party Committees

26(b)

(c) Other Political Committees

26(c)

(d) TOTAL CONTRIBUTION REFUNDS (Add 26(a), 26(b) and 26(c))

26(d)

27. OTHER DISBURSEMENTS

27

28. TOTAL DISBURSEMENTS (add lines 19, 20, 21, 22, 23, 24, 25, 26(d) and 27)

19,576.97

79,715.33

28

III. NET CONTRIBUTIONS AND NET OPERATING EXPENDITURES

29. TOTAL CONTRIBUTIONS (other than loans) from Line 11(d)

29

30. TOTAL CONTRIBUTION REFUNDS from Line 26(d)

30

31. NET CONTRIBUTIONS (other than loans) (Subtract Line 30 from Line 29)

31

32. TOTAL OPERATING EXPENDITURES from Line 19

32

33. OFFSETS TO OPERATING EXPENDITURES from Line 15

33

34. NET OPERATING EXPENDITURES (Subtract Line 33 from Line 32)

34

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SCHEDULE A

ITEMIZED RECEIPTS

Page 1 of 1 for
LINE NUMBER 17
(Use separate schedule(s) for each
category of the Detailed
Summary Page)

Any information copied from such Reports or Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.			
Name of Committee (in Full)			
A. Full Name, Mailing Address and ZIP Code D.C. National Bank 1801 K Street N.W. Washington, D.C. 20006	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
	Interest Income	7/1 thur	
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Occupation Bank	9/30	1,355.58
Aggregate Year-to-Date—\$			
B. Full Name, Mailing Address and ZIP Code 	Name of Employer	Date (month, day, year)	Amount of Each Receipt This Period
	Occupation		
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Aggregate Year-to-Date—\$		
C. Full Name, Mailing Address and ZIP Code 	Name of Employer	Date (month, day, year)	Amount of Each Receipt This Period
	Occupation		
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Aggregate Year-to-Date—\$		
D. Full Name, Mailing Address and ZIP Code 	Name of Employer	Date (month, day, year)	Amount of Each Receipt This Period
	Occupation		
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Aggregate Year-to-Date—\$		
E. Full Name, Mailing Address and ZIP Code 	Name of Employer	Date (month, day, year)	Amount of Each Receipt This Period
	Occupation		
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Aggregate Year-to-Date—\$		
F. Full Name, Mailing Address and ZIP Code 	Name of Employer	Date (month, day, year)	Amount of Each Receipt This Period
	Occupation		
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Aggregate Year-to-Date—\$		
G. Full Name, Mailing Address and ZIP Code 	Name of Employer	Date (month, day, year)	Amount of Each Receipt This Period
	Occupation		
Receipt For: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Aggregate Year-to-Date—\$		
SUBTOTAL of Receipts This Page (optional)			
TOTAL This Period (last page this line number only)			1,355.58

85040514183

SCHEDULE B

ITEMIZED DISBURSEMENTS

Page 1 of 3 for
LINE NUMBER 19
 (Use separate schedule(s) for each
 category of the Detailed
 Summary Page)

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

Name of Committee (in Full)

Republican National Independent Expenditure Committee

A. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
Rodney A. Smith 5085 Lowell Street N.W. Washington, D.C. 20016	Salary Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	7/8/84	\$2,932.00
B. Full Name, Mailing Address and ZIP Code I.R.S. Phil Pa. 19255	Taxes Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	7/8/84	\$1,336.00
C. Full Name, Mailing Address and ZIP Code Postmaster Washington, D.C. 20002	Postage Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	7/12/84	40.00
D. Full Name, Mailing Address and ZIP Code Dynatemp, Inc 8968 Brookville Road Silver Spring Md. 20910	Office Equip Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	7/12/84	138.16
E. Full Name, Mailing Address and ZIP Code C & P Phone Co Box 657 Baltimore, Md 21265	Phone Service Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	7/12/84	57.84
F. Full Name, Mailing Address and ZIP Code PEPCO Box 2812 Washington, D.C. 20067	Utilities Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	7/27/84	85.80
G. Full Name, Mailing Address and ZIP Code Group Hospitalization 550 12th Street N.W. Washington, D.C. 20024	Insurance Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	7/23/84	294.78
H. Full Name, Mailing Address and ZIP Code Capital Copy Products 1024 Rockville Pike Rockville, Md. 20852	Copy Equipment Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	7/27/84	789.96
I. Full Name, Mailing Address and ZIP Code Rodney A. Smith 5085 Lowell Street N.W. Washington, D.C. 20016	Salary Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	8/1/84	2,932.00
SUBTOTAL of Disbursements This Page (optional)			
TOTAL This Period (last page this line number only)			

SCHEDULE B

ITEMIZED DISBURSEMENTS

Page 2 of 3 for
 LINE NUMBER 19
 (Use separate schedule(s) for each
 category of the Detailed
 Summary Page)

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

Name of Committee (in Full)

Republican National Independent Expenditure Committee

A. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
	Taxes		
I.R.S. Phil Pa. 19255	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	8/1/84	1,348.00
B. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
	Insurance		
Group Hospitalization 550 12th Street N.W. Washington, D.C. 20067	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	8/15/84	294.78
C. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
	Salary		
Rodney A. Smith 5085 Lowell Street N.W. Washington, D.C. 20016	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	9/1/84	2,932.00
D. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
	Taxes		
I.R.S. Phil Pa. 19255	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	9/2/84	1,348.00
E. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
	Utilities		
PEPCO Box 2812 Washington, D.C. 20067	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	9/2/84	125.00
F. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
	Phone Service		
C & P Phone Co Box 657 Baltimore Md. 21265	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	9/2/84	193.67
G. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
	Insurance		
Group Hospitalization 550 12th Street N.W. Washington, D.C. 20024	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	9/24/84	294.78
H. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
	Phone Service		
C & P Phone Co Box 657 Baltimore, Md. 21265	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	9/24/84	83.76
I. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
	Utilities		
PEPCO Box 2812 Washington, D.C. 20067	Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	9/26/84	62.94

SUBTOTAL of Disbursements This Page (optional)

TOTAL This Period (last page this line number only)

SCHEDULE B

ITEMIZED DISBURSEMENTS

Page 3 of 3 for
 LINE NUMBER 19
 (Use separate schedule(s) for each
 category of the Detailed
 Summary Page)

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

Name of Committee (in Full)

Republican National Independent Expenditure Committee

A. Full Name, Mailing Address and ZIP Code Rodney A. Smith 5085 Lowell Street N.W. Washington, D.C. 20016	Purpose of Disbursement Salary Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Date (month, day, year) 9/26/84	Amount of Each Disbursement This Period 2,932.00
B. Full Name, Mailing Address and ZIP Code I.R.S. Phil Pa. 19255	Purpose of Disbursement Taxes Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Date (month, day, year) 9/26/84	Amount of Each Disbursement This Period 1,348.00
C. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
D. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
E. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
F. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
G. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
H. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
I. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Disbursement for: <input type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify):	Date (month, day, year)	Amount of Each Disbursement This Period
SUBTOTAL of Disbursements This Page (optional)			
TOTAL This Period (last page this line number only)			19,569.47

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SCHEDULE D
(Revised 3/80)

DEBTS AND OBLIGATIONS
Excluding Loans

Page 1 of 1 for
LINE NUMBER 10
(Use separate schedules
for each numbered line)

Name of Committee (in Full)	Outstanding Balance Beginning This Period	Amount Incurred This Period	Payment This Period	Outstanding Balance at Close of This Period
Republican National Independent Exenditure Committee				
A. Full Name, Mailing Address and Zip Code of Debtor or Creditor Skadden, Arps 919 18th St N.W. Washington, D.C. 22314	26,210	7,300	-0-	33,510
Nature of Debt (Purpose): Legal Services				
B. Full Name, Mailing Address and Zip Code of Debtor or Creditor Miller, Canfield 2500 Detroit Bank & Trust Detroit, Mich 48225	10,404	559	-0-	10,963
Nature of Debt (Purpose): Legal Services				
C. Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose):				
D. Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose):				
E. Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose):				
F. Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose):				
1) SUBTOTALS This Period This Page (optional)				44,473
2) TOTAL This Period (last page this line only)				
3) TOTAL OUTSTANDING LOANS from Schedule C (last page only)				
4) ADD 2) and 3) and carry forward to appropriate line of Summary Page (last page only)				

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REPUBLICAN NATIONAL
IDENT EXPENDITURE COMMITTEE

Federal Election Commission
1325 K Street N. W.
Washington, D.C. 20463

RECEIVED AT THE F
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84 OCT 15 AM 10:13

85940514190
Hand Delivered

EPSTEIN BECKER BORSODY & GREEN, P.C.
ATTORNEYS AT LAW
1140 19TH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 861-0900

250 PARK AVENUE
NEW YORK, NEW YORK 10177
(212) 370-9800

MALLICK TOWER
ONE SUMMIT AVENUE
FORT WORTH, TEXAS 76102
(817) 334-0701

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WASHINGTON, D.C. ONLY

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84 OCT 3 10:30

1875 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067
(213) 556-8861

FOUR EMBARCADERO
SAN FRANCISCO, CALIFORNIA 94111
(415) 398-5565

October 1, 1984

Robert Pease, Esquire
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MURs 1596 and 1602

Dear Mr. Pease:

As I mentioned to you on the telephone last week, Senator Heinz decided to give formal recognition to the fact that he had done nothing in connection with the Republican National Independent Expenditure Committee ("RNIEC") since the Washington State special senatorial election. Therefore, on September 20, 1984, Senator Heinz resigned as chairman of RNIEC's "advisory committee," and otherwise ended his association with the RNIEC.

Considering that Senator Heinz and his staff did nothing that was not entirely proper in connection with his limited RNIEC function and that committee's activities in the Washington election, his resignation should not alter the nature of the Commission's inquiry into the instant matters under review. Nevertheless, I have enclosed a copy of Senator Heinz' resignation letter and ask that you make the Commission aware of it, so that its knowledge will be complete and its view of RNIEC's future conduct, which will have nothing to do with Senator Heinz, will be accurate.

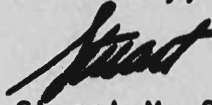
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A 10:50

Robert Pease, Esquire
October 1, 1984
Page Two

I am hopeful that the Commission's disposition of these matters will be prompt, and I thank you for your attention.

Sincerely,



Stuart M. Gerson

SMG:cr

Enclosure

cc: The Honorable John Heinz

85040514192

JOHN HEINZ
WASHINGTON, D.C.

UNITED STATES SENATOR
PENNSYLVANIA

September 20, 1984

Mr. Rodney A. Smith
President-Republican National
Independent Expenditure Committee
5085 Lowell Street, N.W.
Washington, D.C. 20016

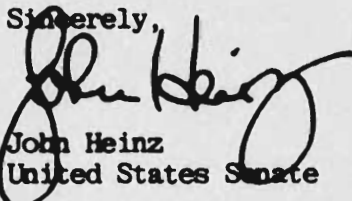
Dear Rod:

As you know and at the request of the Republican National Independent Expenditure Committee, I have been listed as the Chairman of its advisory committee. In that capacity, I have been associated with a public mailing intended to solicit contributions. Although this association has not been a complex one, and since the special election in Washington State has been dormant, at this time I desire to terminate it.

Therefore, effective immediately, I resign as advisory committee chairman and end my association with your Committee. Would you notify the Board of Directors of this action. Please see to it that my name is not used further in connection with your activities.

As always my very best wishes,

Sincerely,


John Heinz
United States Senate

JH/ktg

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EPSTEIN BECKER BORSODY & GREEN, P. C.

ATTORNEYS AT LAW

1140 19TH STREET, N. W.

WASHINGTON, D. C. 20036

Robert Pease Esquire
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

BAKER & HOSTETLER

ATTORNEYS AT LAW

835 CONNECTICUT AVE., N.W.
WASHINGTON, D.C. 20006

(202) 661-1500

TELESCOPIER (202) 667-0060

August 20, 1984

IN CLEVELAND, OHIO
3800 NATIONAL CITY CENTER
CLEVELAND, OHIO 44114
(216) 581-0500
TWX 810 481 8878

IN COLUMBUS, OHIO
66 EAST STATE STREET
COLUMBUS, OHIO 43215
(614) 228-1541

WRITER'S DIRECT DIAL NO.:
(202) 661- 1572

IN DENVER, COLORADO
SUITE 200, 303 EAST 5TH AVENUE
DENVER, COLORADO 80202
(303) 691-5500

IN ORLANDO, FLORIDA
13TH FLOOR BARNETT PLAZA
ORLANDO, FLORIDA 32801
(305) 844-1111

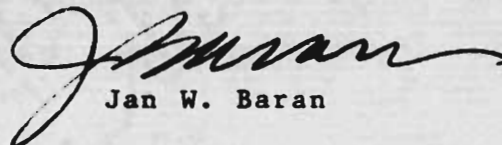
Robert E. Pease, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MURs 1596/1602 National Republican
Senatorial Committee

Dear Mr. Pease:

This office represents the National Republican Senatorial Committee ("NRSC") in the above-captioned matter. Enclosed please find the sworn Responses of Robert J. Perkins, NRSC treasurer, and exhibits attached thereto.

Sincerely,


Jan W. Baran

JWB:njl

Enclosures

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GCC
#4378

4 AUG 20 A 11:19

BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

In the Matter of

National Republican
Senatorial Committee

)
)
)
)

MURs 1596/1602

RESPONSES OF ROBERT J. PERKINS

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Comes now Robert J. Perkins, treasurer of the National Republican Senatorial Committee ("NRSC"), and responds to the best of his knowledge and belief to the Questions of the Federal Election Commission ("FEC") of July 13, 1984 as follows:

QUESTION 1:

Were you the treasurer of the NRSC during the entire time Mr. Rodney Smith was employed by the NRSC?

- a) If not, list all treasurers during Mr. Smith's tenure at NRSC.

RESPONSE 1:

I became treasurer of NRSC in January 1983. Mr. Smith was treasurer and finance director of NRSC from 1977 until January 1983. Prior to 1977 Mr. Smith was finance director of the Republican National Committee.

QUESTION 2:

During the time Mr. Rodney Smith was employed by the NRSC as finance director did he develop a contributor list for the NRSC?

- a) If so, does the NRSC own this list?
- b) What is that ownership right based upon?

RESPONSE 2:

Pursuant to his personal service contracts with NRSC, Mr. Smith had the responsibility and duty of raising contributions to NRSC. The list of NRSC contributor names and addresses which was developed by Mr. Smith is the property solely of NRSC. Mr. Smith's contracts with NRSC never provided Mr. Smith with any property rights over such lists.

Persons who were at NRSC at the time Mr. Smith was retained to raise funds have informed NRSC that to their knowledge Mr. Smith did not make available for use any lists to NRSC. NRSC records do not reflect that any such lists existed or were ever made available to NRSC. These officials further state that Mr. Smith never claimed any proprietary rights over NRSC contributor names and addresses. Mr. Smith's claim to any such right appears to be asserted for the first time in connection with the FEC's investigation. Such a claim is spurious. Mr. Smith's possession, custody, control or use of NRSC lists would be unlawful on grounds including but not limited to common law principles of

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misappropriation of trade secrets or confidential matters; conversion or other trespass of property rights; breach of confidence, trust or fiduciary relationship; fraud, unfair conduct or unfair competition; unjust enrichment; and interference with prospective advantage.

QUESTION 3:

Have any employees, agents, volunteers, or any other persons from the NRSC ever discussed ownership rights of the contributor list with Mr. Smith?

RESPONSE 3:

Yes.

QUESTION 4:

In the NRSC's response to the complaints filed in MURs 1596 and 1602 you stated that the "RNIEC has never been authorized by NRSC to have custody, control, possession or use of the names or addresses of NRSC contributors." Is any employee, agent, volunteer, or any other person from the NRSC aware that Mr. Smith took the contributor list with him when he left the NRSC? If so, state:

- a) how the NRSC became aware that Mr. Smith took the contributor list;
- b) when it became aware that Mr. Smith has possession of the list;
- c) identify all persons who made this information known to the NRSC.

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RESPONSE 4:

NRSC first suspected that the Republican National Independent Expenditure Committee ("RNIEC") was utilizing a list containing the names and addresses of NRSC contributors in late October 1983. On or about that time the following events occurred. First, NRSC received mail from several NRSC contributors who had been solicited by letter dated October 13, 1984 on behalf of RNIEC by Senator John Heinz who was listed on the letterhead as "National Chairman." (A copy of such a solicitation is attached). The RNIEC's name and its solicitation materials bore a striking resemblance to NRSC's name and solicitation materials which created confusion among NRSC contributors. (A copy of an NRSC solicitation letter dated September 18, 1981 is attached for comparative purposes).

At my direction, NRSC personnel obtained a copy of the RNIEC reports then on file with the FEC in order to ascertain whether any itemized RNIEC contributors were also contributors to NRSC. My staff discovered that 86 of 91 individuals listed on RNIEC reports were past NRSC contributors.

Also, the RNIEC letters which were sent to NRSC by various individuals were addressed to persons who were NRSC contributors. The address labels on RNIEC envelopes were identical in all respects to the way the names and addresses appeared on NRSC's records of its contributors.

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On or about November 19, 1983, a particular NRSC contributor notified me that he had received an RNIEC solicitation. This individual had made a contribution to NRSC in 1982 and at the time purposely provided his name and address to NRSC in a unique and distinctive format in order to identify any future mail. The RNIEC solicitation was addressed to him in this distinctive and unique format.

On the basis of this information, NRSC believed that someone associated with RNIEC had possession of a list of NRSC contributors.

QUESTION 5:

The NRSC further stated that "NRSC has taken steps with respect to RNIEC to prevent any unauthorized use of NRSC's proprietary information."

- a) Describe in detail what steps were taken to regain possession of the contributor list.
- b) Describe all steps taken to ensure that the RNIEC does not use the contributor list.
- c) If any of these steps in (a) and (b) above were reduced to writing, please provide a copy of any such documents.

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RESPONSE 5:

On or about November 21, 1983 I met with Mr. Smith. He told me that he was upset with recent news accounts that suggested that the RNIEC had used NRSC contributor lists. He refused to identify what lists had been used by RNIEC.

On November 22, 1983 there was a meeting among myself, Mitchell E. Daniels, executive director of NRSC, Mr. Smith, Kevin Talley, administrative assistant to Senator Heinz, James F. Schoener, counsel to RNIEC, Richard E. Messick, NRSC general counsel, and Jan W. Baran, counsel to NRSC. At this meeting Mr. Daniels and I expressed NRSC's objections to:

- 1) The use by RNIEC of a name confusingly similar to NRSC's registered service mark.
- 2) The use by RNIEC of fundraising letters confusingly similar to NRSC's fundraising letters, and
- 3) The apparent use of a list containing names and addresses of NRSC contributors.

The RNIEC representatives would not identify the lists which were used by RNIEC. They agreed to cease using fundraising letters which were confusingly similar to NRSC fundraising letters. They declined to change the name of RNIEC. They represented that RNIEC would not conduct further direct mail fundraising activities and that it would

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provide NRSC with information about its fundraising lists in conjunction with a written settlement and general release between RNIEC and NRSC.

Subsequent to this meeting NRSC was contacted by Stuart M. Gerson, counsel to Senator Heinz. Mr. Gerson stated that he, on behalf of RNIEC, would be negotiating any agreement between RNIEC and NRSC regarding the matters discussed in the meeting of November 22. On November 23, 1983 NRSC submitted a proposed agreement to Mr. Gerson (copy attached). On November 29, 1983 NRSC submitted a separate proposed agreement to Mr. Smith (copy attached). Further negotiations led to a revised proposed agreement which was delivered to Mr. Gerson on January 9, 1984 (copy attached). Subsequent to January 9, 1984 Mr. Gerson and Mr. Talley submitted a counter-proposal to Mr. Daniels (copy attached). On March 20, 1984, Mr. Gerson was notified that the counter-proposal was unacceptable. No further negotiations have been undertaken to date. NRSC has no reason to believe that its contributor list has been used by RNIEC since October 1983.

NRSC did not know that Mr. Smith has admitted to possession of NRSC's contributor list to the FEC until receiving the FEC's letter of July 13, 1984. NRSC is considering further efforts to regain possession of its contributor list.

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QUESTION 6:

Has the NRSC ever rented its contributor list to a person and/or group.

RESPONSE 6:

No.

QUESTION 7:

Has the NRSC ever provided the contributor list free of charge to any person or group? If so, for each such transaction identify:

- a) the person or group to whom the NRSC provided the list;
- b) the terms of the agreement;
- c) the date(s) of the agreement.

RESPONSE 7:

The names of approximately 200 contributors who have contributed at least \$10,000 each to NRSC are provided free of charge to any Republican Senator who requests such names in writing. NRSC does not otherwise provide its contributor list free of charge to any person or group.

QUESTION 8:

Did any employee, agent, member, volunteer, or any other representative of the NRSC ever discuss the NRSC's plans or activities in support of Senator Evans in the

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special senatorial election in Washington state in 1983 with Rodney A. Smith or any other employee, agent, member, volunteer, or other representative of the RNIEC?

RESPONSE 8:

No.

QUESTION 9:

Was any information concerning the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 forwarded or transmitted in any manner to Rodney A. Smith or any other employee, agent, member, volunteer, or other representative of the RNIEC?

RESPONSE 9:

No.

QUESTION 10:

Did any employee, agent, member, volunteer or any other representative of the NRSC ever discuss the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with Senator John Heinz or any employee, agent or other representative of Senator Heinz?

RESPONSE 10:

No.

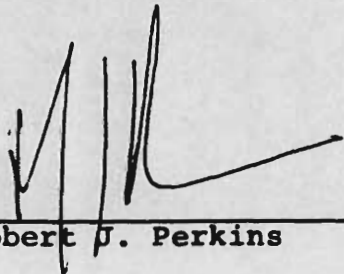
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QUESTION 11:

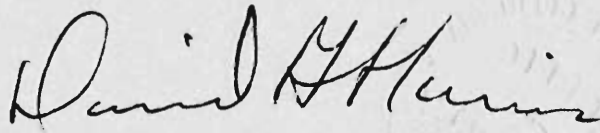
Was any information concerning the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 forwarded or transmitted in any manner to Senator John Heinz or any employee, agent or other representative of Senator Heinz, or representative of the NRSC?

RESPONSE 11:

No.


Robert J. Perkins

Subscribed and sworn to before me this 18 day of August, 1984.


Notary Public

My commission expires

8/31/87

REPUBLICAN NATIONAL

Independent Expenditure Committee

Senator John Hains
National Chairman

October 13, 1983

Dear [REDACTED]

There's a critical election in just three short weeks that directly effects President Reagans razor thin margin of support in the Senate.

On November 8th, Washington State is holding a special election to select Scoop Jackson's successor to the United States Senate.

And it's vitally important that Republican Can Evans win this seat. If Evans can win election to the Senate in Washington State, it's a two for one switch in President Reagan's favor.

In other words, the Democrats will lose one seat. And we Republicans will be picking up one seat.

More importantly, this net increase in Republican Senate strength would give us an added cushion we desperately need to insure continued Republican control of the Senate during President Reagan's 2nd term in office.

That's why it's absolutely essential that you send an emergency contribution to the Republican National Independent Expenditure Committee of \$25 today.

Because a switch of just 5 votes in 1984 would give control of the Senate back to the Democrats.

Remember, 19 Republican Senators must stand for re-election next year. This means we Republicans are risking 50% more seats than the Democrats next fall. And with 1/3 of all our Republican Senate seats at risk, it won't take a major loss to wipe out our slim majority.

To make matters worse, Senate Majority Leader Howard Baker and Senator John Tower have both announced they're retiring at the end of this congressional session.

85040514206

so the likelihood we'll be able to retain Republican control of the Senate beyond 1984 looks pretty bleak, unless of course you and I do everything we can to help Dan Evans win.

Not since 1900 has the Republican Party re-elected a President without suffering a net loss of seats in Congress.

To reverse this historic trend, you and I must intensify our direct support to Senate candidates.

That's why I decided to spearhead the formation of the Republican National Independent Expenditure Committee (R.N.I.C.).

You see, there's no limit - I repeat - "no limit" - under Federal Election Law on the number of dollars the R.N.I.C. can spend in direct support of any Republican Candidate including Dan Evans in Washington State.

And if you'll send an emergency contribution of \$25 today, I guarantee you that every cent of your money will be spent to help elect Dan Evans on November 6th and insure continued Republican control of the Senate.

What makes your support of the R.N.I.C. so vitally important is the fact that Federal Election Law imposes very strict limits on what official party committees can do to directly help federal candidates.

In fact, Paul Laxalt, General Chairman of the Republican Party, called these restrictions "a strait-jacket . . . imposed on the Party structure".

Does this mean you shouldn't support official committees of the Republican Party? Of course, you should. And they in turn can always be counted on to give their legal maximum in targeted races like Washington State.

But these legal spending limits are so absurdly restrictive that the limited money our official party committees can give simply isn't enough. Particularly in close races.

So if fine Republican candidates like Dan Evans are to be successful on election day, it's absolutely essential that dedicated Republicans like you and I work together through the R.N.I.C. to bring more resources to bear in support of their campaigns.

And remember, even as I write this letter, the Democrats are busy mobilizing their resources from all over the country!

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They intend to bombard Washington State with blistering fire power. They know better than anyone the importance of this race.

In short, the Democrats have pulled out all stops. They'll do anything necessary to defeat Dan Evans.

That's why it's absolutely essential that you and I join forces and do everything we can to help Dan Evans counter this massive Democrat blitz.

None of us can ever look proudly at ourselves again if we fail to do our part to help Dan Evans now.

Because if we end up next year losing Republican control of the Senate by one vote, we'll have no one to blame but ourselves.

So please, I urge you to send your \$25 check without delay.

On a personal note, I want you to know Dan Evans is a good friend. He's an exceptionally bright, capable person and he has impeccable credentials for election to the Senate.

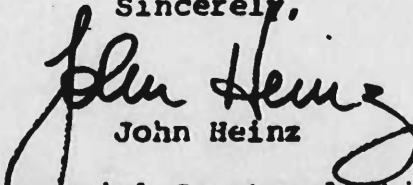
In fact, Dan Evans is the only man in the history of Washington State to be elected to three consecutive terms as Governor.

In addition, he was the keynote speaker at the 1968 Republican convention and named one of the "Ten Best Governors" of this century.

Not only will Dan Evans' election to the Senate help maintain President Reagan's precious Majority, Dan's impressive qualifications will make him a welcome addition to the Senate and a valuable asset to the country.

So please, I urge you to rush your \$25 contribution to me today.

Sincerely,


John Heinz

P.S. Time is short. The special Senate election in Washington State is just a few weeks away and I must raise at least \$243,500 before November 5th. That's why I need you to drop your check in the mail today! Thanks.

85040514208

REPUBLICAN



PRESIDENTIAL

TASK FORCE

RONALD REAGAN

President

HOWARD W. BAKER

Chairman

September 18, 1981

[REDACTED]

Dear [REDACTED]:

9
O Forgive me for saying this but you're causing the President grave concern.

2
O Why hasn't President Reagan heard from you?

4
O Why haven't you joined him in the Republican Presidential Task Force?

1
O I can't believe you don't want to wear the President's Medal of Merit.

4
O It's more than an impressive golden medallion. It's a visible symbol of your personal relationship with President Reagan.

5
O I can't believe you wouldn't be proud to fly the full size American flag dedicated by ceremony in the Rotunda of our Nation's Capitol Building.

President Reagan knows that some Americans fly our flags with a special sense of what it truly means. So he wanted you to have a very special flag to fly.

To show your friends and neighbors you belong to our President's own Task Force.

And I can't believe you're offended by President Reagan's desire to place your name on his unprecedented Honor Roll of Americans and give a place of respect in his own permanent papers.

Perhaps someday your grandchildren or great-grandchildren will find your name historically linked with Ronald Wilson Reagan in pursuit of the finest vision of

America since 1776.

What shall I tell our President?

Because he's personally asked me to find out why you're holding back.

Surely you believe in the good things President Reagan is fighting for?

Then prove it by giving Ronald Reagan's Republican Presidential Task Force 33¢ worth of support a day.

That's all he asks of you.

And what else can you get for 33¢?

In most cities 33¢ won't even buy a cup of coffee.

But that same 33¢ will give us Republicans the muscle to build an America with safer streets.

An America with international clout and secure borders.

Where senior citizens are respected by all citizens and live in economic dignity.

Where young people again receive worthwhile educations and a decent crack at the American Dream.

An America where "producing" citizens keep more of the dollars they work so hard to earn. And where those dollars aren't bled dry by Government taxation and inflation.

Well that's where 33¢ can get us.

For the first time in over a quarter of a century, a Republican President has a Republican United States Senate to back him up.

And look what we've done in just nine months...even with Democrats controlling the House of Representatives, most Governors, most Mayors, most Legislators!

But heaven help our President if we lose just 4 Republican Senators in 1982. Because the golden gates of opportunity will be slammed shut by liberal Democrats just as they've been for almost 50 years now.

Can the Democrats regain control by beating 4 Republicans next year?

85040514210

Well we picked up 12 Democratic Senate seats last year! All they have to do is be 33% as good as we were.

And they're filling their war chests faster than at any time in memory.

The big-brother government philosophers, the free-ride spenders, the weak-willed internationalists, the criminal protectionists, the liberal special interest groups...All of them and more are coming after us with vengeance!

They know they must stop us in 1982...before Americans fully reap the bountiful harvest of the Reagan/Senate programs. Because once America sees how good things can be, the liberals won't get in again!

So what shall I tell our President?

Shall I tell Ronald Reagan that you've accepted his personal invitation to join the Republican Presidential Task Force?

Shall I show him your contribution of \$120 for a full year's membership...or \$10 for your first month...or whatever amount between that's convenient for you?

Or shall I tell him you've said he must fight alone?

He's waiting for your answer.

So is America.

Sincerely,



Bob Packwood

P.S. If our letters have crossed in the mail, let me be the first to congratulate you for the finest citizenship possible.

If you've delayed for any reason, let me assure you there's no more time to lose.

Our adversaries are forging ahead even as you read this.

Don't let this day end without action!

Join the Republican Presidential Task Force!

**URGENT
MESSAGE
ENCLOSED**

BUSINESS REPLY MAIL

FIRST CLASS PERMIT NO. 14000 WASHINGTON, D.C.

POSTAGE WILL BE PAID BY ADDRESSEE

Senator John Heinz

c/o Republican National Independent Expenditure Committee
5085 Lowell Street, N.W.
Washington, D.C. 20016

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

85040514212

**URGENT
MESSAGE
ENCLOSED**

BUSINESS REPLY MAIL

FIRST CLASS PERMIT NO. 10782 WASHINGTON, D.C.

POSTAGE WILL BE PAID BY ADDRESSEE

President Ronald Reagan

c/o National Republican Senatorial Committee
406 C Street, N.E.
Washington, D.C. 20002

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

CRISIS

EMERGENCY REPLY FORM

Dear Rod:

YES, I want to help in this emergency!

Here is my contribution to keep the cash flowing to our Senatorial Candidates.

Enclosed is my contribution of:

() \$25	() \$.....
----------	-------------

From:

[REDACTED]

Please mail this right away... every day counts!

74 190 Please make checks payable to: Republican Presidential Task Force

558224 1843

DEADLINE: SEPTEMBER 27TH!

85040514213

URGENT

EMERGENCY REPLY FORM

063292

Dear Senator Heinz:

Yes, I want to support your efforts to help Republican Dan Evans win the Special Nov. 8th Senate Election in Washington State.

Enclosed is my emergency contribution of:

() \$25	() \$.....
----------	-------------

[REDACTED]

Please mail this right away... every day counts!

Please make checks payable to: Republican National Independent Expenditure Committee

WOD

AC

TF
ID# 8/18/98

DEADLINE: NOVEMBER 11TH!

DRAFTAGREEMENT

An Agreement made this _____ day of _____, 1983 by and between the National Republican Senatorial Committee ("NRSC") and the Republican National Independent Expenditure Committee ("RNIIEC"), the Parties hereto.

WHEREAS, the Parties desire to resolve all matters concerning the use of a mark confusingly similar to the registered service mark NATIONAL REPUBLICAN SENATORIAL COMMITTEE registered by NRSC with the United States Patent and Trademark Office; and

WHEREAS, the Parties desire to resolve all matters concerning RNIIEC's possession and use of NRSC's trade secret, names and addresses of all persons who have made a contribution to NRSC;

NOW THEREFORE, in consideration of the mutual promises, covenants, agreements and undertakings by the Parties set forth herein, the Parties agree as follows:

1. Within ten days of execution of this agreement, RNIIEC agrees to change its name to a name that is not confusingly similar to NRSC's registered service mark, NATIONAL REPUBLICAN SENATORIAL COMMITTEE, by filing an appropriate amendment to RNIIEC's Statement of Organization at the Federal Election Commission. RNIIEC further agrees to cease and desist from using NRSC's registered service mark or any mark confusingly similar to NRSC's registered service mark for any purpose whatsoever.

2. RNIIEC agrees to cease and desist from using, producing or disseminating any printed, photographic or broadcast materials, including but not limited to direct mail response letters and enclosures which appeal for donations or

-2-

other financial or non-financial support, which materials create a false impression that RNIEC is sponsored, connected or associated with NRSC or which create confusion as to the origin or sponsorship of RNIEC.

3. RNIEC agrees to provide within five days to NRSC or its designated agent any and all lists (including originals and all copies) containing names and addresses of individuals, whether in printed, computer or other form, over which RNIEC directly or indirectly has access, custody, control or possession.

4. RNIEC agrees to permit NRSC to delete from the lists provided by RNIEC pursuant to paragraph 3 the names and addresses of any and all individuals or households that appear on any list that is in the custody, control or possession of NRSC.

5. RNIEC agrees not to solicit contributions from any individual whose name and address is deleted pursuant to paragraph 4.

6. NRSC agrees to return to RNIEC all lists referred to in paragraph 3, minus the names and addresses referred to in paragraph 4.

7. RNIEC agrees to pay for any and all expenses incurred by NRSC in connection with the process of deleting names and addresses pursuant to paragraph 4.

8. RNIEC agrees to provide to NRSC in writing within five days the identity, including the names, addresses and telephone numbers, of any and all persons or entities who have had access, custody, control or possession of the lists referred to in paragraph 3.

9. RNIEC agrees to provide to NRSC in writing within five days the identity, including the names, addresses and telephone numbers, of any and all persons or entities from whom RNIEC has rented, purchased, received, exchanged or otherwise obtained custody, control, possession or use of any list of names and addresses of individuals in any form whatsoever since RNIEC's inception, together with all documents which refer or relate to the rental, purchase, receipt, exchange or other acquisition or use of any and all such lists including documents which refer or relate to any funds received as a result of any solicitation by RNIEC.

10. RNIEC agrees to provide to NRSC in writing within two days a listing of the source codes used on all RNIEC mailings together with a directory reflecting which list or lists are associated with each source code, the person or entity from whom the list or lists were obtained and the date of the mailing.

11. NRSC and RNIEC each do hereby release and discharge the other, their successors, assigns, heirs, executors, administrators, personal representatives, employees, officers and directors, from any and all actions, causes of action, debts, dues, judgments, claims and demands of every name and nature, both at law and in equity, which against the other they have or may have for or by any reason of any matter or thing relating to NRSC's service mark or trade secrets on or prior to the day of the date of this Agreement.

12. RNIEC acknowledges that its failure to abide by any of the terms of this agreement will cause NRSC to suffer irreparable harm. Accordingly, if, in the sole judgment of NRSC, RNIEC breaches this agreement in any way, RNIEC consents to the entry of a temporary restraining order or preliminary injunction in a court of competent jurisdiction.

-4-

Said relief shall restrain RNIEC and its agents, officers and employees from undertaking any fundraising appeals on behalf of RNIEC, destroying any documents or purging or altering any information stored in computer readable terms. Said relief shall remain in force until the final disposition of all NRSC claims against RNIEC.

13. This Agreement constitutes the entire agreement between the Parties and shall be construed according to the laws of the District of Columbia.

WHEREFORE, we have set our hands unto this Agreement with the intent to be bound thereby.

REPUBLICAN NATIONAL INDEPENDENT
EXPENDITURE COMMITTEE

Witness

Rodney A. Smith, Treasurer

NATIONAL REPUBLICAN SENATORIAL
COMMITTEE

Witness

Mitchell E. Daniels, Executive
Director

DRAFTAGREEMENT

An Agreement made this _____ day of _____, 1983 by and between the National Republican Senatorial Committee ("NRSC") and Rodney A. Smith ("Smith"), the Parties hereto.

WHEREAS, the Parties desire to resolve all matters concerning Smith's possession and use of NRSC's trade secret, names and addresses of all persons who have made a contribution to NRSC;

NOW THEREFORE, in consideration of the mutual promises, covenants, agreements and undertakings by the Parties set forth herein, the Parties agree as follows:

1. Smith agrees to provide within five days to NRSC or its designated agent any and all lists (including originals and all copies) containing names and addresses of individuals, whether in printed, computer or other form, over which Smith directly or indirectly has access, custody, control or possession.
2. Smith agrees to permit NRSC to delete from the lists provided by Smith pursuant to paragraph 1 the names and addresses of any and all individuals or households that appear on any list that is in the custody, control or possession of NRSC.
3. Smith agrees not to solicit contributions from any individual whose name and address is deleted pursuant to paragraph 2.
4. NRSC agrees to return to Smith all lists referred to in paragraph 1, minus the names and addresses referred to in paragraph 2.
5. Smith agrees to pay for any and all expenses incurred by NRSC in connection with the process of deleting names and addresses pursuant to paragraph 2.

6. Smith agrees to provide to NRSC in writing within five days the identity, including the names, addresses and telephone numbers, of any and all persons or entities who have had access, custody, control or possession of the lists referred to in paragraph 1.

7. Smith agrees to provide to NRSC in writing within five days the identity, including the names, addresses and telephone numbers, of any and all persons or entities from whom Smith has rented, purchased, received, exchanged or otherwise obtained custody, control, possession or use of any list of names and addresses of individuals in any form whatsoever since January 1, 1983 to the date of this agreement, together with all documents which refer or relate to the rental, purchase, receipt, exchange or other acquisition or use of any and all such lists including documents which refer or relate to any funds received as a result of any solicitation.

8. Smith agrees to provide to NRSC in writing within two days a listing of the source codes used on all mailings by Smith or on behalf of any other person or entity together with a directory reflecting which list or lists are associated with each source code, the person or entity from whom the list or lists were obtained, the date of the mailing, and the identity of the person or entity on whose behalf the list or lists were used.

9. NRSC and Smith each do hereby release and discharge the other, their successors, assigns, heirs, executors, administrators, personal representatives, employees, officers and directors, from any and all actions, causes of action, debts, dues, judgments, claims and demands of every name and nature,

-3-

both at law and in equity, which against the other they have or may have for or by any reason of any matter or thing relating to NRSC's trade secrets on or prior to the day of the date of this Agreement.

10. Smith acknowledges that his failure to abide by any of the terms of this agreement will cause NRSC to suffer irreparable harm. Accordingly, if, in the sole judgment of NRSC, Smith breaches this agreement in any way, Smith consents to the entry of a temporary restraining order or preliminary injunction in a court of competent jurisdiction. Said relief shall restrain Smith and his agents and employees from undertaking any fundraising appeals, destroying any documents or purging or altering any information stored in computer readable terms. Said relief shall remain in force until the final disposition of all NRSC claims against Smith.

11. This Agreement constitutes the entire agreement between the Parties and shall be construed according to the laws of the District of Columbia.

WHEREFORE, we have set our hands unto this Agreement with the intent to be bound thereby.

RODNEY A. SMITH

Witness

NATIONAL REPUBLICAN SENATORIAL
COMMITTEE

Witness

Mitchell E. Daniels, Executive
Director

Agreement

An Agreement made this _____ day of _____, 1984 by and between the National Republican Senatorial Committee ("NRSC") and the Republican National Independent Expenditure Committee, Inc. ("RNIEC"), the Parties hereto.

WHEREAS, the Parties desire to resolve all matters concerning RNIEC's possession and use of NRSC's trade secret, names and addresses of all persons who have made a contribution to NRSC;

NOW THEREFORE, in consideration of the mutual promises, covenants, agreements and undertakings by the Parties set forth herein, the Parties agree as follows:

1) RNIEC agrees to provide to NRSC in writing within two days a listing of the source codes used on all RNIEC mailings together with a directory reflecting which list or lists are associated with each source code, the person or entity from whom the list or lists were obtained and the date of the mailing.

2) RNIEC agrees to provide to NRSC in writing within four days the names, addresses and telephone numbers, of any and all persons or entities from whom RNIEC has rented, purchased, received, exchanged or otherwise obtained custody, control, possession or use of any list of names and addresses of individuals in any form whatsoever since RNIEC's inception, together with all documents which refer or relate to the rental, purchase, receipt, exchange or other acquisition or use of any and all such lists including documents which refer or relate to any funds received as a result of any solicitation by RNIEC.

3) RNIEC agrees to provide within five days to NRSC or its designated agent any and all lists (including originals and all copies) containing names and addresses of individuals, whether in printed, computer or other form, over which RNIEC directly or indirectly has access, control or possession.

4) RNIEC agrees to permit a third party agreeable to both RNIEC and NRSC to delete from the lists provided by RNIEC pursuant to paragraph three the names and addresses of all individuals or households that: (1) contributed monies to NRSC at anytime during the period January 1, 1981 through November 1, 1983 and (2) did not contribute to the Heinz for Senate Committee during this same period.

5) With respect to those individuals or households which contributed to both the Heinz for Senate Committee and the NRSC during the period January 1, 1981 through November 1, 1983, RNIEC agrees to permit the third party referenced in paragraph four above to delete those individuals or households whose first contribution to NRSC was at least 60 days prior to their first contribution to the Heinz for Senate Committee.

6) RNIEC agrees not to solicit contributions from any individual whose name and address is deleted pursuant to paragraphs four or five for a period of two years from the date this agreement is signed.

7) RNIEC agrees to pay for any and all expenses incurred in connection with the process of deleting names and addresses pursuant to paragraphs four and five.

8) RNIEC agrees to provide to NRSC in writing within five days the identity, including the names, addresses and telephone numbers, of any and all persons or entities who have had access, custody, control or possession of the lists referred to in paragraph 3.

9) NRSC and RNIEC each do hereby release and discharge the other, their successors, assigns, heirs, executors, administrators, personal representatives, employees, officers and directors, from any and all actions, causes of action, debts, dues, judgments, claims and demands of every name and nature, both at law and in equity, which against the other they have or may have for or by reason of any matter or thing relating to NRSC's trade secrets on or prior to the day of the date of this Agreement.

10) RNEIC acknowledges that its failure to abide by any of the terms of this agreement will cause NRSC to suffer irreparable harm.

11) This Agreement constitutes the entire agreement between the Parties and shall be construed according to the laws of the District of Columbia.

WHEREFORE, we have set our hands unto this Agreement
with the intent to be bound thereby.

REPUBLICAN NATIONAL INDEPENDENT
EXPENDITURE COMMITTEE

Witness

Rodney A. Smith, Treasurer

NATIONAL REPUBLICAN SENATORIAL
COMMITTEE

Witness

Mitchell E. Daniels, Executive
Director

AGREEMENT

This Agreement is made and entered into as of the _____ day of December, 1983, by and between the National Republican Senatorial Committee ("NRSC") and the Republican National Independent Expenditure Committee ("RNIEC"), the Parties hereto.

WHEREAS, the Parties recognize that the election of Republican candidates to national political office is a matter of urgency and importance, and that, within their appropriate spheres of activity, NRSC and RNIEC each must assist in the realization of that goal; and

WHEREAS, the Parties understand that they cannot function appropriately if there is confusion as to their respective identities and functions which might encourage opponents to mount resource-wasting challenges; and

WHEREAS, the Parties recognize that through a legally-appropriate agreement concerning the use of contributor lists that each has generated they can protect themselves against baseless challenges to their independence of one another; and

WHEREAS, the Parties are desirous of resolving all matters of potential or actual dispute between them without any admission of unauthorized or improper conduct being made by either of them;

- 2 -

NOW THEREFORE, in consideration of the mutual promises, covenants, agreements and undertakings by the Parties set forth herein, and for other good and valuable consideration, the Parties hereto agree as follows:

1. RNIEC and ~~NRSC~~ agree^s that ~~they~~^{it} will not use, produce or disseminate any printed, photographic or broadcast materials, including but not limited to direct mail response letters and enclosures which appeal for donations or other financial or non-financial support, which materials create the impression that ~~either Party~~^{RNIEC} is or ever has been originated or sponsored by, or affiliated or associated with ~~the other Party~~^{NRSC}.

2. The Parties agree that each of them has a proprietary right in, and may, under process of law, maintain as confidential, prospect and contributor lists that each has originated. The foregoing shall not bar RNIEC from the resolicitation of persons, who at the date of this Agreement number approximately 7,000, who have contributed to RNIEC and who constitute RNIEC's "Masterfile List", or prevent RNIEC from solicitation of persons who have been contributors to Republican holders of public office, provided that the names of such contributors are obtained by RNIEC in a manner consistent with the requirement of the Federal Election laws.

- 3 -

3. In support of the Agreement, for the period ending January 31, 1985, NRSC may, by a duly-authorized agent, inspect both the RNIEC "Masterfile List" and any list of persons solicited for contributions by RNIEC, whether such lists are in coded or printed form, for the purpose of verifying that no contributor or list unique to NRSC's is being used. *(Delete language)*

4. In consideration of both present and past undertakings, NRSC is entitled to two usages of the RNIEC "Masterfile List" at no charge.

5. NRSC and RNIEC each does hereby release and discharge the other, their successors, assigns, heirs, executors, administrators, personal representatives, employees, agents, officers and directors, from any and all actions, causes of action, debts, dues, judgments, claims and demands of every name and nature, both at law and in equity, which are or could be brought before any judicial or administrative agency arising from any action or occurrence predating the execution of this Agreement.

6. This Agreement constitutes the entire agreement between the Parties and shall be construed according to the laws of the District of Columbia.

- 4 -

WHEREFORE, we have set our hands unto this Agreement
with the intent to be bound thereby.

REPUBLICAN NATIONAL INDEPENDENT
EXPENDITURE COMMITTEE

Witness

Rodney A. Smith, Treasurer

NATIONAL REPUBLICAN SENATORIAL
COMMITTEE

Witness

Mitchell E. Daniels, Executive
Director

BAKER & HOSTETLERS 040514228

818 CONNECTICUT AVE., N.W.
WASHINGTON, D.C. 20006

Robert E. Pease, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

61:40 02507

GCC#4126

RECEIVED
OFFICE OF THE
SKADDEN ARNOLD, MEAGHER & FLOM
919 EIGHTEENTH STREET, N.W.
WASHINGTON, D.C. 20006
84 JUL 24 11:17
(202) 463-8700

TELECOPIER
(202) 293-3931

515 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 371-6000
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 523-0008
ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 429-8800
515 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90071
(213) 486-4600

July 23, 1984

The Honorable Lee Ann Elliott
Chairman
Federal Election Commission
Washington, D.C. 20463

Re: MUR 1596/1602
Republican National Independent
Expenditure Committee

JUL 24 11:33

Dear Madam Chairman:

This letter responds to your letter of July 13, 1984, and the questions attached thereto. We strongly believe that the facts contradict any assertion that our client, the Republican National Independent Expenditure Committee (RNIEC) is "affiliated" with the National Republican Senatorial Committee (NRSC).

Your letter says that it is "unclear whether Mr. Smith used the former association [with NRSC] to acquire knowledge of the NRSC's plans and activities on behalf of Senator Evans." Mr. Smith has made quite clear, under oath, that he did not do so, and the sworn record is also clear that Senator Heinz did not do so either.

The tenor of the questions and the details requested indicate that the Commission may be using the standards for determining the independence of expenditures found in 11 C.F.R. § 109.1 in deciding the question of whether two non-candidate political committees are "affiliated" within the meaning of 11 C.F.R. § 100.5(g). These two provisions arise from different purposes and were created separately, each with its own distinctive tests. These tests should not be confused. While no prohibited contacts of any sort took place in this case, it is important to remember that as a matter of law, non-candidate political committees may communicate freely with each other so long as the indicia of affiliation set forth in 11 C.F.R. § 100.5(g)(2) are not present.

85040514229

The Honorable Lee Ann Elliott
July 23, 1984
Page Two

Our response of January 6, 1984, was comprehensive and showed clearly (pp. 10-11) that RNIEC did not meet the indicia of affiliation spelled out in 11 C.F.R. § 100.5(g)(2). To suggest that a mailing list might be enough to create an affiliation under the Federal Election Campaign Act of 1971, as amended, would be to stretch the statute well beyond the bounds of reasonableness. However, the attached answers to your questions demonstrate that the list issue is innocuous in any event.

Despite the grossly unwarranted nature of this proceeding, our client has cooperated in every way with the Commission and will continue to do so. We believe that the attached answers will put to rest any questions that remain, and believe that the Commission now has ample evidence upon which to dismiss these complaints and to allow our client to exercise its constitutional rights of free association and free speech.

Sincerely yours,

Stephen Sharp by ced

Stephen A. Sharp

Carol C. Darr

Carol C. Darr

85040514230

Responses of Rodney A. Smith
to FEC Questions of July 13, 1983

Q.1. With respect to the contributor list developed by Rodney Smith ("the Smith list") while employed by the National Republican Senatorial Committee ("NRSC"), does Mr. Smith own that list? If so, what is that ownership right based upon?

A.1. Yes, Mr. Smith owns "the Smith list." Mr. Smith acquired an ownership interest in the list by developing it. Prior to becoming a consultant to the NRSC^{*/} Smith owned a proven contribution list. During the period of his consultancy to the NRSC he continued to develop and expand his list. Any revisions or improvements to the list made during his consultancy with the NRSC were made in exchange for Mr. Smith's providing the list in the first place, and thus did not affect Mr. Smith's ownership of the list.

Q.1(a) Is this contributor list now owned by the RNIEC?

A.1.(a) No. See answer to question 1(b) below.

Q.1(b) What is the ownership right of RNIEC in regard to the contributor list?

A.1.(b) The RNIEC utilized Smith's list on the same "barter/exchange" basis that the NRSC had utilized it. Thus in exchange^{**/} for access to the Smith list, the RNIEC added some new names, updated and corrected names and addresses and deleted names of deceased addressees and bad addresses.

Q.2. Describe in detail how Mr. Smith acquired possession of the contributor list after he left the NRSC.

A.2. The premise of the question is erroneous. Mr. Smith possessed and owned the list even

^{*/} We note that your letter contains references suggesting that Mr. Smith was an employee of the NRSC. Those references are in error. Mr. Smith was retained as a consultant to the NRSC.

^{**/} Barter or exchanges of equal value need not be reported to the FEC. Advisory Opinions 1981-46 and 1979-36.

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before he arrived at the NRSC and therefore retained the list upon his departure. For more detail, see answer to question 1.

Q.2.(a) Did Mr. Smith have possession before leaving NRSC?

A.2.(a) Again, it was his list. He had possession before working with the NRSC, during his consultancy and afterwards.

Q.3. Did anyone at the NRSC know that Mr. Smith had possession of the Smith contributor list after he left the NRSC?

A.3. Mr. Smith has no such knowledge of other people's knowledge.

Q.4. Did Mr. Smith ever discuss with any employee, agent, member, volunteer or other person from the NRSC the ownership rights of the Smith contributor list?

A.4. No. To clarify the record we wish to note that prior to the filing of the pending complaints, the RNIEC and the NRSC never had any meetings or otherwise discussed this or any other subject. Both organizations have scrupulously maintained their independence from each other. However, the filing of the complaints and the attendant publicity occasioned a meeting on or about November 22, 1983. Mr. Smith therefore met with representatives of the NRSC and their counsel and discussed issues including: (1) avoidance of confusion in the two committees' names and materials; (2) concern by both NRSC and RNIEC that each had been making public statements potentially damaging to the fundraising efforts of the other; (3) avoidance of conflicts as to future fundraising unconnected with the Evans campaign and not related to any specific election.

Q.5. How much money did the RNIEC raise in 1983 using the Smith contributor list?

A.5. During 1983, the "Smith list" accounted for \$186,616 of RNIEC's revenue.

Q.5.(a) How many contributor names were on that list?

A.5.(a) The list used by RNIEC consisted of 223,064 names and addresses.

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Q.5.(b) How much money did the RNIEC spend in 1983 in connection with fundraising efforts using said contributor list?

A.5.(b) RNIEC spent \$162,621 on fundraising costs, including postage, printing production costs, thank you letters, etc., as well as a pro rata portion*/ of the cost associated with the September 20, 1983 fundraising dinner at Senator Heinz' home.

Q.6. With respect to the list rental by the RNIEC from Senator Heinz:

Q.6.(a) Was there a written rental agreement between the parties concerning the Heinz list?

A.6.(a) A list was rented by RNIEC from the People for John Heinz Committee. There was no written rental agreement.

Q.6.(b) If there was no written agreement, please state all terms of the rental agreement, including, but not limited to, the rental fee for said list, the length of time RNIEC was authorized to use said list, and all restrictions placed on the use of said list.

A.6.(b) Senator Heinz agreed to host a fundraising dinner on behalf of the RNIEC at his home on September 20, 1983. To insure the success of this function, the People for John Heinz Committee allowed the RNIEC to rent a portion of its campaign contributor list. It was understood that the RNIEC was limited to using the Heinz contributor list only in connection with trying to maximize attendance at the September 20th dinner. No other use was authorized.

In this regard the RNIEC made one mailing to this list. It also conducted a follow-up telephone operation and sent confirming

*/ The costs of the September 20, 1983 dinner were pro rated between the Smith list and the Heinz list in proportion to the dollars raised from each list and number of pieces mailed from each list.

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mailgrams to those people who expressed an interest in the September 20th function on the telephone. The cost for renting the 876*/ names was \$157.22 or \$.18 each. This rate is commercially reasonable and, we believe, exceeds the prevailing rate for similar lists.

Q.7. How many contributor names were on the Heinz list rented by the RNIEC?

A.7. The list used by RNIEC consisted of 876 names and addresses, although RNIEC was billed for 1,123 names.

Q.8. How much money did the RNIEC raise in 1983 using the Heinz list?

A.8. During 1983, the list of the People for John Heinz Committee accounted for \$105,600 of RNIEC's revenues.

In reviewing this number it should be noted that what enabled the RNIEC to generate such large proceeds from such a small list was not the list per se. Rather, it was the fact that Senator Heinz himself signed a letter inviting people with whom he had existing relationships to his home for dinner. In other words, if some person other than Senator Heinz had signed exactly the same letter to exactly the same list, the contributions received would have been substantially different.

Q.9. How much money did the RNIEC spend in 1983 on fund-raising efforts in which the Heinz contributor list was used?

A.9. RNIEC spent \$14,024 on fundraising costs relating to the People for John Heinz contribution list, including postage and printing production costs, thank-you letters, etc., as well as its pro rata portion of costs associated with the September 20, 1983 fundraising dinner at Senator Heinz' home.

*/ The list received actually contained 876 names, although RNIEC was billed for 1,123 names, apparently through inadvertance. RNIEC was duly billed and this bill was paid by check. Copies of the documents supporting this transaction are attached hereto.

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Q.10. Did any employee, agent, member, volunteer, or any other representative of the NRSC ever discuss the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with Rodney A. Smith or any other employee, agent, member, volunteer or other representative of the RNIEC?

A.10. Mr. Smith states with certainty that he never participated in any such discussions and to the best of his knowledge, neither did any other employee, agent, member, volunteer or other representative of RNIEC.

Q.11. Was any information concerning the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 forwarded or transmitted in any manner to Rodney A. Smith or any other employee, agent, member, volunteer or other representative of the RNIEC?

A.11 Mr. Smith states with certainty that no such information was forwarded or transmitted to him in any manner, nor, to the best of his knowledge, to any other employee, agent, member, volunteer or other representative of the RNIEC.

Q.12. Did any employee, agent, member, volunteer or any other representative of the RNIEC ever discuss RNIEC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with any employee, agent, member, volunteer or any other representative of the NRSC?

A.12. To the best of Mr. Smith's knowledge, the answer is no. See A.10. above.

Q.13. Did any employee, agent, member, volunteer or other representative of the NRSC ever discuss the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with Senator John Heinz or any employee, agent or other representative of Senator Heinz?

A.13 Mr. Smith knows of no such discussion. He also notes that Senator Heinz stated, under oath, in his November 29, 1983 letter to the Commission " . . . at no time have I, my staff, or to my knowledge the RNIEC, ever conferred with Senator Evans, his agents or his authorized committee, or with any member or agent of any

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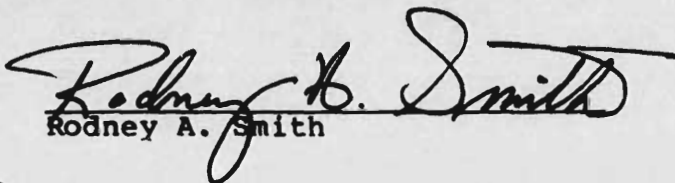
state or national party committee regarding the plans, projects or needs of the Evans' campaign." (Page Three)

Q.14. Was any information concerning the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 forwarded or transmitted in any manner to Senator John Heinz or any employee, agent, or other representative of Senator Heinz or (sic) by any employee, agent, member, volunteer or other representative of NRSC?

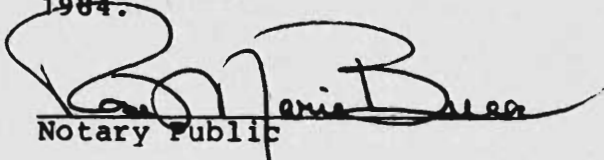
A.14. See A.13. above. Additionally, Mr. Smith has stated above at A.11. that he made no such transmittal.

VERIFICATION

The undersigned President for the respondent, Republican National Independent Expenditure Committee, swears that the statements contained herein are based on the sources indicated, and, as such, are true and correct to the best of his information and belief.


Rodney A. Smith

Subscribed and sworn before me this 20th day of July, 1984.


Notary Public

My Commission Expires: Dec 14, 1988

85040514236



REPUBLICAN NATIONAL INDEPENDENT
EXPENDITURE COMMITTEE

WASHINGTON, D.C.

166

15-120/840

1/27 1981

PAY
TO THE
ORDER OF

People for John Herive Committee

\$ 157.22

One Hundred Fifty-Seven and 22/100

DOLLARS

D.C. National
Bank ***

DISTRICT OF COLUMBIA NATIONAL BANK

Main Office
1501 K Street, N.W.
Washington, D.C. 20005

FOR

Madame H. Smith

⑆00000166⑆ ⑆054001204⑆

⑆269013⑆

85040514237

Attention: Rodney Smith
NRIC

From : Carey A. Lackman
PJH

Bill Date: November 10, 1983

ITEM: One partial PFJH J-Code List of 1123 names.

COST: \$157.22

PAYABLE TO: People for John Heinz Committee
400 C Street, N.E.
Washington, D.C. 20002

85040514238

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REC

11-23-63

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The Honorable Lee Ann Elliott
Chairman
Federal Election Commission
Washington, D.C. 20463

DDEN, ARPS, SLATE, MEAGHER & FLOM

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

919 EIGHTEENTH STREET, N.W.
WASHINGTON, D.C. 20006

TELECOPIER
(202) 293-3931

(202) 463-8700

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 371-6000
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 553-0002
ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 489-8800
515 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90071
(213) 488-4800

GCC
#4130

July 23, 1984

The Honorable Lee Ann Elliott
Chairman
Federal Election Commission
Washington, D.C. 20463

Re: MUR 1596/1602
Republican National Independent
Expenditure Committee

Dear Madam Chairman:

This letter responds to your letter of July 13, 1984, and the questions attached thereto. We strongly believe that the facts contradict any assertion that our client, the Republican National Independent Expenditure Committee (RNIEC) is "affiliated" with the National Republican Senatorial Committee (NRSC).

Your letter says that it is "unclear whether Mr. Smith used the former association [with NRSC] to acquire knowledge of the NRSC's plans and activities on behalf of Senator Evans." Mr. Smith has made quite clear, under oath, that he did not do so, and the sworn record is also clear that Senator Heinz did not do so either.

The tenor of the questions and the details requested indicate that the Commission may be using the standards for determining the independence of expenditures found in 11 C.F.R. § 109.1 in deciding the question of whether two non-candidate political committees are "affiliated" within the meaning of 11 C.F.R. § 100.5(g). These two provisions arise from different purposes and were created separately, each with its own distinctive tests. These tests should not be confused. While no prohibited contacts of any sort took place in this case, it is important to remember that as a matter of law, non-candidate political committees may communicate freely with each other so long as the indicia of affiliation set forth in 11 C.F.R. § 100.5(g)(2) are not present.

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The Honorable Lee Ann Elliott
July 23, 1984
Page Two

Our response of January 6, 1984, was comprehensive and showed clearly (pp. 10-11) that RNIEC did not meet the indicia of affiliation spelled out in 11 C.F.R. § 100.5(g)(2). To suggest that a mailing list might be enough to create an affiliation under the Federal Election Campaign Act of 1971, as amended, would be to stretch the statute well beyond the bounds of reasonableness. However, the attached answers to your questions demonstrate that the list issue is innocuous in any event.

Despite the grossly unwarranted nature of this proceeding, our client has cooperated in every way with the Commission and will continue to do so. We believe that the attached answers will put to rest any questions that remain, and believe that the Commission now has ample evidence upon which to dismiss these complaints and to allow our client to exercise its constitutional rights of free association and free speech.

Sincerely yours,

Stephen Sharp by ced

Stephen A. Sharp

Carol C. Darr

Carol C. Darr

85040514241

Responses of Rodney A. Smith
to FEC Questions of July 13, 1983

Q.1. With respect to the contributor list developed by Rodney Smith ("the Smith list") while employed by the National Republican Senatorial Committee ("NRSC"), does Mr. Smith own that list? If so, what is that ownership right based upon?

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mailgrams to those people who expressed an interest in the September 20th function on the telephone. The cost for renting the 876*/ names was \$157.22 or \$.18 each. This rate is commercially reasonable and, we believe, exceeds the prevailing rate for similar lists.

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*/ The list received actually contained 876 names, although RNIEC was billed for 1,123 names, apparently through inadvertance. RNIEC was duly billed and this bill was paid by check. Copies of the documents supporting this transaction are attached hereto.

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Q.10. Did any employee, agent, member, volunteer, or any other representative of the NRSC ever discuss the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with Rodney A. Smith or any other employee, agent, member, volunteer or other representative of the RNIEC?

A.10. Mr. Smith states with certainty that he never participated in any such discussions and to the best of his knowledge, neither did any other employee, agent, member, volunteer or other representative of RNIEC.

Q.11. Was any information concerning the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 forwarded or transmitted in any manner to Rodney A. Smith or any other employee, agent, member, volunteer or other representative of the RNIEC?

A.11 Mr. Smith states with certainty that no such information was forwarded or transmitted to him in any manner, nor, to the best of his knowledge, to any other employee, agent, member, volunteer or other representative of the RNIEC.

Q.12. Did any employee, agent, member, volunteer or any other representative of the RNIEC ever discuss RNIEC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with any employee, agent, member, volunteer or any other representative of the NRSC?

A.12. To the best of Mr. Smith's knowledge, the answer is no. See A.10. above.

Q.13. Did any employee, agent, member, volunteer or other representative of the NRSC ever discuss the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with Senator John Heinz or any employee, agent or other representative of Senator Heinz?

A.13 Mr. Smith knows of no such discussion. He also notes that Senator Heinz stated, under oath, in his November 29, 1983 letter to the Commission " . . . at no time have I, my staff, or to my knowledge the RNIEC, ever conferred with Senator Evans, his agents or his authorized committee, or with any member or agent of any

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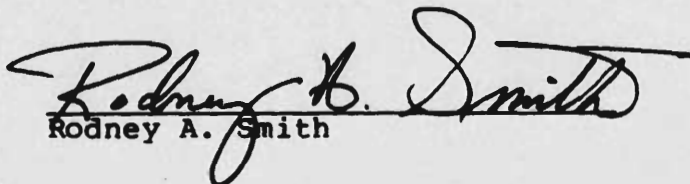
state or national party committee regarding the plans, projects or needs of the Evans' campaign." (Page Three)

Q.14. Was any information concerning the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 forwarded or transmitted in any manner to Senator John Heinz or any employee, agent, or other representative of Senator Heinz or (sic) by any employee, agent, member, volunteer or other representative of NRSC?

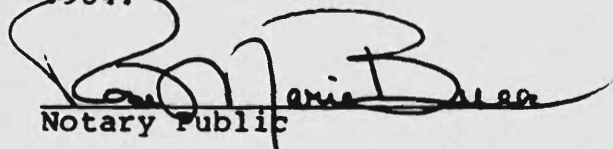
A.14. See A.13. above. Additionally, Mr. Smith has stated above at A.11. that he made no such transmittal.

VERIFICATION

The undersigned President for the respondent, Republican National Independent Expenditure Committee, swears that the statements contained herein are based on the sources indicated, and, as such, are true and correct to the best of his information and belief.


Rodney A. Smith

Subscribed and sworn before
me this 20th day of July,
1984.


Notary Public

My Commission Expires: Dec 14, 1988

85040314247



REPUBLICAN NATIONAL INDEPENDENT
EXPENDITURE COMMITTEE

WASHINGTON, D.C.

166

15-120/648

PAY
TO THE
ORDER OF

People for John Harvin Committee

\$ 157.²²/₁₀₀

One Hundred Fifty-Seven and ²²/₁₀₀

DOLLARS

D.C. National
Bank ★★ ★

DISTRICT OF COLUMBIA NATIONAL BANK

Main Office
1001 K Street, N.W.
Washington, D.C. 20006

For

Madame H. Smith

⑈00000166⑈ ⑆1054001204⑆

⑈269013⑈

85040514248

Attention: Rodney Smith
NRIC

From : Carey A. Lackman
PJH

Bill Date: November 10, 1983

ITEM: One partial PFJH J-Code List of 1123 names.

COST: \$157.22

PAYABLE TO: People for John Heinz Committee
400 C Street, N.E.
Washington, D.C. 20002

85040514249

CLERK ALCOHOL

JUL 23 84:46

Robert Pease, Esquire
Federal Election Commission
7th Floor
1325 K Street, N.W.
Washington, D.C. 20463

EN, ARPS, SLATE, MEAGHER & FLOM
19 EIGHTEENTH STREET, N.W.
WASHINGTON, D.C. 20006



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 20, 1984

Jan Baran, Esquire
Baker and Hostetler
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

RE: MUR 1602
National Republican
Senatorial Committee

Dear Mr. Baran:

Please be advised that your request for a twenty day extension of time to answer the Commission's questions in MUR 1602 has been granted. It is my understanding that your answers to the questions are due no later than August 17, 1984.

If you have any questions concerning your answers, please contact Robert E. Pease, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel


BY: Kenneth A. Grass
Associate General Counsel

85040514251

RECEIVED AT THE FEC

BAKER & HOSTETLER

ATTORNEYS AT LAW

818 CONNECTICUT AVE., N.W.

WASHINGTON, D. C. 20006

(202) 661-1800

TELESCOPIER (202) 667-0010

July 17, 1984

IN CLEVELAND, OHIO
3200 NATIONAL CITY CENTER
CLEVELAND, OHIO 44114
(216) 621-0200
TWX 610 481 8375

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 228-1841

WRITER'S DIRECT DIAL NO.

(202) 661- 1572

34 JUL 18 11:03

IN DENVER, COLORADO
SUITE 100, 303 EAST 17TH AVENUE
DENVER, COLORADO 80202
(303) 661-0500

IN ORLANDO, FLORIDA
13TH FLOOR BARNETT PLAZA
ORLANDO, FLORIDA 32801
(305) 641-1111

GCC #4079

Robert E. Pease, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1596/1602

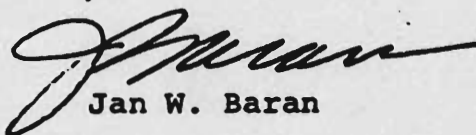
Dear Mr. Pease:

This office represents the National Republican Senatorial Committee ("NRSC") in the above-referenced matters. On this date, I received the July 13, 1984 letter from Chairman Lee Ann Elliott and Questions to Robert J. Perkins, NRSC Treasurer, attached thereto. Chairman Elliott's letter requests responses to the Questions within 10 days.

Please be advised that Mr. Perkins is travelling outside the District of Columbia and will not return to his office until July 23, 1984. I will be travelling myself during the week of July 23. In light of these travel plans, I hereby request an extension of 20 days within which to respond to the Commission's Questions. This extension would permit me to confer with my client when we are all in town and to file responses no later than August 17, 1984.

We would appreciate your granting this request.

Sincerely,


Jan W. Baran

JWB:ca

cc: Richard E. Messick, Esq.
Robert J. Perkins

85040514252

JUL 18 11:03

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BAKER & HOSTETLER

ATTORNEYS AT LAW

815 CONNECTICUT AVE, N.W.

WASHINGTON, D. C. 20006

(202) 691-2500

TELESCOPIER (202) 697-0050

July 17, 1984

84 JUL 19 P 1:00

IN DENVER, COLORADO
SUITE 200, 303 EAST 7TH AVENUE
DENVER, COLORADO 80202
(303) 691-2500

IN ORLANDO, FLORIDA
13TH FLOOR BARRETT PLAZA
ORLANDO, FLORIDA 32801
(305) 691-2500

IN CLEVELAND, OHIO
3200 NATIONAL CITY CENTER
CLEVELAND, OHIO 44114
(216) 621-2500
TWX 510 481 6275

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43218
(614) 222-1551

WRITER'S DIRECT DIAL NO.
(202) 691-1572

GCC #4079

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Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

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Dear Mr. Pease:

This office represents the National Republican Senatorial Committee ("NRSC") in the above-referenced matters. On this date, I received the July 13, 1984 letter from Chairman Lee Ann Elliott and Questions to Robert J. Perkins, NRSC Treasurer, attached thereto. Chairman Elliott's letter requests responses to the Questions within 10 days.

Please be advised that Mr. Perkins is travelling outside the District of Columbia and will not return to his office until July 23, 1984. I will be travelling myself during the week of July 23. In light of these travel plans, I hereby request an extension of 20 days within which to respond to the Commission's Questions. This extension would permit me to confer with my client when we are all in town and to file responses no later than August 17, 1984.

We would appreciate your granting this request.

Sincerely,


Jan W. Baran

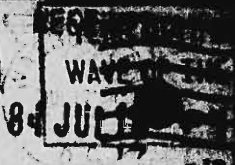
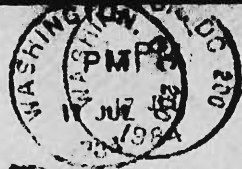
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cc: Richard E. Messick, Esq.
Robert J. Perkins

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JAN W. BAKER, ESQ.
BAKER & HOSTETLER
815 CONNECTICUT AVE., N.W.
WASHINGTON, D. C. 20006



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Robert E. Pease, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463





FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 13, 1984

James F. Schoener, Esquire
Miller, Canfield, Paddock
and Stone
Suite 1200
1015 Fifteenth Street, N.W.
Washington, D.C. 20005

RE: MUR 1596/1602
Republican National
Independent Expenditure
Committee

Dear Mr. Schoener:

The Federal Election Commission notified your client on November 15 and 28, 1983, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaints, and information supplied by you, the Commission, on July 10, 1984, merged MURs 1596 and 1602, and determined that there is reason to believe that your client has violated 2 U.S.C. § 441a(a), a provision of the Act. Specifically, it appears that the Republican National Independent Expenditure Committee ("RNIEC") and the National Republican Senatorial Committee ("NRSC") are affiliated committees and therefore have made excessive contributions to the Dan Evans Senate Committee in violation of 2 U.S.C. § 441a(a). The basis for the allegation involves an overlapping member, a former employee and a common contributor list which were instrumental in establishing the RNIEC.

The regulations at 11 C.F.R. § 100.5(g)(2) define affiliated committees as:

all committees (including a separate segregated fund, see 11 C.F.R. Part 114) established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons including any parent, subsidiary, branch, division, department, or local unit thereof

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As affiliated committees the RNIEC and the NRSC have the same contribution limitation because all affiliated political committees are treated as one committee for purposes of computing contribution limitations. 11 C.F.R. § 110.3. In addition, as a party committee, the NRSC is prohibited from making independent expenditures. 11 C.F.R. § 110.7(b)(4). This prohibition extends to all of its affiliates and therefore any expenditures made by the RNIEC must be considered contributions in-kind on behalf of the candidate. The NRSC spent the maximum amount allowed under 2 U.S.C. § 441a(d) in support of Senator Evans. The RNIEC spent over \$185,000 on behalf of Senator Evans. The RNIEC and the NRSC, as affiliated committees, exceeded the contribution limitations of 2 U.S.C. § 441a(a) on behalf of Senator Evans in the Washington Senate race.

The complaints raise numerous questions concerning the common and former personnel of the RNIEC and the NRSC. Rodney Smith was the former finance director and treasurer of the NRSC prior to his association with the RNIEC. It is unclear whether Mr. Smith used that former association to acquire knowledge of the NRSC's plans and activities on behalf of Senator Evans. Senator Heinz was a member of the NRSC while also active with the RNIEC. While Senator Heinz "suspended" his membership from the NRSC during part of the Washington Senate race, Senator Heinz was in a position to acquire information from the NRSC concerning the NRSC's plans and activities to support Senator Evans.

In its supplemental response the RNIEC acknowledged that it has a contributor mailing list also used by the NRSC and that it used that list to help finance its operations.

The use of the NRSC's contributor list was clearly instrumental in the RNIEC's ability to raise campaign contributions. Without the contributor list also used by the NRSC, it seems logical to assume that the RNIEC would not have raised almost \$300,000 with total operating expenditures of less than \$26,000. While there may be circumstances under which the possession and utilization of a list by a former officer of one committee in his or her new employment at a different committee would not be determinative, there is reason to believe herein that the RNIEC utilized the list to get started, that the contributor list was not even charged for, and that it was not generally available except through the conduit of a former finance director, Rodney Smith. The continued use of that list, allegedly claimed by the NRSC, without compensation from the RNIEC helped to establish the RNIEC. Without this list, it is highly improbable that the RNIEC would have been able to raise the funds needed to establish its existence.

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James F. Schoener, Esquire
Page 3

Your client's response to the Commission's initial notification of this complaint did not provide complete information regarding the matter in question. Please submit answers to the enclosed questions within ten (10) days of receipt of this letter. Statements should be submitted under oath.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause; however, in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public.

If you have any questions, please contact Robert E. Pease, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,


Lee Ann Elliott
Chairman

Enclosure
Questions
Procedures

85040514257

QUESTIONS

TO: Rodney A. Smith, Treasurer
Republican National Independent Expenditure
Committee

RE: MUR 1596/1602

Definition and Instructions

1. For purposes of questions one through five, inclusive, the terms "contributor list" or "Smith contributor list" refer interchangeably to the list which the Republican National Independent Expenditure Committee ("RNIEC") described in its response to the above-referenced complaints in MURs 1596 and 1602 as a list developed by Mr. Rodney Smith during his employment or consultancy at the National Republican Senatorial Committee ("NRSC").

2. With respect to questions six through ten, inclusive, the term "Heinz list" refers to the contributor list the RNIEC, in its supplemental response to the above-referenced complaints in MURs 1596-1602, said it rented from Senator Heinz.

3. "Person" shall be deemed to include both singular and plural, and shall mean any natural person, committee, association, or any other organization or entity.

4. "You" shall mean the named respondent in this action, or any agent or agents thereof.

5. "Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and telephone numbers, the present occupation or position of such person, and the nature of the connection or association that person has to any respondent in this MUR. If the person to be identified is not a natural person, provide the legal and trade names, and the address and telephone number.

6. "Matter Under Review" or "MUR" shall mean the designation given by the Federal Election Commission to any case or matter which comprises a compliance or enforcement action. The numerical symbol following the acronym "MUR" represents the identifying number given by the Federal Election Commission to that matter.

If any privilege is claimed as to any communication as to which information is requested by these questions, or as to any response requested by these questions, state the privilege claimed, the communication and/or answer as to which that claim is made, the topic discussed in the communication, and specify the basis upon which you assert that claim.

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For each document produced, state the number of the document request to which it is responsive. If any document called for herein is withheld under a claim of privilege, please furnish a list identifying each such document for which the privilege is claimed, together with the following information:

- (a) a description of the subject matter;
- (b) the date, if any, appearing on the document;
- (c) the name and title of the author;
- (d) the name and title of the person to whom the document was addressed;
- (e) the name and title of the person to whom the document was actually sent;
- (f) the number of pages in the document;
- (g) the paragraph of this request to which the document is otherwise responsive; and
- (h) the nature of the claimed privilege as well as the specific basis for your claim of such privilege.

QUESTIONS

1. With respect to the contributor list developed by Rodney Smith ("the Smith list") while employed by the National Republican Senatorial Committee ("NRSC"), does Mr. Smith own that list? If so, what is that ownership right based upon?
 - a) Is this contributor list now owned by RNIEC?
 - b) What is the ownership right of RNIEC in regard to the contributor list?
2. Describe in detail how Mr. Smith acquired possession of the contributor list after he left the NRSC.
 - a) Did Mr. Smith have possession before leaving NRSC?
3. Did anyone at the NRSC know that Mr. Smith had possession of the Smith contributor list after he left the NRSC? If so:
 - a) identify all individuals who knew that Mr. Smith had possession of said list;

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- b) when each individual first became aware that Mr. Smith had possession of said list;
 - c) state how each individual became aware that Mr. Smith had possession of said list.
 - 4. Did Mr. Smith ever discuss with any employee, agent, member, volunteer or any other person from the NRSC the ownership rights of the Smith contributor list? For each such discussion that took place provide:
 - a) the identity of the NRSC employee(s), agent(s), member(s), volunteer(s), or other person(s) involved in the conversation;
 - b) the date the conversation took place;
 - c) a detailed description of the conversation.
 - 5. How much money did the RNIEC raise in 1983 using the Smith contributor list?
 - a) How many contributor names were on that list?
 - b) How much money did the RNIEC spend in 1983 in connection with fundraising efforts using said contributor list?
 - 6. With respect to the list rental by the RNIEC from Senator Heinz (see RNIEC supplemental response to MURs 1596/1602):
 - a) was there a written rental agreement between the parties concerning the Heinz list? If so, please provide a copy of such agreement.
 - b) If there was no written agreement, please state all terms of the rental agreement, including, but not limited to, the rental fee for said list, the length of time the RNIEC was authorized to use said list, and all restrictions placed on the use of said list.
 - 7. How many contributor names were on the Heinz list rented by the RNIEC?
 - 8. How much money did the RNIEC raise in 1983 using the Heinz list?
 - 9. How much money did the RNIEC spend in 1983 on fundraising efforts in which the Heinz contributor list was used?

Questions

RNIEC

Page 4

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10. Did any employee, agent, member, volunteer, or any other representative of the NRSC ever discuss the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with Rodney A. Smith or any other employee, agent, member, volunteer, or other representative of the RNIEC? If so, state:
- a) the identity of the person from the NRSC who participated in the discussion(s);
 - b) the identity of the person from the RNIEC who participated in the discussion(s);
 - c) any other person who was present at any such discussions;
 - d) the date of any such discussions;
 - e) the subjects discussed at any such discussions.
11. Was any information concerning the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 forwarded or transmitted in any manner to Rodney A. Smith or any other employee, agent, member, volunteer, or other representative of the RNIEC? If so, state:
- a) date of any such transmittals;
 - b) the information transmitted;
 - c) the identity of the individual(s) who transmitted the information.
12. Did any employee, agent, member, volunteer or any other representative of the RNIEC ever discuss the RNIEC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with any employee, agent, member, volunteer, or other representative of the NRSC? If so, state:
- a) the identity of the person from the NRSC who participated in the discussion(s);
 - b) the identity of the person from the RNIEC who participated in the discussion(s);
 - c) any other person who was present at any such discussions;

- d) the date of any such discussions;
- e) the subjects discussed at any such discussions.
13. Did any employee, agent, member, volunteer or any other representative of the NRSC ever discuss the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with Senator John Heinz or any employee, agent or other representative of Senator Heinz? If so, state:
- a) the identity of the person from the NRSC who participated in the discussion(s);
- b) the identity of the person from the RNIEC who participated in the discussion(s);
- c) any other person who was present at any such discussions;
- d) the date of any such discussions;
- e) the subjects discussed at any such discussions.
14. Was any information concerning the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 forwarded or transmitted in any manner to Senator John Heinz or any employee, agent or other representative of Senator Heinz or by any employee, agent, member, volunteer, or other representative of the NRSC? If so, state:
- a) date of any such transmittals;
- b) the information transmitted;
- c) the identity of the individual(s) who transmitted the information.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 13, 1984

Carol C. Darr, Esquire
Skadden, Arps, Slate, Meagher
and Flom
918 Eighteenth Street, N.W.
Washington, D.C. 20006

RE: MUR 1596/1602
Republican National
Independent Expenditure
Committee

Dear Ms. Darr:

The Federal Election Commission notified your client on November 15 and 28, 1983, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaints, and information supplied by you, the Commission, on July 10, 1984, merged MURs 1596 and 1602, and determined that there is reason to believe that your client has violated 2 U.S.C. § 441a(a), a provision of the Act. Specifically, it appears that the Republican National Independent Expenditure Committee ("RNIEC") and the National Republican Senatorial Committee ("NRSC") are affiliated committees and therefore have made excessive contributions to the Dan Evans Senate Committee in violation of 2 U.S.C. § 441a(a). The basis for the allegation involves an overlapping member, a former employee and a common contributor list which were instrumental in establishing the RNIEC.

The regulations at 11 C.F.R. § 100.5(g)(2) define affiliated committees as:

all committees (including a separate segregated fund, see 11 C.F.R. Part 114) established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons including any parent, subsidiary, branch, division, department, or local unit thereof

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As affiliated committees the RNIEC and the NRSC have the same contribution limitation because all affiliated political committees are treated as one committee for purposes of computing contribution limitations. 11 C.F.R. § 110.3. In addition, as a party committee, the NRSC is prohibited from making independent expenditures. 11 C.F.R. § 110.7(b)(4). This prohibition extends to all of its affiliates and therefore any expenditures made by the RNIEC must be considered contributions in-kind on behalf of the candidate. The NRSC spent the maximum amount allowed under 2 U.S.C. § 441a(d) in support of Senator Evans. The RNIEC spent over \$185,000 on behalf of Senator Evans. The RNIEC and the NRSC, as affiliated committees, exceeded the contribution limitations of 2 U.S.C. § 441a(a) on behalf of Senator Evans in the Washington Senate race.

The complaints raise numerous questions concerning the common and former personnel of the RNIEC and the NRSC. Rodney Smith was the former finance director and treasurer of the NRSC prior to his association with the RNIEC. It is unclear whether Mr. Smith used that former association to acquire knowledge of the NRSC's plans and activities on behalf of Senator Evans. Senator Heinz was a member of the NRSC while also active with the RNIEC. While Senator Heinz "suspended" his membership from the NRSC during part of the Washington Senate race, Senator Heinz was in a position to acquire information from the NRSC concerning the NRSC's plans and activities to support Senator Evans.

In its supplemental response the RNIEC acknowledged that it has a contributor mailing list also used by the NRSC and that it used that list to help finance its operations.

The use of the NRSC's contributor list was clearly instrumental in the RNIEC's ability to raise campaign contributions. Without the contributor list also used by the NRSC, it seems logical to assume that the RNIEC would not have raised almost \$300,000 with total operating expenditures of less than \$26,000. While there may be circumstances under which the possession and utilization of a list by a former officer of one committee in his or her new employment at a different committee would not be determinative, there is reason to believe herein that the RNIEC utilized the list to get started, that the contributor list was not even charged for, and that it was not generally available except through the conduit of a former finance director, Rodney Smith. The continued use of that list, allegedly claimed by the NRSC, without compensation from the RNIEC helped to establish the RNIEC. Without this list, it is highly improbable that the RNIEC would have been able to raise the funds needed to establish its existence.

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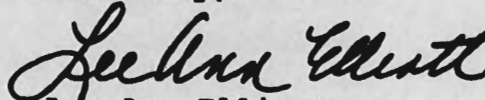
Your client's response to the Commission's initial notification of this complaint did not provide complete information regarding the matter in question. Please submit answers to the enclosed questions within ten (10) days of receipt of this letter. Statements should be submitted under oath.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause; however, in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public.

If you have any questions, please contact Robert E. Pease, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,


Lee Ann Elliott
Chairman

Enclosure
Questions
Procedures

85040314265

QUESTIONS

TO: Rodney A. Smith, Treasurer
Republican National Independent Expenditure
Committee

RE: MUR 1596/1602

Definition and Instructions

1. For purposes of questions one through five, inclusive, the terms "contributor list" or "Smith contributor list" refer interchangeably to the list which the Republican National Independent Expenditure Committee ("RNIEC") described in its response to the above-referenced complaints in MURs 1596 and 1602 as a list developed by Mr. Rodney Smith during his employment or consultancy at the National Republican Senatorial Committee ("NRSC").

2. With respect to questions six through ten, inclusive, the term "Heinz list" refers to the contributor list the RNIEC, in its supplemental response to the above-referenced complaints in MURs 1596-1602, said it rented from Senator Heinz.

3. "Person" shall be deemed to include both singular and plural, and shall mean any natural person, committee, association, or any other organization or entity.

4. "You" shall mean the named respondent in this action, or any agent or agents thereof.

5. "Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and telephone numbers, the present occupation or position of such person, and the nature of the connection or association that person has to any respondent in this MUR. If the person to be identified is not a natural person, provide the legal and trade names, and the address and telephone number.

6. "Matter Under Review" or "MUR" shall mean the designation given by the Federal Election Commission to any case or matter which comprises a compliance or enforcement action. The numerical symbol following the acronym "MUR" represents the identifying number given by the Federal Election Commission to that matter.

If any privilege is claimed as to any communication as to which information is requested by these questions, or as to any response requested by these questions, state the privilege claimed, the communication and/or answer as to which that claim is made, the topic discussed in the communication, and specify the basis upon which you assert that claim.

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For each document produced, state the number of the document request to which it is responsive. If any document called for herein is withheld under a claim of privilege, please furnish a list identifying each such document for which the privilege is claimed, together with the following information:

- (a) a description of the subject matter;
- (b) the date, if any, appearing on the document;
- (c) the name and title of the author;
- (d) the name and title of the person to whom the document was addressed;
- (e) the name and title of the person to whom the document was actually sent;
- (f) the number of pages in the document;
- (g) the paragraph of this request to which the document is otherwise responsive; and
- (h) the nature of the claimed privilege as well as the specific basis for your claim of such privilege.

QUESTIONS

1. With respect to the contributor list developed by Rodney Smith ("the Smith list") while employed by the National Republican Senatorial Committee ("NRSC"), does Mr. Smith own that list? If so, what is that ownership right based upon?
 - a) Is this contributor list now owned by RNIEC?
 - b) What is the ownership right of RNIEC in regard to the contributor list?
2. Describe in detail how Mr. Smith acquired possession of the contributor list after he left the NRSC.
 - a) Did Mr. Smith have possession before leaving NRSC?
3. Did anyone at the NRSC know that Mr. Smith had possession of the Smith contributor list after he left the NRSC? If so:
 - a) identify all individuals who knew that Mr. Smith had possession of said list;

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- b) when each individual first became aware that Mr. Smith had possession of said list;
- c) state how each individual became aware that Mr. Smith had possession of said list.
4. Did Mr. Smith ever discuss with any employee, agent, member, volunteer or any other person from the NRSC the ownership rights of the Smith contributor list? For each such discussion that took place provide:
- a) the identity of the NRSC employee(s), agent(s), member(s), volunteer(s), or other person(s) involved in the conversation;
- b) the date the conversation took place;
- c) a detailed description of the conversation.
5. How much money did the RNIEC raise in 1983 using the Smith contributor list?
- a) How many contributor names were on that list?
- b) How much money did the RNIEC spend in 1983 in connection with fundraising efforts using said contributor list?
6. With respect to the list rental by the RNIEC from Senator Heinz (see RNIEC supplemental response to MURs 1596/1602):
- a) was there a written rental agreement between the parties concerning the Heinz list? If so, please provide a copy of such agreement.
- b) If there was no written agreement, please state all terms of the rental agreement, including, but not limited to, the rental fee for said list, the length of time the RNIEC was authorized to use said list, and all restrictions placed on the use of said list.
7. How many contributor names were on the Heinz list rented by the RNIEC?
8. How much money did the RNIEC raise in 1983 using the Heinz list?
9. How much money did the RNIEC spend in 1983 on fundraising efforts in which the Heinz contributor list was used?

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10. Did any employee, agent, member, volunteer, or any other representative of the NRSC ever discuss the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with Rodney A. Smith or any other employee, agent, member, volunteer, or other representative of the RNIEC? If so, state:

- a) the identity of the person from the NRSC who participated in the discussion(s);
- b) the identity of the person from the RNIEC who participated in the discussion(s);
- c) any other person who was present at any such discussions;
- d) the date of any such discussions;
- e) the subjects discussed at any such discussions.

11. Was any information concerning the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 forwarded or transmitted in any manner to Rodney A. Smith or any other employee, agent, member, volunteer, or other representative of the RNIEC? If so, state:

- a) date of any such transmittals;
- b) the information transmitted;
- c) the identity of the individual(s) who transmitted the information.

12. Did any employee, agent, member, volunteer or any other representative of the RNIEC ever discuss the RNIEC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with any employee, agent, member, volunteer, or other representative of the NRSC? If so, state:

- a) the identity of the person from the NRSC who participated in the discussion(s);
- b) the identity of the person from the RNIEC who participated in the discussion(s);
- c) any other person who was present at any such discussions;

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- d) the date of any such discussions;
- e) the subjects discussed at any such discussions.
13. Did any employee, agent, member, volunteer or any other representative of the NRSC ever discuss the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with Senator John Heinz or any employee, agent or other representative of Senator Heinz? If so, state:
- a) the identity of the person from the NRSC who participated in the discussion(s);
- b) the identity of the person from the RNIEC who participated in the discussion(s);
- c) any other person who was present at any such discussions;
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- a) date of any such transmittals;
- b) the information transmitted;
- c) the identity of the individual(s) who transmitted the information.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 13, 1984

Jan W. Baran, Esquire
Baker and Hostettler
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

RE: MUR 1596/1602
National Republican
Senatorial Committee

Dear Mr. Baran:

The Federal Election Commission notified your client on December 8, 1983, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaints were forwarded to your client at that time.

Upon further review of the allegations contained in the complaints, and information supplied by you, the Commission, on July 10, 1984, merged MURs 1596 and 1602, and determined that there is reason to believe that your client has violated 2 U.S.C. § 441a(a), a provision of the Act. Specifically, it appears that the Republican National Independent Expenditure Committee ("RNIEC") and the National Republican Senatorial Committee ("NRSC") are affiliated committees and therefore have made excessive contributions to the Dan Evans Senate Committee in violation of 2 U.S.C. § 441a(a). The basis for the allegation involves an overlapping member, a former employee and a common contributor list which were instrumental in establishing the RNIEC.

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In its supplemental response the RNIEC acknowledged that it has a contributor mailing list also used by the NRSC and that it used that list to help finance its operations.

The use of the NRSC's contributor list was clearly instrumental in the RNIEC's ability to raise campaign contributions. Without the contributor list also used by the NRSC, it seems logical to assume that the RNIEC would not have raised almost \$300,000 with total operating expenditures of less than \$26,000. While there may be circumstances under which the possession and utilization of a list by a former officer of one committee in his or her new employment at a different committee would not be determinative, there is reason to believe herein that the RNIEC utilized the list to get started, that the contributor list was not even charged for, and that it was not generally available except through the conduit of a former finance director, Rodney Smith. The continued use of that list, allegedly claimed by the NRSC, without compensation from the RNIEC helped to establish the RNIEC. Without this list, it is highly improbable that the RNIEC would have been able to raise the funds needed to establish its existence.

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Jan W. Baran, Esquire
Page 3

Your client's response to the Commission's initial notification of this complaint did not provide complete information regarding the matter in question. Please submit answers to the enclosed questions within ten (10) days of receipt of this letter. Statements should be submitted under oath.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause; however, in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public.

If you have any questions, please contact Robert E. Pease, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,


Lee Ann Elliott
Chairman

Enclosure
Questions
Procedures

85040514273

QUESTIONS

TO: Bob Perkins, Treasurer
National Republican Senatorial Committee
404 C Street, N.E.
Washington, D.C. 20002

RE: MURs 1596/1602, National
Republican Senatorial
Committee

Definitions and Instructions

1. For purposes of these questions the term "contributor list" refers to the names and addresses of the National Republican Senatorial Committee's ("NRSC") contributors.
2. "Person" shall be deemed to include both singular and plural, and shall mean any natural person, committee, association, or any other organization or entity.
3. "You" shall mean the named respondent in this action, or any agent or agents thereof.
4. "Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and telephone numbers, the present occupation or position of such person, and the nature of the connection or association that person has to any respondent in this MUR. If the person to be identified is not a natural person, provide the legal and trade names, and the address and telephone number.
5. "Matter Under Review" or "MUR" shall mean the designation given by the Federal Election Commission to any case or matter which comprises a compliance or enforcement action. The numerical symbol following the acronym "MUR" represents the identifying number given by the Federal Election Commission to that matter.

If any privilege is claimed as to any communication as to which information is requested by these questions, or as to any response requested by these questions, state the privilege claimed, the communication and/or answer as to which that claim is made, the topic discussed in the communication, and specify the basis upon which you assert that claim.

For each document produced, state the number of the document request to which it is responsive. If any document called for herein is withheld under a claim of privilege, please furnish a list identifying each such document for which the privilege is claimed, together with the following information:

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- (a) a description of the subject matter;
- (b) the date, if any, appearing on the document;
- (c) the name and title of the author;
- (d) the name and title of the person to whom the document was addressed;
- (e) the name and title of the person to whom the document was actually sent;
- (f) the number of pages in the document;
- (g) the paragraph of this request to which the document is otherwise responsive; and
- (h) the nature of the claimed privilege as well as the specific basis for your claim of such privilege.

QUESTIONS

1. Were you the treasurer of the NRSC during the entire time Mr. Rodney Smith was employed by the NRSC?
 - a) If not, list all treasurers during Mr. Smith's tenure at the NRSC.
2. During the time Mr. Rodney Smith was employed by the NRSC as finance director did he develop a contributor list for the NRSC?
 - a) If so, does the NRSC own this list?
 - b) What is that ownership right based upon?
3. Have any employees, agents, volunteers, or any other persons from the NRSC ever discussed ownership rights of the contributor list with Mr. Smith?
4. In the NRSC's response to the complaints filed in MURs 1596 and 1602 you stated that the "RNIEC has never been authorized by NRSC to have custody, control, possession or use of the names or addresses of NRSC contributors." Is any employee, agent, volunteer, or any other person from the NRSC aware that Mr. Smith took the contributor list with him when he left the NRSC? If so, state:

R 5 0 4 0 5 1 4 2 7 5

- a) how the NRSC became aware that Mr. Smith took the contributor list;
- b) when it became aware that Mr. Smith had possession of the list;
- c) identify all persons who made this information known to the NRSC.
5. The NRSC further stated that "NRSC has taken steps with respect to RNIEC to prevent any unauthorized use of NRSC's proprietary information."
- a) Describe in detail what steps were taken to regain possession of the contributor list.
- b) Describe all steps taken to ensure that the RNIEC does not use the contributor list.
- c) If any of these steps in (a) and (b) above were reduced to writing, please provide a copy of any such documents.
6. Has the NRSC ever rented its contributor list to a person and/or group. If so, for each such rental provide:
- a) the identity of the person or group who rented the contributor list;
- b) the terms of such rental;
- c) the date(s) of such rental agreements.
7. Has the NRSC ever provided the contributor list free of charge to any person or group? If so, for each such transaction identify:
- a) the person or group to whom the NRSC provided the list;
- b) the terms of the agreement;
- c) the date(s) of the agreement.
8. Did any employee, agent, member, volunteer, or any other representative of the NRSC ever discuss the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with Rodney A. Smith or any other employee, agent, member,

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volunteer, or other representative of the RNIEC? If so, state:

- a) the identity of the person from the NRSC who participated in the discussion(s);
- b) the identity of the person from the RNIEC who participated in the discussion(s);
- c) any other person who was present at any such discussions;
- d) the date of any such discussions;
- e) the subjects discussed at any such discussions.

9. Was any information concerning the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 forwarded or transmitted in any manner to Rodney A. Smith or any other employee, agent, member, volunteer, or other representative of the RNIEC? If so, state:

- a) date of any such transmittals;
- b) the information transmitted;
- c) the identity of the individual(s) who transmitted the information.

10. Did any employee, agent, member, volunteer or any other representative of the NRSC ever discuss the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 with Senator John Heinz or any employee, agent or other representative of Senator Heinz? If so, state:

- a) the identity of the person from the NRSC who participated in the discussion(s);
- b) the identity of the person from the RNIEC who participated in the discussion(s);
- c) any other person who was present at any such discussions;
- d) the date of any such discussions;
- e) the subjects discussed at any such discussions.

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Questions

NRSC

Page 5

11. Was any information concerning the NRSC's plans or activities in support of Senator Evans in the special senatorial election in Washington state in 1983 forwarded or transmitted in any manner to Senator John Heinz or any employee, agent or other representative of Senator Heinz, or by any employee, agent, member, volunteer, or other representative of the NRSC? If so, state:

- a) date of any such transmittals;
- b) the information transmitted;
- c) the identity of the individual(s) who transmitted the information.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 13, 1984

Stuart M. Gerson, Esquire
Epstein, Becker, Borsody and
Green, P.C.
1140 Nineteenth Street, N.W.
Washington, D.C. 20036

RE: MURs 1596/1602
Senator John Heinz

Dear Mr. Gerson:

The Federal Election Commission notified your client on November 15 and 28, 1983, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaints were forwarded to your client at that time.

Upon review of the allegations contained in the complaints, and information supplied by your client, the Commission, on July 10, 1984, merged MURs 1596 and 1602, and decided to take no action at this time with respect to any possible violation of the Act by your client.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public.

If you have any questions, please contact Robert E. Pease, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

Lee Ann Elliott
Lee Ann Elliott
Chairman

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 13, 1984

Marlin L. Vortman, Esquire
Keller, Rohrback, Waldo, Hiscock,
Butterworth and Fardal
IBM Building
Fourteenth Floor
Seattle, Washington 98101

RE: MUR 1596/1602
Dan Evans Senate Committee

Dear Mr. Vortman:

On November 15 and December 8, 1983, the Commission notified your client of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on July 10, 1984, determined that on the basis of the information in the complaint, and information provided by your client, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter as it pertains to you. This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

Sincerely,

Charles N. Steele
General Counsel

BY: 
Kenneth A. Gross
Associate General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The Republican National) MURs 1596 and 1602
Independent Expenditure)
Committee, et al.)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the
Federal Election Commission executive session of July 10,
1984, do hereby certify that the Commission took the following
actions in the above-captioned matter:

1. Decided by a vote of 6-0 to merge MURs 1596
and 1602.

Commissioners Aikens, Elliott, Harris,
McDonald, McGarry, and Reiche voted
affirmatively for the decision.

2. Decided by a vote of 4-2 to find reason
to believe that the Republican National
Independent Expenditure Committee violated
2 U.S.C. § 441a(a) with respect to the Dan
Evans Senate Committee.

Commissioners Harris, McDonald, McGarry, and
Reiche voted affirmatively for the decision;
Commissioners Aikens and Elliott dissented.

(Continued)

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3. Decided by a vote of 4-2 to find reason to believe that the National Republican Senatorial Committee violated 2 U.S.C. § 441a(a) with respect to the Dan Evans Senate Committee.

Commissioners Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision; Commissioners Aikens and Elliott dissented.

4. Decided by a vote of 5-0 to take no action at this time with respect to any possible violation of the Federal Election Campaign Act by Senator John Heinz.

Commissioners Elliott, Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision; Commissioner Aikens abstained on the vote.

5. Decided by a vote of 6-0 to find no reason to believe that the Dan Evans Senate Committee violated 2 U.S.C. § 441a(f) and close the file to this respondent.

Commissioners Aikens, Elliott, Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision.

6. Decided by a vote of 5-0 to direct the General Counsel to send appropriate letters pursuant to the above findings.

Commissioners Aikens, Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision; Commissioner Elliott abstained in the vote.

Attest:

7-12-84

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL
FROM: MARJORIE W. EMMONS/JODY C. RANSOM *JCR*
DATE: JUNE 26, 1984
SUBJECT: ADDITIONAL OBJECTION - MUR 1596/1602
General Counsel's Report
signed June 21, 1984

The above-named document was circulated to the
Commission on Friday, June 22, 1984 at 2:00.

Objections have been received from the Commissioners
as indicated by the name(s) checked:

Commissioner Aikens	_____
Commissioner Elliott	_____ X _____
Commissioner Harris	_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Reiche	_____ X _____

This matter will be placed on the Executive Session
agenda for Tuesday, July 10, 1984.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL
FROM: MARJORIE W. EMMONS/JODY C. RANSOM *JCR*
DATE: JUNE 25, 1984
SUBJECT: OBJECTION - MUR 1596/1602 General Counsel's
Report signed June 21, 1984

The above-named document was circulated to the
Commission on June 22, 1984 at 2:00.

Objections have been received from the Commissioners
as indicated by the name(s) checked:

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner Harris	_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Reiche	_____X_____

This matter will be placed on the Executive Session
agenda for Tuesday, July 3, 1984.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *CL*
DATE: June 22, 1984
SUBJECT: MUR 1596/1602 - General Counsel's Report

The attached is submitted as an Agenda document
for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

48 Hour Tally Vote [X]
Sensitive [X]
Non-Sensitive []

24 Hour No Objection []
Sensitive []
Non-Sensitive []

Information []
Sensitive []
Non-Sensitive []

Other []

DISTRIBUTION

Compliance [X]
Audit Matters []

Litigation []
Closed MUR Letters []

Status Sheets []
Advisory Opinions []

Other (see distribution below) []

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

~~RECEIVED~~
~~OFFICE OF THE~~
~~COMMISSION SECRETARY~~

In the Matter of)

The Republican National)
Independent Expenditure)
Committee, et al.)

MURs 1596 and 1602

~~04 JUN 22 10: 45~~

GENERAL COUNSEL'S REPORT

BACKGROUND

On November 8, 1983, the Commission received a complaint, designated as MUR 1596, from the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee. On November 22, 1983, Common Cause filed a complaint with the Commission that was designated as MUR 1602. Both complaints contained similar allegations against the Republican National Independent Expenditure Committee ("RNIEC"), Rodney A. Smith, the president and treasurer of the RNIEC, Senator John Heinz, co-founder and chairman of the RNIEC's Advisory Panel, the National Republican Senatorial Committee ("NRSC"), and the Dan Evans Senate Committee ("Evans Committee"). Because both MURs involve similar allegations and respondents, this report contains a recommendation to merge MURs 1596 and 1602. Consequently, for purposes of this report both MURs will be treated as if merged.

The allegations in the complaints concern expenditures made by the RNIEC in connection with the special senatorial election in Washington state. The RNIEC spent over \$185,000 on behalf of Senator Evans in that election. RNIEC claims that the expenditures made qualify as independent expenditures; the complainants contend that the expenditures were not independent

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OFFICE OF THE
COMMISSION SECRETARY

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but rather were excessive contributions in-kind by RNIEC on behalf of Senator Evans.

The complainants allege that the RNIEC was established by a national political party, that the RNIEC and the NRSC are affiliated political committees subject to the same contribution limitations, that the NRSC provided the RNIEC with the plans of the Evans campaign and that the RNIEC had direct contact with the Evans campaign concerning the plans and activities of the Evans Committee. In support of these allegations the complaints state that the RNIEC has the words "Republican National" in its name, that its goal is to elect Republican candidates, the RNIEC and the NRSC have both common vendors and donors and that both committees have overlapping personnel. The complainants conclude that these allegations demonstrate that impermissible coordination of expenditures between the RNIEC, NRSC and the Evans Committee occurred such that the independence of the expenditures made by the RNIEC on behalf of Senator Evans were compromised and therefore are excessive contributions in-kind.

The Commission has received verified responses from all of the respondents in this matter.

The RNIEC is a non-party political committee that registered with the Commission on March 30, 1983. On its original registration it listed Rodney A. Smith as the treasurer. In an amendment, dated October 13, 1983, Elizabeth Warren Smith was listed as assistant treasurer. Mr. Smith was one of the

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co-founders of the RNIEC and operates the committee on a day-to-day basis according to information received by the Commission. Mr. Smith is the president as well as treasurer of the RNIEC. Mr. Smith formerly was employed by the Republican National Committee from 1976 to 1977. From 1977 until December of 1982, Mr. Smith was the finance director and treasurer for the NRSC.

On the RNIEC's fundraising material Senator John Heinz, Republican from Pennsylvania, is listed as one of the co-founders of the RNIEC. Senator Heinz is currently chairman of the RNIEC's "Advisory Panel." Senator Heinz formerly was the chairman of the NRSC until 1980, and was a member until he resigned from the committee on November 14, 1983.

The RNIEC spent over \$185,000 on behalf of Senator Evans in the special general election for United States Senator held on November 8, 1983. The expenditures consisted of an "election-gram" sent to prospective voters urging them to vote for Senator Evans. The RNIEC has reported these expenditures as independent expenditures on behalf of Senator Evans.

The NRSC is a national political committee registered with the Commission. The current chairman of the NRSC is Senator Richard Lugar of Indiana and he was also the chairman of the committee throughout the special Washington senate race. The NRSC is comprised of sixteen Republican senators, the Majority Leader of the United States Senate and an operational staff. The chairman of the NRSC is responsible for the day-to-day operations

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of the committee.^{1/} The NRSC spent the maximum permitted by law on behalf of Senator Evans, for the Washington Senate race, approximately \$265,000.

Senator Daniel Evans, Republican from Washington, was a candidate for U.S. Senate in the special general election held in Washington state on November 8, 1983. His opponent was U.S. Representative Mike Lowry. The Evans Committee was the principal campaign committee for Senator Evans.

One of the principal allegations in the complaints concerns the overlapping or common personnel of the NRSC and the RNIEC. It is important therefore to have an accurate chronology of events concerning the formation of the RNIEC and the special general election in Washington state on November 8, 1983. The following is a chronology of relevant dates in this matter.

1. In December 1982 Rodney A. Smith resigned as treasurer and finance director of the NRSC.^{2/}

2. On March 30, 1983, the RNIEC registered with the Commission as a non-party political committee making independent expenditures. Rodney A. Smith was listed as treasurer.

3. In August 1983, the NRSC became aware that the RNIEC was conducting fundraising efforts.^{3/} A fundraising letter of

^{1/} Heinz response to MUR 1596, p. 3; Heinz response to MUR 1602, p. 2; RNIEC response to MUR 1602, p. 14.

^{2/} RNIEC response to MUR 1596, p. 4.

^{3/} NRSC response, affidavit of Senator Lugar (hereinafter Lugar affidavit), ¶ 4.

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the RNIEC dated July 29, 1983, was brought to the attention of the NRSC. That letter stated that the RNIEC intended to support 1984 Republican senate candidates through independent expenditures. The letter was signed by Senator Heinz. Senator Lugar, chairman of the NRSC, requested a meeting with Senator Heinz to discuss Senator Heinz's involvement with the RNIEC. That meeting was delayed because of the Senate's summer recess.

4. On September 1, 1983, Senator Jackson died creating a vacancy in the Senate from the state of Washington.

5. On September 12, Daniel Evans was appointed Senator filling the vacancy created by Senator Jackson's death.

6. On September 12, 1983, Senator Evans declared as a candidate for the special general election for United States Senate in Washington state to be held on November 8, 1983.

7. On September 15, 1983, Senator Lugar and Heinz met to discuss Senator Heinz's involvement with the RNIEC and the making of independent expenditures.^{4/} Senator Lugar requested of Senator Heinz that if Heinz chose not to cease independent expenditure activity he resign as a member of the NRSC.

8. On September 19, 1983, the RNIEC formally decided to make independent expenditures on behalf of Senator Evans for the special general election of November 8, 1983.^{5/}

^{4/} Lugar affidavit, ¶ 6.

^{5/} As previously mentioned, the RNIEC spent over \$185,000 on behalf of Senator Evans. Part of this amount includes expenditures used for general fundraising efforts and administrative expenses which were attributed as expenditures on behalf of Senator Evans. See RNIEC response to MUR 1596, p. 2, n.2.

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9. On October 6, 1983, in a letter to Senator Lugar, Senator Heinz stated that he was suspending himself from all campaign related activities pertaining to the Dan Evans race and was taking a leave of absence from the NRSC through and including the special senatorial election in Washington state to be decided on November 8, 1983.

10. During the week of October 18, 1983, the RNIEC mailed "election-grams" to selected voters in Washington state urging them to vote for Senator Evans. Senator Heinz signed the election-grams. Senator Heinz is identified as a United States Senator from Pennsylvania. The election-gram contains a disclaimer indicating that it was paid for by the RNIEC, Rodney A. Smith, president. The disclaimer also states that the mailing was prepared independent of and without authorization of Dan Evans or his campaign committee.

11. On November 7, 1983, an article appeared in the Wall Street Journal under the heading "Group Formed by Sen. Heinz Aims to Pour Money Into GOP Races, Exceeding Limit." This article was referred to in both of the complaints in this matter.

12. On November 8, 1983, Senator Evans won the special general election in Washington state.

13. On November 8, 1983, the Commission received a complaint from the DSCC and the DCCC.

14. On November 14, 1983, Senator Heinz resigned from the NRSC.

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15. On November 22, 1983, the Commission received a complaint from Common Cause.

LEGAL AND FACTUAL ANALYSIS

The main issue raised by the complaints in this matter concerns whether the expenditures made by the RNIEC qualify as independent expenditures. All of the allegations in the complaints attack the independence of those expenditures made on behalf of Senator Evans by the RNIEC.

An independent expenditure is defined at 11 C.F.R.

§ 109.1(a) as:

an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.

Section 109.1(b)(5) further provides that any expenditure not qualifying as an independent expenditure is considered a contribution in-kind to the candidate and subject to the restrictions of 2 U.S.C. § 441a.

The issues raised in the complaints can be summarized into two main allegations. First, the NRSC and the RNIEC are affiliated committees and/or that the two committees impermissibly coordinated their expenditures. And second, the RNIEC had contact with the Evans campaign, thereby negating the independence of the expenditures made by the RNIEC. If substantiated, each of these allegations results in the expenditures made by the RNIEC as being excessive in-kind

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contributions by the RNIEC on behalf of Senator Evans in violation of 2 U.S.C. § 441a. Section 441a limits non-qualified political committees, such as the RNIEC, to making a maximum of \$1,000 in contributions to a federal candidate per election. The RNIEC spent over \$185,000 on behalf of Senator Evans. Because the complaints raise numerous questions concerning the connections between the NRSC and the RNIEC, which are not answered by the responses of the respondents, the Office of General Counsel recommends reason to believe that the expenditures made by the RNIEC were excessive in-kind contributions on behalf of Senator Evans.

Affiliation Or Coordination of RNIEC and NRSC

In order to demonstrate affiliation in the present case it must be shown that the NRSC established or financed or maintained or controlled the RNIEC. 11 C.F.R. § 100.5(g)(2). If affiliated, the RNIEC and the NRSC would have the same contribution limitation because all affiliated political committees are treated as one committee for purposes of computing contribution limitations. 11 C.F.R. § 110.3. In addition, as a party committee, the NRSC is prohibited from making independent expenditures. 11 C.F.R. § 110.7(b)(4). This prohibition extends to all of its affiliates and therefore any expenditures made by the RNIEC, should the RNIEC and the NRSC be affiliated, must be considered contributions in-kind on behalf of the candidate. The NRSC spent the maximum amount allowed under 2 U.S.C. § 441a(d) in support of Senator Evans. The RNIEC spent over \$185,000 on behalf of Senator Evans. If the RNIEC and the NRSC are

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affiliated committees, then together they exceeded the contribution limitations of 2 U.S.C. § 441a on behalf of Senator Evans in the Washington Senate race.

The complaints allege that because of the close ties between the RNIEC and the NRSC that the committees are affiliated or that the RNIEC was established and is maintained by a national political party. The allegation that the RNIEC was established and is maintained by a national political party is simply another way of saying that the party and the RNIEC are affiliated entities.

To support the allegation of affiliation, the complaint states that the RNIEC was organized by "key" Republican Party officials, its goal is to elect Republican candidates, it uses words "Republican National" in its name, it has common vendors and it has common donors. The complaints further allege that the RNIEC may have had access to the NRCS's contributor mailing list which was used to establish the RNIEC.

In its response, the RNIEC stated that it was established, and operated by Rodney A. Smith.^{6/} Mr. Smith once worked for the Republican National Committee (RNC) (he terminated that relationship in January 1977), and worked for the NRSC as finance director from January 1977 until his resignation in December 1982. It is unclear, however, exactly what role Senator Heinz plays with the RNIEC. He has been active in fundraising

^{6/} RNIEC response to MUR 1602, p. 2.

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appeals for the RNIEC, has contributed \$5,000 to the RNIEC in 1983, and he has rented his contributor mailing list to the RNIEC for an amount not in excess of \$200.00.^{7/} In the electiongram mailed to Washington voters, Senator Heinz said he was a "Co-Founder" of the RNIEC. In his response to the present complaints, however, Senator Heinz stated that while chairman of RNIEC's "Advisory Panel", he has never directed the operations of the RNIEC nor made its decisions or controlled its staff.^{8/}

The RNIEC freely admits that its goal is to elect Republican candidates and that it uses the words "Republican National" in its name. There is nothing in the regulations that prohibits the use of such party labels in a non-party committee's title. The RNIEC also acknowledges that it has used some of the same vendors as the NRSC but states that the vendors used by both committees performed merely routine services.

The NRSC is a political committee composed of a chairman, sixteen members, the Majority Leader of the United States Senate, and an operational staff. The NRSC is controlled by its chairman on a day-to-day basis and the chairman does not need the approval of the members prior to authorizing expenditures or making contributions on behalf of federal candidates.^{9/} In its

^{7/} The RNIEC, in its supplemental response, stated that the list rented from Senator Heinz fell below the threshold for itemization, i.e. \$200, and therefore was not itemized on the RNIEC's reports.

^{8/} Heinz response to MUR 1596, p. 2; see also RNIEC response to MUR 1602, p. 14.

^{9/} Heinz response to MUR 1596, p. 3.

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response, the NRSC stated that its policy is that NRSC members and personnel not communicate with any person or committee that is making, or states an intention to make, independent expenditures on behalf of Republican senatorial candidates.^{10/} NRSC states that it became aware of RNIEC's fundraising activities in August 1983. On September 15, 1983, after the Senate's summer recess, Senator Richard Lugar, NRSC's chairman, met with Senator Heinz. In that meeting Senator Lugar asked Senator Heinz to resign from the NRSC or cease independent expenditure activities.^{11/} As previously mentioned, Senator Heinz instead took a leave of absence from the NRSC on October 6, 1983, but did not resign until November 14, 1983.

The NRSC denies any involvement with the RNIEC. Senator Lugar stated that "to my knowledge, no member or employee of NRSC provided any information about the projects, plans or needs of the Dan Evans for Senate campaign to Senator Heinz or to any other person associated with RNIEC."^{12/} The NRSC further stated that "no meetings of NRSC members were held during the period of August to November 15, 1983."^{13/}

^{10/} Lugar affidavit, ¶ 5.

^{11/} Id., ¶ 6.

^{12/} Id., ¶ 11.

^{13/} Id., ¶ 10. This lack of meetings did not affect the operations of the NRSC. According to Senator Heinz, it was not necessary for the NRSC members to meet in order to authorize expenditures as the chairman of the NRSC has the authority to operate the committee and make expenditures without the NRSC's members' approval.

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It appears that the NRSC attempted to distance itself from the RNIEC and its independent activities. The NRSC requested Heinz to resign or cease his involvement in the independent campaign, it instructed its staff to avoid contact with any independent campaign and no meetings of the NRSC were held during the period of Senator Heinz's leave of absence. In his response, Senator Heinz declared that he never attended any meeting of the NRSC at which the Washington state senate race was discussed. Senator Heinz also confirmed that he did not attend any meetings of the NRSC subsequent to Senator Jackson's death or that he acquired any information concerning the Washington senate race from the NRSC.

Although the NRSC may have taken some steps to distance itself from the RNIEC there are links between the committees that raise numerous questions concerning the expenditures made by the RNIEC on behalf of Senator Evans. The links indicate that the expenditures may have been impermissibly coordinated such that there is reason to believe that the RNIEC and the NRSC may have violated 2 U.S.C. § 441a(a) by making excessive in-kind contributions on behalf of Senator Evans. If the two committees are affiliated or the expenditures were impermissibly coordinated, the expenditures made by the RNIEC on behalf of Senator Evans do not qualify as independent expenditures but rather are contributions in-kind to Senator Evans. In addition, as an affiliate of the RNIEC, the contributions in-kind would also be attributed to the NRSC.

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The links between the two committees involve Rodney Smith, Senator Heinz and a contributor mailing list used by both the RNIEC and the NRSC for fundraising purposes. As previously indicated, Mr. Smith, one of the co-founders of the RNIEC, was the finance director and the treasurer of the NRSC from 1977 until December of 1982. Mr. Smith was involved in numerous campaigns for the NRSC during his tenure at the NRSC. He was heavily involved in fundraising for the NRSC. He is familiar with the tactics and plans that have been employed by the NRSC to help senatorial candidates. As a result of this former association with the NRSC questions exist as to whether Mr. Smith used that former relationship to either establish the RNIEC or to assist in the expenditures made on behalf of Senator Evans. In an affidavit supplied to the Commission, Mr. Smith stated he received neither a suggestion or request by any state or national political party committee to make expenditures on behalf of Senator Evans.^{14/} While he may not have acted at the suggestion of the NRSC, it is unclear whether Mr. Smith either had direct contact with the NRSC or knew of the NRSC's plans in support of Senator Evans.

Senator Heinz's overlapping memberships in both committees raises concerns involving the affiliation of the two committees as well as the independence of the expenditures made by the RNIEC on behalf of Senator Evans. While Senator Heinz may not have attended any meetings of the NRSC while he was involved

^{14/} RNIEC response to MUR 1602, affidavit of Rodney A. Smith.

in the RNIEC's efforts to support Senator Evans, it is unknown what information, if any, he received from the NRSC concerning the NRSC's plans to support Senator Evans. As a member of the NRSC, even a "suspended" member, Senator Heinz may have been in a position to acquire information from the NRSC concerning the NRSC's plans and activities. Senator Heinz acknowledges that he gave general advice to the RNIEC and that he was active in fundraising appeals. He is further identified as a "co-founder" of the RNIEC in RNIEC fundraising material.

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The use by the RNIEC of a contributor list also used by the NRSC raises additional problems of affiliation. The complaints allege that the RNIEC had access to the NRSC's mailing list. In support of that position they cite the significant overlap of donors between the RNIEC and the NRSC. In its supplemental response the RNIEC acknowledged that it has a list also used by the NRSC. In that response the RNIEC stated that it used four lists to raise campaign funds. It acquired a list on an exchange basis from Robert P. Odell, a fundraising consultant in Republican politics; it rented a list from Senator Heinz; it received from Rodney A. Smith a "personal list of prospective contributors, which he had previously developed and later used to assist NRSC during his consultancy";^{15/} and it received other

^{15/} The RNIEC reports do not disclose any in-kind contributions received from Mr. Smith. They do show, however, a \$500 contribution from Mr. Smith on March 17, 1983.

rental lists reported to the FEC.^{16/} The RNIEC reports disclose that as of the 1983 Year End Report the Committee had raised \$298,156 in contributions. The Committee's entire operating expenses for this same period of time were \$25,789. The RNIEC reports do not disclose any payments for rent or salaries. There is only one disclosed payment for rental of contributor lists, the \$1,320 paid to AAA-American Public Issues Lists. The RNIEC listed \$525 as payment for postage on its reports.

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In the supplemental response the RNIEC states that Mr. Smith had a list of prospective contributors prior to his employment at the NRSC. While at the NRSC he further developed this list and after leaving the NRSC used this list to raise funds for the RNIEC. The NRSC disputes any authorization to Mr. Smith or anyone else at the RNIEC to use the NRSC's contributor list. In its response the NRSC stated that the "RNIEC has never been authorized by NRSC to have custody, control, possession or use of the names or addresses of NRSC contributors NRSC has taken steps with respect to RNIEC to prevent any unauthorized use of NRSC's proprietary information".^{17/} It states further that it had no knowledge prior to the RNIEC fundraising efforts that the RNIEC may have had access to its mailing list. The RNIEC did not pay the NRSC for the use of the list nor did the NRSC make a contribution in-kind to the RNIEC for use of the contributor list.

^{16/} The RNIEC reports show a payment of \$1,320.00 to AAA-American Public Issues Lists for rental of mailing lists.

^{17/} NRSC response, pp. 4-5.

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The use of the NRSC's contributor list was clearly instrumental in the RNIEC's ability to raise campaign contributions. While the use of the NRSC's list was "unauthorized," the use of the list was certainly a central factor in the "establishment" of the RNIEC. Without the contributor list also used by the NRSC, it seems logical to assume that the RNIEC would not have raised almost \$300,000 with total operating expenditures of less than \$26,000. While there may be circumstances under which the possession and utilization of a list by a former officer of one committee in his or her new employment at a different committee would not be determinative, there is reason to believe herein that the RNIEC utilized the list to get started, that the contributor list was not even charged for, and that it was not generally available except through the conduit of a former finance director, Rodney Smith. The continued use of that list, allegedly claimed by the NRSC, without compensation from the RNIEC helped to establish the RNIEC. Without this list, it is highly improbable that the RNIEC would have been able to raise the funds needed to establish its existence.

As previously mentioned, the RNIEC stated that it rented a contributor list from Senator Heinz. The RNIEC reports do not disclose any payments to Senator Heinz or to the Heinz Senate Committee for rental of a mailing list. The RNIEC, in its supplemental response,^{18/} however, contends that the expense for

^{18/} RNIEC supplemental response (dated February 2, 1984), p. 2.

the list rented from Senator Heinz fell below the threshold for itemization, i.e., was not in excess of \$200. See 2 U.S.C. § 434(b)(5)(A). There is no evidence at this time that the list rented from Senator Heinz was for other than the usual and normal charge.

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The overlapping memberships in the NRSC and the RNIEC by Senator Heinz, the close association of Rodney Smith with both committees as well as the use of a common contributor list by both committees raise serious questions concerning the affiliation of the two committees and that the expenditures made by the RNIEC on behalf of Senator Evans were impermissibly coordinated with the NRSC thus negating the claim that the RNIEC's expenditures on behalf of Senator Evans were independent expenditures. The Office of General Counsel recommends, therefore, reason to believe that the RNIEC and the NRSC violated 2 U.S.C. § 441a(a) by making excessive contributions in-kind on behalf of Senator Evans.

Expenditures by RNIEC on behalf of Senator Evans'

The complaints allege that RNIEC's expenditures were not totally independent of Senator Evans' campaign. It further alleges that RNIEC obtained information from or about the Evans campaign through NRSC or elsewhere and thereby coordinated its expenditures with Senator Evans' campaign efforts. The respondents have denied that the expenditures made by the RNIEC were made with the cooperation, prior consent, or in consultation with any representative of the Evans campaign. See 11 C.F.R. § 109.1(a). The RNIEC, Rodney Smith and Elizabeth Smith, the

assistant treasurer of the RNIEC, all responded under oath that they had no contact with "Dan Evans, his campaign committee or agents with regard to the special election set for November 8, 1983, nor was any decision to approve making independent expenditures by the RNIEC in support of Dan Evans made on the basis of any request or suggestion of the candidate, his committee or his or their agents."19/ The RNIEC further denies that it received any information from the NRSC and denies any coordination between itself and the NRSC or any other national or state party committee in regard to the Dan Evans Senator race.20/

J.J. Gilmour, treasurer for the Dan Evans Senate Committee, responded that neither he nor anyone associated with the Dan Evans Senate Committee had any contact with Senator Heinz or anyone connected with the RNIEC.21/

The NRSC specifically denies providing any information to the RNIEC concerning the Evans campaign plans or needs.22/ The complaints provide no information to support the broad allegation that the RNIEC's expenditures were not totally independent of Senator Evans' campaign. The RNIEC and its agents specifically denied under oath having any contact with the Evans campaign.

19/ RNIEC response to MUR 1602, affidavits of Rodney Smith and Elizabeth Smith.

20/ RNIEC response to MUR 1596, p. 5; RNIEC response to MUR 1602, p. 15.

21/ Response of Dan Evans Senate Committee to MURs 1596 and 1602.

22/ Lugar affidavit, ¶ 11.

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Finally, the Evans campaign denied having any contact with anyone from the RNIEC. There is no direct evidence that the expenditures made by the RNIEC on behalf of Senator Evans in the Washington Senate race in 1983 were not independent of the Evans campaign.

CONCLUSION

The Office of General Counsel recommends that there is reason to believe that the NRSC and the RNIEC, as affiliated political committees, each violated 2 U.S.C. § 441a(a) by making excessive in-kind contributions on behalf of Senator Evans in the special senatorial election in Washington state. As affiliated committees, the expenditures made by one committee are attributed to each committee. While Senator Heinz may be required to provide information in this matter, there is no direct evidence at this time that he personally violated the Act. There is no direct evidence that any violations of the Act occurred by the Dan Evans Senate Committee.

RECOMMENDATIONS

1. Merge MURs 1596 and 1602.
2. Find reason to believe that the Republican National Independent Expenditure Committee violated 2 U.S.C. § 441a(a) with respect to the Dan Evans Senate Committee.
3. Find reason to believe that the National Republican Senatorial Committee violated 2 U.S.C. § 441a(a) with respect to the Dan Evans Senate Committee.
4. Find no reason to believe that Senator Heinz violated the Act with respect to the Dan Evans Senate Committee.

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5. Find no reason to believe that the Dan Evans Senate Committee violated 2 U.S.C. § 441a(f) and close the file as to this respondent.
6. Approve the attached notification letters.

Charles N. Steele
General Counsel

June 21, 1984
Date

by:

Kenneth A. Gross
Associate General Counsel

Attachments
Notification Letters

85040514305

6c# 4020

EPSTEIN BECKER BORSODY & GREEN, P.C.

ATTORNEYS AT LAW

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(817) 334-0701

1875 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067
(213) 886-8881

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(415) 398-8888

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July 12, 1984

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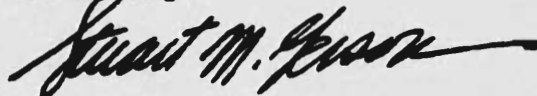
Robert Pease, Esquire
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1596 and 1602

Dear Mr. Pease:

Pursuant to our telephone conversation of this morning, please note my appearance as attorney for Senator John Heinz in the above-referenced matters under review. Please forward to me, on behalf of Senator Heinz, any item that the Commission wishes to be called to his attention.

Sincerely,



Stuart M. Gerson

SMG:cr

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EIN BECKER BORSODY & GREEN, P.C.

1140 19TH STREET, N.W.

WASHINGTON, D.C. 20036

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Robert Pease, Esquire
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

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SKADDEN, ARPS, SLATE, MEAGHER & FLOW

919 EIGHTEENTH STREET, N.W.
WASHINGTON, D.C. 20006

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WILMINGTON, DELAWARE 19801
(302) 429-2800
515 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90071
(213) 486-4800

TELECOPIER
(202) 293-3931

February 2, 1984

Robert Pease, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1602

Dear Mr. Pease:

This letter responds to your telephone inquiry of January 25, 1984. As you made clear in our conversation, your request for additional information is made on an informal basis. In a similar vein, our response is made voluntarily, in the spirit of cooperation with the Commission, and in hopes of reaching a quick resolution to this matter.

You asked where Mr. Rodney A. Smith acquired the mailing lists to generate the funds raised by the Republican National Independent Expenditures Committee ("RNIEC"), given the small expenditures reported for the rental of lists. Given the fact that the officers of both the National Republican Senatorial Committee ("NRSC") and RNIEC have stated under oath that NRSC provided no assistance whatever to RNIEC, your inquiry is not material to the question of RNIEC's independence from the Evans campaign raised in MUR 1602 and MUR 1596. As we see it, those matters should be decided in RNIEC's favor irrespective of the information you requested. Nevertheless, we are happy to respond to you.

As we have previously explained, Smith was the principal architect of the RNIEC and its fundraising programs. For the six years prior to the formation of RNIEC, Smith provided the same fundraising services on a consulting basis for NRSC.

When Smith began assisting NRSC in January 1977, it had no substantial asset base of any kind. Smith immediately undertook the design of unique and attractive

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fundraising programs that were aimed at specific groups of potential contributors. He then solicited contributions utilizing resources including:

- (1) His personal lists of prospective contributors acquired prior to being retained by NRSC.
- (2) Borrowed lists of prospective contributors acquired on a quid pro quo exchange basis with groups and individuals, which lists were later exchanged for lists compiled by NRSC.
- (3) Rental lists of all kinds.

By effectively merging into a single list the names and addresses of prospective contributors acquired from the three sources described above, and by focusing attention on those individuals most likely to be interested in a particular fundraising program, Smith was able to target his market and thus quickly convert each of his programs into successful fundraising efforts.

When Smith decided to form the RNIEC in March 1983, he used the same fundraising techniques that had proved so effective for him in assisting NRSC. This time, he developed the framework for a new fundraising program called "The Republican Roundtable." After completing all the details, he then solicited prospective donors, whose names and addresses were derived from the following sources:*/

- (1) His personal list of prospective contributors, which he had previously developed and later used to assist NRSC during his consultancy;
- (2) The list he had acquired on a quid pro quo basis from Mr. Robert P. Odell, Jr., a fundraising consultant in Republican politics;
- (3) A list rented^{*/} from Senator John Heinz; and
- (4) Other rental lists reported to the FEC.

*/ We wish to note that none of the lists were acquired or in any way copied from any candidate or organizational report on file with the Federal Election Commission.

**/ This expense falls below the threshold for itemization and thus does not appear as a separate entry on RNIEC's reports.

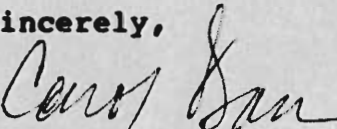
85040514309

Robert Pease, Esq.
February 2, 1984
Page Three

In view of the similarity of approaches employed by Smith and the relatively small corps of donors who give serially to Republican organizations, it is unsurprising to learn of the high percentage of people who have given both to the RNIEC and to the NRSC.

The program and techniques utilized by Smith in the formation of RNIEC were independently conceived and executed. That should be clear from NRSC's public efforts to repudiate RNIEC, and its directive to its members and employees not to communicate with independent expenditures committees. We reiterate that RNIEC is not affiliated with the NRSC, nor lacking in independence from the Dan Evans campaign.

Sincerely,


Carol C. Darr

cc: Chairman Elliot
Commissioner Aikens
Commissioner Harris
Commissioner McDonald
Commissioner McGarry
Commissioner Rieche

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DEN, ARPS, SLATE, MEAGHER & FLOM
919 EIGHTEENTH STREET, N. W.
WASHINGTON, D. C. 20006

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Robert Pease, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C. 20463

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515 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90071
(213) 488-4600

February 2, 1984

Robert Pease, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1602

Dear Mr. Pease:

This letter responds to your telephone inquiry of January 25, 1984. As you made clear in our conversation, your request for additional information is made on an informal basis. In a similar vein, our response is made voluntarily, in the spirit of cooperation with the Commission, and in hopes of reaching a quick resolution to this matter.

You asked where Mr. Rodney A. Smith acquired the mailing lists to generate the funds raised by the Republican National Independent Expenditures Committee ("RNIEC"), given the small expenditures reported for the rental of lists. Given the fact that the officers of both the National Republican Senatorial Committee ("NRSC") and RNIEC have stated under oath that NRSC provided no assistance whatever to RNIEC, your inquiry is not material to the question of RNIEC's independence from the Evans campaign raised in MUR 1602 and MUR 1596. As we see it, those matters should be decided in RNIEC's favor irrespective of the information you requested. Nevertheless, we are happy to respond to you.

As we have previously explained, Smith was the principal architect of the RNIEC and its fundraising programs. For the six years prior to the formation of RNIEC, Smith provided the same fundraising services on a consulting basis for NRSC.

When Smith began assisting NRSC in January 1977, it had no substantial asset base of any kind. Smith immediately undertook the design of unique and attractive

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fundraising programs that were aimed at specific groups of potential contributors. He then solicited contributions utilizing resources including:

- (1) His personal lists of prospective contributors acquired prior to being retained by NRSC.
- (2) Borrowed lists of prospective contributors acquired on a quid pro quo exchange basis with groups and individuals, which lists were later exchanged for lists compiled by NRSC.
- (3) Rental lists of all kinds.

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When Smith decided to form the RNIEC in March 1983, he used the same fundraising techniques that had proved so effective for him in assisting NRSC. This time, he developed the framework for a new fundraising program called "The Republican Roundtable." After completing all the details, he then solicited prospective donors, whose names and addresses were derived from the following sources:*/

- (1) His personal list of prospective contributors, which he had previously developed and later used to assist NRSC during his consultancy;
- (2) The list he had acquired on a quid pro quo basis from Mr. Robert P. Odell, Jr., a fundraising consultant in Republican politics;
- (3) A list rented^{*/} from Senator John Heinz; and
- (4) Other rental lists reported to the FEC.

*/ We wish to note that none of the lists were acquired or in any way copied from any candidate or organizational report on file with the Federal Election Commission.

**/ This expense falls below the threshold for itemization and thus does not appear as a separate entry on RNIEC's reports.


85040514313

Robert Pease, Esq.
February 2, 1984
Page Three

In view of the similarity of approaches employed by Smith and the relatively small corps of donors who give serially to Republican organizations, it is unsurprising to learn of the high percentage of people who have given both to the RNIEC and to the NRSC.

The program and techniques utilized by Smith in the formation of RNIEC were independently conceived and executed. That should be clear from NRSC's public efforts to repudiate RNIEC, and its directive to its members and employees not to communicate with independent expenditures committees. We reiterate that RNIEC is not affiliated with the NRSC, nor lacking in independence from the Dan Evans campaign.

Sincerely,


Carol C. Darr

cc: Chairman Elliot
Commissioner Aikens
Commissioner Harris
Commissioner McDonald
Commissioner McGarry
Commissioner Rieche

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Smith and Toggian

ATTORNEYS AT LAW

09. 412 E. MADISON STREET

MPA, FLORIDA 33602

850405143



Lee Ann Ellicott, Chairman
Federal Election Commission
Washington D.C. 20463



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE
FROM: MARJORIE W. EMMONS/JODY C. RANSOM *JCR*
DATE: JANUARY 17, 1984
SUBJECT: MUR 1602 - First General Counsel's Report
dated January 13, 1984

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 11:00, January 16, 1984.

There were no objections to the First General Counsel's Report at the time of the deadline.

85040514316



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *OK*
DATE: January 13, 1984
SUBJECT: MUR 1602 - 1st GC Rpt

The attached is submitted as an Agenda document
for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

48 Hour Tally Vote []
Sensitive []
Non-Sensitive []

24 Hour No Objection [x]
Sensitive [x]
Non-Sensitive []

Information []
Sensitive []
Non-Sensitive []

Other []

DISTRIBUTION

Compliance [x]
Audit Matters []

Litigation []
Closed MUR Letters []

Status Sheets []
Advisory Opinions []

Other (see distribution below) []

85040514317

SENSITIVE

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FIRST GENERAL COUNSEL'S REPORT 4 JAN 13 P 4: 39

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 1-13-84

MUR NO. 1602
DATE COMPLAINT RECEIVED
BY OGC: November 8, 1983
DATE OF NOTIFICATION TO
RESPONDENT: November 8, 1983
and December 8, 1983

COMPLAINANTS' NAMES: Common Cause

RESPONDENTS' NAMES: Republican National Independent Expenditure
Committee (RNIEC); Rodney A. Smith as
treasurer of RNIEC and as former finance
director of the National Republican
Senatorial Committee; the National
Republican Senatorial Committee;
Senator John Heinz; the Dan Evans
Senate Committee

RELEVANT STATUTES: 2 U.S.C. §§ 434(c), 441a(a), 441a(d),
and 11 C.F.R. § 109.1

INTERNAL REPORTS
CHECKED: Reports on file from RNIEC

FEDERAL AGENCIES
CHECKED: None

SUMMARY OF ALLEGATIONS

The complaint, supported by newspapers articles,*/ alleges
that the Republican National Independent Expenditure Committee
(RNIEC) made expenditures on behalf of the Senate candidacy of
Dan Evans in Washington that exceeded the contribution

*/ The complaints are sufficient without the supporting newspaper
articles. They fulfill all of the requirements of 11 C.F.R.
§ 111.4. The complaints contain the names and addresses of
the complainants, are sworn to and notarized. They also
identify the respondents; state a clear and concise recitation
of the facts comprising the alleged violations; list the
sections of the Act and the Regulations allegedly violated;
and are accompanied by newspaper articles supporting the
allegations.

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limitations of 2 U.S.C. § 441a(a) and did not qualify as independent expenditures. The complaint further alleges that RNIEC spent \$185,000 on electiongrams urging voter support for Mr. Evans. These expenditures do not qualify as independent expenditures, according to the allegations in the complaint, because the close relationship between the National Republican Senatorial Committee (NRSC) and RNIEC negates any possible independent expenditures by RNIEC on behalf of Dan Evans, a Republican senatorial candidate. Senator John Heinz, currently on the board of RNIEC, was a former chairman of NRSC in 1979-80 and until November 16, 1983, was still a member of NRSC. Rodney A. Smith is treasurer of RNIEC and the former finance director of NRSC. The complaint alleges that by virtue of these close ties the respondents were in a position to work through NRSC in close cooperation with Mr. Evans thereby negating the independence of the expenditures.

Allegations further exist that the RNIEC may have used the NRSC's mailing list to solicit contributions for RNIEC.

Responses have been received from some of the respondents. On January 4, 1984, the Dan Evans Senate Committee and Senator Heinz each responded and on January 6, 1984, a response was received by the RNIEC. The NRSC has requested, and was granted, an extension to reply to the allegations until January 4, 1984. Counsel for the NRSC responded on January 9, 1984, that due to unforeseen delays their response would not be delivered to the

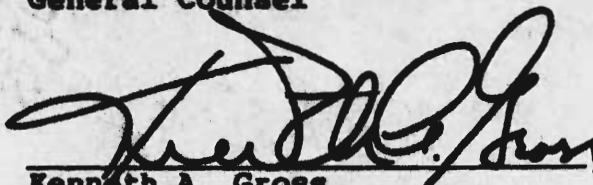
85040514319

Commission until January 12. After all the responses are received, the Office of General Counsel will be make recommendations to the Commission.

Charles N. Steele
General Counsel

January 13, 1964
Date

BY:


Kenneth A. Gross
Associate General Counsel

85040314320



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE
FROM: MARJORIE W. EMMONS/JODY C. RANSOM *JCR*
DATE: JANUARY 17, 1984
SUBJECT: MUR 1596 - First General Counsel's Report
dated January 13, 1984

The above-named document was circulated to the Commission on a 24 hour no-objection basis at 11:00, January 16, 1984.

There were no objections to the First General Counsel's Report at the time of the deadline.

85040514321



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *gkh*
DATE: January 13, 1984
SUBJECT: MUR 1596 - 1st GC Rpt

The attached is submitted as an Agenda document
for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

48 Hour Tally Vote []
Sensitive []
Non-Sensitive []

24 Hour No Objection [x]
Sensitive [x]
Non-Sensitive []

Information []
Sensitive []
Non-Sensitive []

Other []

DISTRIBUTION

Compliance [x]

Audit Matters []

Litigation []

Closed MUR Letters []

Status Sheets []

Advisory Opinions []

Other (see distribution below) []

85040514322

SENSITIVE

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 1-13-84

MUR NO. 1596 84 JAN 13 P 4: 46
DATE COMPLAINT RECEIVED
BY OGC: November 8, 1983
DATE OF NOTIFICATION TO
RESPONDENT: November 8, 1983
and December 8, 1983

COMPLAINANTS' NAMES: Democratic Senatorial Campaign
Committee and the Democratic
Congressional Campaign Committee

RESPONDENTS' NAMES: Republican National Independent Expenditure
Committee (RNIEC); Rodney A. Smith as
treasurer of RNIEC and as former finance
director of the National Republican
Senatorial Committee; the National
Republican Senatorial Committee;
Senator John Heinz; the Dan Evans
Senate Committee

RELEVANT STATUTES: 2 U.S.C. §§ 434(c), 441a(a), 441a(d),
and 11 C.F.R. § 109.1

INTERNAL REPORTS
CHECKED: Reports on file from RNIEC

FEDERAL AGENCIES
CHECKED: None

SUMMARY OF ALLEGATIONS

The complaint, supported by newspapers articles,*/ alleges that
the Republican National Independent Expenditure Committee (RNIEC)
made expenditures on behalf of the Senate candidacy of Dan Evans in
Washington that exceeded the contribution limitations of 2 U.S.C.
§ 441a(a) and did not qualify as independent expenditures. The

*/ The complaints are sufficient without the supporting newspaper
articles. They fulfill all of the requirements of 11 C.F.R.
§ 111.4. The complaints contain the names and addresses of
the complainants, are sworn to and notarized. They also
identify the respondents; state a clear and concise recitation
of the facts comprising the alleged violations; list the
sections of the Act and the Regulations allegedly violated;
and are accompanied by newspaper articles supporting the
allegations.

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complaint further alleges that RNIEC spent \$185,000 on electiongrams urging voter support for Mr. Evans. These expenditures do not qualify as independent expenditures, according to the allegations in the complaint, because the close relationship between the National Republican Senatorial Committee (NRSC) and RNIEC negates any possible independent expenditures by RNIEC on behalf of Dan Evans, a Republican senatorial candidate. Senator John Heinz, currently on the board of RNIEC, was a former chairman of NRSC in 1979-80 and until November 16, 1983, was still a member of NRSC. Rodney A. Smith is treasurer of RNIEC and the former finance director of NRSC. The complaint alleges that by virtue of these close ties the respondents were in a position to work through NRSC in close cooperation with Mr. Evans thereby negating the independence of the expenditures.

Allegations further exist that the RNIEC may have used the NRSC's mailing list to solicit contributions for RNIEC.

Responses have been received from some of the respondents. The NRSC has requested, and was granted, an extension to reply to the allegations until January 4, 1984. Counsel for the NRSC responded on January 9, 1984, that due to unforeseen delays their response would not be delivered to the Commission until January 12. After all the responses are received, the Office of General Counsel will make recommendations to the Commission.

Charles N. Steele
General Counsel

January 13, 1984
Date

BY:


Kenneth A. Gross
Associate General Counsel

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BAKER & HOSTETLER

ATTORNEYS AT LAW

616 CONNECTICUT AVE., N. W.

WASHINGTON, D. C. 20004

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1/13 P 1: 51

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COLUMBUS, OHIO 43215
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WRITER'S DIRECT DIAL NO.:
(202) 861- 1572

January 12, 1984

Charles N. Steele, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D.C. 20463

Re: MURs 1596 and 1602

Dear Mr. Steele:

This office represents the National Republican Senatorial Committee ("NRSC"). By letter of December 9, 1983 to you from Robert J. Perkins, Treasurer, we were designated counsel with respect to the above-captioned matters.

You notified Mr. Perkins by separate letters dated December 8, 1983, that on November 8 and November 22 complaints were filed by the Executive Directors of the Democratic Senatorial and Congressional Campaign Committees and Common Cause, respectively, alleging violations by NRSC of the Federal Election Campaign Act, as amended ("Act"). It

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is our understanding from Mr. Robert Pease of your office that these matters will be consolidated for purposes of consideration by the Federal Election Commission ("FEC"). Pursuant to 2 U.S.C. § 437g(a)(1) we submit this letter, the enclosed Affidavit of Richard G. Lugar and accompanying exhibits and respectfully request that no action be taken by the FEC against NRSC on the basis of either complaint.

THE ALLEGATIONS

In general, both complaints allege that a political committee, the Republican National Independent Expenditure Committee ("RNIEC"), made expenditures in support of the candidacy of Senator Daniel Evans in 1983 which violated the contribution limits of the Act. The complaints suggest that NRSC is involved in this alleged violation on the grounds that RNIEC coordinated its activities with the Evans campaign through NRSC and/or because RNIEC is affiliated with NRSC. These allegations as they pertain to NRSC are factually inaccurate, legally erroneous, or both, for the following reasons.

FACTS

NRSC is a political committee composed of a chairman, sixteen members and the Majority Leader of the United States Senate. Affidavit of Richard G. Lugar, Chair-

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man of NRSC at ¶ 3 (hereafter "Lugar Aff."). RNIEC is a political committee which supports Republican candidates for United States Senator. NRSC became aware of RNIEC's fundraising activities in August 1983 when an NRSC supporter informed NRSC that he had received a fundraising letter dated July 29, 1983 from Senator John Heinz. Lugar Aff. at ¶ 4. Senator Heinz described himself as "Co-Founder" of RNIEC and stated that RNIEC would make independent expenditures on behalf of Republican Senate candidates. Id. and Exhibit B.

On March 16, 1983, Senator Heinz had been appointed a member of NRSC. Lugar Aff. at ¶ 3. It is NRSC's policy that NRSC members and personnel not communicate with any person or committee that is making, or states an intention to make, independent expenditures on behalf of Republican Senatorial candidates. Lugar Aff. at ¶ 5. This policy was brought to the attention of NRSC personnel on June 13, 1983 in a memorandum by NRSC's Executive Director. Id. and Exhibit C.

On September 15, 1983 after the Senate's summer recess, Senator Richard G. Lugar, NRSC's Chairman, met with Senator Heinz. Lugar Aff. at ¶ 6. Senator Lugar requested that if Senator Heinz chose not to cease independent expenditures activities he resign as a member of NRSC in conform-

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ity with NRSC's policy of not communicating with persons who plan to make independent expenditures on behalf of Republican Senate candidates. Lugar Aff. at ¶ 6.

Senator Heinz replied in a letter dated October 6, 1983 that he would take a "leave of absence" from NRSC through the special election in Washington so that he "may be involved in the independent expenditure activities of RNIEC" on behalf of Republican nominee, Evans. Lugar Aff. at ¶ 7 and Exhibit D.

Subsequent to Senator Heinz's letter of October 6, Senator Lugar obtained legal advice from NRSC's outside counsel that Senator Heinz sever all relationships with either NRSC or RNIEC. Lugar Aff. at ¶ 8. Senator Heinz resigned as a member of NRSC on November 15, 1983. Lugar Aff. at ¶ 9. No member or employee of NRSC provided any information about the projects, plans or needs of the Dan Evans for Senate campaign to Senator Heinz or to any other person associated with RNIEC. Lugar Aff. at ¶ 11. No meetings of NRSC members were held during the period of August to November 15, 1983. Lugar Aff. at ¶ 10.

NRSC has never supported RNIEC, financially or otherwise. Lugar Aff. at ¶ 12. RNIEC has never been authorized by NRSC to have custody, control, possession or use of the names or addresses of NRSC contributors. Lugar Aff. at ¶ 13. NRSC has taken steps with respect to RNIEC to prevent

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any unauthorized use of NRSC's proprietary information. Id. NRSC also has expressed objections to RNIEC that its name is confusingly similar to NRSC's mark, NATIONAL REPUBLICAN SENATORIAL COMMITTEE, which is a service mark registered with the United States Office of Patents and Trademarks (Certificate No. 1222867). Lugar Aff. at ¶ 14.

DISCUSSION

1. NRSC is Not Affiliated with RNIEC

Contrary to the allegations made in the complaints, NRSC and RNIEC are not and never have been affiliated political committees. "Affiliated committees" are committees that have been established, financed, maintained or controlled by the same person or group of persons. 11 C.F.R. § 100.5(g)(2). RNIEC has not received any financial or other form of support from NRSC. Lugar Aff. at ¶ 12. NRSC, through its Chairman, Senator Lugar, actually discouraged Senator Heinz from undertaking RNIEC's activities by insisting on his resignation from NRSC if he were to continue associating with RNIEC. Lugar Aff. at ¶ 6.

NRSC never authorized RNIEC to have access, custody, possession or use of NRSC contributor names and addresses. Lugar Aff. at ¶ 13. If RNIEC had such access, custody, possession or use, as alleged in the Common Cause

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complaint, NRSC will assert its legal rights over this valuable proprietary and confidential information. Lugar Aff. at ¶ 13. NRSC has already taken steps with respect to RNIEC. Id. NRSC has expressed objections to RNIEC regarding the use of a name confusingly similar to NRSC's registered service mark. Lugar Aff. at ¶ 14.

NRSC made efforts to repudiate, rather than "affiliate" with, RNIEC. Those efforts include the insistence by NRSC that Senator Heinz resign from NRSC. Lugar Aff. at ¶¶ 6-9.

The complaints allege that persons who were NRSC officials or employees prior to Senator Lugar's term as Chairman may be involved in RNIEC. To the extent these allegations are true, NRSC has no control over the political activities of former officials and employees. NRSC can act only against current personnel, such as Senator Heinz, and only with respect to its own propriety information, both of which NRSC has done.

For all these reasons, NRSC and RNIEC are not affiliated committees.

2. NRSC was Not Involved in RNIEC Expenditures

NRSC has no control over RNIEC expenditures or activities. Accordingly, NRSC cannot vouch for the

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"independence" of that organization's expenditures. NRSC categorically denies any involvement in the making of any expenditures on behalf of political candidates other than those duly reported on NRSC monthly financial reports filed with the FEC and the Secretary of the Senate. Those reports reflect contributions to all candidates supported by NRSC and all expenditures made pursuant to 2 U.S.C. § 441a(d). NRSC has not made any independent expenditures.

NRSC's policy is not to have any communications with persons who make or intend to make independent expenditures in support of Republican candidates for United States Senate. Lugar Aff. at ¶ 5. These policy considerations caused Senator Lugar to request Senator Heinz's resignation from NRSC. Lugar Aff. at ¶ 6. There were no meetings of NRSC members (which would include Senator Heinz) during the period of time preceding Senator Heinz's resignation and during his apparently coterminous involvement with RNIEC and NRSC. Lugar Aff. at ¶ 10. Furthermore, neither Senator Heinz nor any person associated with RNIEC received any information from NRSC regarding the projects, plans or needs of the Evans campaign. Lugar Aff. ¶ 11.

In sum, NRSC did not encourage, participate in or facilitate the making of any independent expenditures by RNIEC.


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CONCLUSION

For the above stated reasons, the FEC should take no action against NRSC on the basis of the complaints filed by Common Cause and the other Democratic complainants.

Sincerely,

BAKER & HOSTETLER

By 
Jan W. Baran

cc: Honorable Richard G. Lugar
Mitchell E. Daniels, Jr., Esquire
Richard E. Messick, Esquire
Robert J. Perkins

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HAND DELIVERED

**BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA**

In the Matter of Republican
National Independent
Expenditure Committee

MURs 1596 and 1602

AFFIDAVIT

District of Columbia) SS:
)

Richard G. Lugar for his affidavit deposes and
says:

1. I have personal knowledge of the facts contained herein and am competent to testify thereto.

2. From December 1982 to date I have been the Chairman of the National Republican Senatorial Committee ("NRSC"). The Chairman of NRSC is elected by the members of the Republican Conference of the United States Senate. Members of the Republican Conference are the Republican Senators of the United States Senate. The Chairman of the Republican Conference also is elected by the members. The current Chairman of the Republican Conference is Senator James A. McClure.

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3. NRSC is an unincorporated membership organization with a chairman, members appointed by the Chairman of the Republican Conference and an ex-officio member, the Senate Majority Leader. On March 16, 1983 Senator McClure appointed 16 members to NRSC, including Senator John Heinz, by letter to me a copy of which is attached to this affidavit and marked Exhibit A.

4. In early August 1983 NRSC was informed by an NRSC supporter that he received a fundraising letter dated July 29, 1983 from Senator Heinz as "Co-Founder" of an organization named the Republican National Independent Expenditure Committee ("RNIEC"). The letter expressed the intent of RNIEC to support 1984 Republican Senate candidates through independent expenditures. A copy of the letter is attached and marked Exhibit B.

5. It is NRSC's policy that members and employees not communicate with any person or committee that is making or states an intention to make independent expenditures on behalf of Republican senatorial candidates. All NRSC personnel were thus informed by the Executive Director of NRSC by memorandum dated June 13, 1983, a copy of which is attached to this affidavit and marked Exhibit C.

6. I requested a meeting with Senator Heinz to discuss his fundraising letter of July 29, 1983. The meeting could not be arranged until September 15, 1983

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because of the Senate's summer recess. On that occasion I requested of Senator Heinz that consistent with NRSC policy he resign as a member of NRSC if he intended to undertake independent expenditures or otherwise associate himself with RNIEC.

7. On or about October 6, 1983, I received from Senator Heinz a letter of the same date stating that he was taking a "leave of absence from the NRSC through and including the special Senatorial election in Washington State" held November 8, 1983 to fill the vacancy caused by the death of Senator Henry Jackson. Senator Heinz explained that this step was being taken so that he "may be involved in the independent expenditure activities of RNIEC." A copy of that letter is attached and marked Exhibit D.

8. Subsequent to Senator Heinz's letter of October 6 I requested, and on October 25, 1983, received from NRSC's outside legal counsel, Jan W. Baran, Esquire, of Baker & Hostetler, written legal advice that Senator Heinz sever all relationships with either NRSC or RNIEC.

9. Senator Heinz resigned from NRSC on November 15, 1983. His resignation was accepted on the same day.

10. From August 1983 until Senator Heinz's resignation, there were no meetings of NRSC members.

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11. To my knowledge, no member or employee of NRSC has provided any information about the projects, plans or needs of the Dan Evans for Senate campaign to Senator Heinz or to any other person associated with RNIEC.

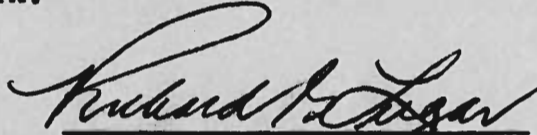
12. NRSC has never supported RNIEC, either financially or otherwise.

13. The names and addresses of NRSC contributors are confidential and are treated as proprietary information. RNIEC is not and never has been authorized by NRSC to have custody, control, possession or use of this proprietary information. NRSC has taken and will continue to take whatever legal steps, formal and informal, it deems necessary, to prevent any unauthorized use of NRSC's proprietary information. Such steps have been taken with respect to RNIEC.

14. The mark, NATIONAL REPUBLICAN SENATORIAL COMMITTEE, is a service mark registered with the United States Office of Patents and Trademarks (Certificate No. 1222867). NRSC believes that the name "Republican National Independent Expenditure Committee" is a mark confusingly similar to NRSC's registered service mark. NRSC has expressed its objections to RNIEC. NRSC has taken and will take whatever legal steps, formal or informal, it deems necessary to pre-

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vent any unauthorized use of its registered service mark or
any confusingly similar mark.


Richard G. Lugar

Subscribed and sworn before me this 12th day of January,
1984.


Notary Public

My commission expires:

My Commission Expires October 14, 1987

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JOHN C. DANFORTH, CHAIRMAN
JAMES G. BAKER, CHAIRMAN
COMMITTEE CHAIRMAN
JOHN TUNNEY, POLICY
HOWARD G. LUGAR, CHAIRMAN
HARRY LANGRISH, CHAIRMAN, COMMITTEE
HARRY CARLISLE
STAFF DIRECTOR

United States Senate

THE REPUBLICAN CONFERENCE
WASHINGTON, D.C. 20510

March 16, 1983

Honorable Richard G. Lugar, Chairman
National Republican Senatorial Committee
United States Senate
Washington, D.C. 20510

Dear Dick:

In my position as Chairman of the Republican Conference, I am appointing the following Conference Members to serve on the National Republican Senatorial Committee during the 98th Congress:

Alfonse M. D'Amato
John C. Danforth
Jeremiah Denton
John P. East
Slade Gorton
Charles E. Grassley
Orrin G. Hatch
John Heinz

Robert W. Kasten, Jr.
Paul Laxalt
Mack Mattingly
Frank H. Murkowski
Don Nickles
Warren Rudman
Steven D. Symms
Paul S. Tribble, Jr.

ex-officio: Howard H. Baker, Jr.

It is impossible to overstate the importance of the NRSC, and I wish to assure you of my cooperation as chairman as well as that of your fellow colleagues. Those of us who are incumbents will be looking to you for guidance and counsel, as well. If I or my staff can be of assistance, please do not hesitate to call upon us.

Sincerely,

Jim McClure

James A. McClure
Chairman

McC:C

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EXHIBIT B

Dear [REDACTED]:

I know it's asking a lot for you to travel so far but I have something extremely important to discuss with you.

And I'm anxious to talk with you personally because I want you to join with me as a Co-Founder.

Like me, you've worked hard over the years helping to elect and re-elect Republican candidates. And there's no doubt our efforts have been effective.

But the results of the 1982 elections clearly reveal they haven't been enough. That's why I'm hoping you'll accept a key role in the Republican National Independent Expenditure Committee, (RNIC).

You see, I believe the RNIC is the next logical step you and I must take to insure Republican control in Washington.

Here's why:

We came within a "hair's breath" of losing control of the Senate last November with nearly half our Senators winning by a margin of 51% or less.

In the House of Representatives, virtually all the gains we won in President Reagan's sweeping 1980 triumph were wiped out in 1982 with the defeat of 26 Republican Congressmen.

And with the Democrats now controlling nearly 70% of the Governor's Mansions, Republican Governors in this country have become an endangered species.

To make matters worse, Democratic candidates have consistently raised more money than Republican Candidates -- a fact rarely, if ever, mentioned by the national media.

And there's little more you and I can do through the Official Party structure to directly aid our fine Republican candidates and help them off-set this lopsided Democrat financial advantage.

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In fact, even Senator Paul Laxalt, General Chairman of the Republican Party, publicly admitted as much at a recent press briefing when he described current federal legal restrictions on political Party expenditures for House and Senate candidates.

He called these restrictions "a straitjacket . . . imposed on the Party structure". To underscore the importance of Senator Laxalt's statement, consider this:

During the 1981-82 election cycle the Republican National, Congressional, and Senatorial Committees (combined) raised six times as much money as they could legally spend to aid federal candidates directly!

In other words, the traditional vehicles you and I now rely on to help our candidates simply aren't enough anymore.

So if our Republican philosophy is to increase in influence, it's absolutely essential that dedicated Republicans like you and me work together in new ways so that more resources can be brought to bear in support of our candidates.

And the Republican National Independent Expenditure Committee is the perfect mechanism for doing just this.

You see, there are no limits -- I repeat "no limits" -- under federal law on the number of dollars the RNIC can spend in direct support of Republican candidates.

Consequently, you and I through the RNIC have the potential to revolutionize the American political process!

Frankly, I believe your joining with me in the RNIC is as politically important to America as anything you've done or are likely to do.

Let me tell you more about this over dinner at my house on the 10th of June. I'll explain the why and how. It's like you to accept the challenge.

I want you to become a Charter Member of the Republican Roundtable -- an exclusive insiders group that will form the backbone of the RNIC.

And I'm asking only the most committed and trusted friends I know to join. Men and women whose opinion and judgment are highly regarded by myself and other leaders of the Party.

You and I have long enjoyed a special relationship. One granted to few Senators. So naturally, your name was at the top of my personal list of Roundtable co-founders.

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And I'll consider it a personal privilege to have you at my side in this exciting new venture. Because I strongly believe the RNIC is desperately needed to give Republican candidates a decisive edge in close races.

In fact, I believe an effort of this kind is so vitally important that I've already committed \$5,000 of my own funds.

And I'm asking you and every other person who accepts my invitation to sit at the Republican Roundtable to make the same annual \$5,000 commitment.

I know \$5,000 is a lot of money. But I also know that if you and I don't take this pioneering step right now to bring unlimited financial support to the aid of Republican candidates, the superior financial and numerical resources of the liberal Democratic power block will quickly take their toll. And if this happens, I'm not at all optimistic about America's future.

But if the Republican National Independent Expenditure Committee is as successful as I know it can be, there's a good chance Republican Policy will carry our country into the 21st Century.

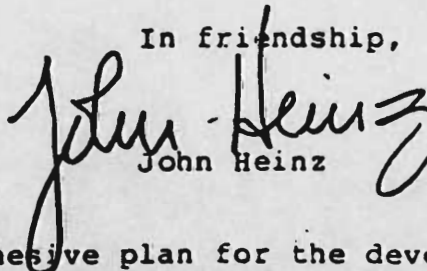
To me, that's a goal worth working for and I'm counting on you to help me accomplish it. And counting on friends like you is good enough for me.

Teresa and I look forward to seeing you at dinner and personally welcoming you to Charter Membership in the Republican Roundtable.

But if you can't make it to dinner, with Teresa and me in September, please don't let that stand in the way of your joining the Roundtable. Because Election Day 1984 is just around the corner and we've got lots to do between now and then.

So I urge you to mail me your \$5,000 membership check without delay.

In friendship,


John Heinz

P.S. As part of my comprehensive plan for the development of the RNIC, I need to raise \$125,000 in the next three weeks. So, if you can't send the entire \$5,000 today, please send \$2,500 or even \$1,000 and pay the balance later. Thanks!

P.P.S. Oh, yes if you wish to bring a dinner guest, please be sure to indicate that on the acceptance form I've enclosed. A schedule for the evening will be sent to you in a few weeks. See you in September!

June 13, 1983

TO: All NRSC staff

FROM: Mitch Daniels

Subject: Independent Expenditure Committees

Just a reminder that this committee cannot have any conversations with any independent expenditure committee (such as NCPAC and PROPAC) because it would endanger the independent status of that committee and whatever work it might be involved in at the time. This statement should not be construed to mean we endorse or do not endorse any of the work they are conducting.

But, it does mean that if any such independent expenditure committee should call, those calls should be directed either to me or Rick Messick, and we will explain our policy of no communication. The FEC and other groups such as Sommon Cause would love to find records of collusion so that such committees could be destroyed, and we could cause serious damage to some of our candidates. So, the policy is "No communication with independent expenditure committees".

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JOHN HEINZ
United States Sena

EXHIBIT D

October 6, 1983

Honorable Richard L. Lugar
Chairman
National Republican Senatorial Committee
Washington, D. C. 20510

Dear Senator ^{Dick}Lugar:

As you know, I have agreed to become Chairman of the Advisory Council of the recently-formed Republican National Independent Expenditure Committee ("RNIEC"). The RNIEC is now involved in fund-raising and will, among other things, make "independent expenditures" within the meaning of the Federal election laws, in support of Republican candidates for National office. Considering the tremendous challenge that the Republican Party is facing in the upcoming elections, I am committed to doing everything possible to preserve the Republican majority in the Senate and in turning the tide in the House, and that the RNIEC can be a major force in helping to achieve these goals.

As you know, I am presently a member of the National Republican Senatorial Committee ("NRSC"), and have been active in NRSC affairs. However, with the recently scheduled Senatorial primary and special election in the State of Washington, it is now necessary that I alter my NRSC role.

In order that I may be involved in the independent expenditure activities of the RNIEC, it is necessary under the election laws that I not engage in any discussion or action in which a candidate, his staff or campaign committee(s) participate, concerning the plans, conduct or needs of that candidate or his campaign. The same is the case for my staff and the officers, directors and staff of the RNIEC. For this reason, effective immediately, I suspend myself from all campaign related activities pertaining to the Dan Evans race and shall take a leave of absence from the NRSC through and including the special Senatorial election in Washington State to be decided on November 8. I am advised by counsel, however, that I may

Honorable Richard Lugar
Page Two
October 6, 1983

continue to remain active in fundraising activities for individual Republican candidates and all Party Committees, specifically including the NRSC. I therefore intend to remain active, as I have previously, in all fundraising activities that benefit the NRSC. I am advised by counsel that I will be free to resume my role in all NRSC activities subsequent to November 8, 1983.

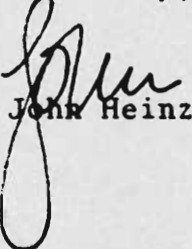
For your information the RNIEC will make no independent expenditures in any primary election. However, it will, at some point in 1984, be necessary for me to suspend my NRSC campaign involvement in general election campaigns (other than for fundraising purposes) where there is the possibility of RNIEC involvement.

During the period of my leave of absence from the Evans campaign activities of the NRSC, I shall not engage in any consultation or communication with the NRSC or its staff, or with the candidate, his staff or committee, concerning the plans or activities of the candidate or his campaign. I have instructed my own staff and the officers, directors and staff of the RNIEC to act in the same way. Similarly, I request that the members and staff of the NRSC not engage in any such discussion with me or these persons during the period of my leave. I would appreciate your transmitting this request.

Republican success in these critical times is utterly dependent upon the broadest possible participation of committees such as the RNIEC and NRSC. I am confident that we can reach our goals.

With best wishes,

Sincerely,


John Heinz

JH/ml

cc Mitch Daniels
Kevin Talley
Rod Smith

85040514344

BAKER & HOSTETLER
18 CONNECTICUT AVE., N.W.
WASHINGTON, D.C. 20006

Mr. Robert Pease
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

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BAKER & HOSTETTLER

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100 EAST BROAD STREET
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WRITER'S DIRECT DIAL NO.:
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IN ORLANDO, FLORIDA
850 CNA TOWER
ORLANDO, FLORIDA 32802
(305) 241-1111

January 12, 1984

1/13 P 1:51

Charles N. Steele, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D.C. 20463

Re: MURs 1596 and 1602

Dear Mr. Steele:

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On September 15, 1983 after the Senate's summer recess, Senator Richard G. Lugar, NRSC's Chairman, met with Senator Heinz. Lugar Aff. at ¶ 6. Senator Lugar requested that if Senator Heinz chose not to cease independent expenditures activities he resign as a member of NRSC in conform-

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ity with NRSC's policy of not communicating with persons who plan to make independent expenditures on behalf of Republican Senate candidates. Lugar Aff. at ¶ 6.

Senator Heinz replied in a letter dated October 6, 1983 that he would take a "leave of absence" from NRSC through the special election in Washington so that he "may be involved in the independent expenditure activities of RNIEC" on behalf of Republican nominee, Evans. Lugar Aff. at ¶ 7 and Exhibit D.

Subsequent to Senator Heinz's letter of October 6, Senator Lugar obtained legal advice from NRSC's outside counsel that Senator Heinz sever all relationships with either NRSC or RNIEC. Lugar Aff. at ¶ 8. Senator Heinz resigned as a member of NRSC on November 15, 1983. Lugar Aff. at ¶ 9. No member or employee of NRSC provided any information about the projects, plans or needs of the Dan Evans for Senate campaign to Senator Heinz or to any other person associated with RNIEC. Lugar Aff. at ¶ 11. No meetings of NRSC members were held during the period of August to November 15, 1983. Lugar Aff. at ¶ 10.

NRSC has never supported RNIEC, financially or otherwise. Lugar Aff. at ¶ 12. RNIEC has never been authorized by NRSC to have custody, control, possession or use of the names or addresses of NRSC contributors. Lugar Aff. at ¶ 13. NRSC has taken steps with respect to RNIEC to prevent

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any unauthorized use of NRSC's proprietary information. Id. NRSC also has expressed objections to RNIEC that its name is confusingly similar to NRSC's mark, NATIONAL REPUBLICAN SENATORIAL COMMITTEE, which is a service mark registered with the United States Office of Patents and Trademarks (Certificate No. 1222867). Lugar Aff. at ¶ 14.

DISCUSSION

1. NRSC is Not Affiliated with RNIEC

Contrary to the allegations made in the complaints, NRSC and RNIEC are not and never have been affiliated political committees. "Affiliated committees" are committees that have been established, financed, maintained or controlled by the same person or group of persons. 11 C.F.R. § 100.5(g)(2). RNIEC has not received any financial or other form of support from NRSC. Lugar Aff. at ¶ 12. NRSC, through its Chairman, Senator Lugar, actually discouraged Senator Heinz from undertaking RNIEC's activities by insisting on his resignation from NRSC if he were to continue associating with RNIEC. Lugar Aff. at ¶ 6.

NRSC never authorized RNIEC to have access, custody, possession or use of NRSC contributor names and addresses. Lugar Aff. at ¶ 13. If RNIEC had such access, custody, possession or use, as alleged in the Common Cause

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complaint, NRSC will assert its legal rights over this valuable proprietary and confidential information. Lugar Aff. at ¶ 13. NRSC has already taken steps with respect to RNIEC. Id. NRSC has expressed objections to RNIEC regarding the use of a name confusingly similar to NRSC's registered service mark. Lugar Aff. at ¶ 14.

NRSC made efforts to repudiate, rather than "affiliate" with, RNIEC. Those efforts include the insistence by NRSC that Senator Heinz resign from NRSC. Lugar Aff. at ¶¶ 6-9.

The complaints allege that persons who were NRSC officials or employees prior to Senator Lugar's term as Chairman may be involved in RNIEC. To the extent these allegations are true, NRSC has no control over the political activities of former officials and employees. NRSC can act only against current personnel, such as Senator Heinz, and only with respect to its own propriety information, both of which NRSC has done.

For all these reasons, NRSC and RNIEC are not affiliated committees.

2. NRSC was Not Involved in RNIEC Expenditures

NRSC has no control over RNIEC expenditures or activities. Accordingly, NRSC cannot vouch for the

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"independence" of that organization's expenditures. NRSC categorically denies any involvement in the making of any expenditures on behalf of political candidates other than those duly reported on NRSC monthly financial reports filed with the FEC and the Secretary of the Senate. Those reports reflect contributions to all candidates supported by NRSC and all expenditures made pursuant to 2 U.S.C. § 441a(d). NRSC has not made any independent expenditures.

NRSC's policy is not to have any communications with persons who make or intend to make independent expenditures in support of Republican candidates for United States Senate. Lugar Aff. at ¶ 5. These policy considerations caused Senator Lugar to request Senator Heinz's resignation from NRSC. Lugar Aff. at ¶ 6. There were no meetings of NRSC members (which would include Senator Heinz) during the period of time preceding Senator Heinz's resignation and during his apparently coterminous involvement with RNIEC and NRSC. Lugar Aff. at ¶ 10. Furthermore, neither Senator Heinz nor any person associated with RNIEC received any information from NRSC regarding the projects, plans or needs of the Evans campaign. Lugar Aff. ¶ 11.

In sum, NRSC did not encourage, participate in or facilitate the making of any independent expenditures by RNIEC.

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CONCLUSION

For the above stated reasons, the FEC should take no action against NRSC on the basis of the complaints filed by Common Cause and the other Democratic complainants.

Sincerely,

BAKER & HOSTETLER

By 

Jan W. Baran

cc: Honorable Richard G. Lugar
Mitchell E. Daniels, Jr., Esquire
Richard E. Messick, Esquire
Robert J. Perkins

HAND DELIVERED

**BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA**

In the Matter of Republican
National Independent
Expenditure Committee

MURs 1596 and 1602

AFFIDAVIT

District of Columbia) SS:
)

Richard G. Lugar for his affidavit deposes and
says:

1. I have personal knowledge of the facts contained herein and am competent to testify thereto.

2. From December 1982 to date I have been the Chairman of the National Republican Senatorial Committee ("NRSC"). The Chairman of NRSC is elected by the members of the Republican Conference of the United States Senate. Members of the Republican Conference are the Republican Senators of the United States Senate. The Chairman of the Republican Conference also is elected by the members. The current Chairman of the Republican Conference is Senator James A. McClure.

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3. NRSC is an unincorporated membership organization with a chairman, members appointed by the Chairman of the Republican Conference and an ex-officio member, the Senate Majority Leader. On March 16, 1983 Senator McClure appointed 16 members to NRSC, including Senator John Heinz, by letter to me a copy of which is attached to this affidavit and marked Exhibit A.

4. In early August 1983 NRSC was informed by an NRSC supporter that he received a fundraising letter dated July 29, 1983 from Senator Heinz as "Co-Founder" of an organization named the Republican National Independent Expenditure Committee ("RNIEC"). The letter expressed the intent of RNIEC to support 1984 Republican Senate candidates through independent expenditures. A copy of the letter is attached and marked Exhibit B.

5. It is NRSC's policy that members and employees not communicate with any person or committee that is making or states an intention to make independent expenditures on behalf of Republican senatorial candidates. All NRSC personnel were thus informed by the Executive Director of NRSC by memorandum dated June 13, 1983, a copy of which is attached to this affidavit and marked Exhibit C.

6. I requested a meeting with Senator Heinz to discuss his fundraising letter of July 29, 1983. The meeting could not be arranged until September 15, 1983

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because of the Senate's summer recess. On that occasion I requested of Senator Heinz that consistent with NRSC policy he resign as a member of NRSC if he intended to undertake independent expenditures or otherwise associate himself with RNIEC.

7. On or about October 6, 1983, I received from Senator Heinz a letter of the same date stating that he was taking a "leave of absence from the NRSC through and including the special Senatorial election in Washington State" held November 8, 1983 to fill the vacancy caused by the death of Senator Henry Jackson. Senator Heinz explained that this step was being taken so that he "may be involved in the independent expenditure activities of RNIEC." A copy of that letter is attached and marked Exhibit D.

8. Subsequent to Senator Heinz's letter of October 6 I requested, and on October 25, 1983, received from NRSC's outside legal counsel, Jan W. Baran, Esquire, of Baker & Hostetler, written legal advice that Senator Heinz sever all relationships with either NRSC or RNIEC.

9. Senator Heinz resigned from NRSC on November 15, 1983. His resignation was accepted on the same day.

10. From August 1983 until Senator Heinz's resignation, there were no meetings of NRSC members.

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11. To my knowledge, no member or employee of NRSC has provided any information about the projects, plans or needs of the Dan Evans for Senate campaign to Senator Heinz or to any other person associated with RNIEC.


12. NRSC has never supported RNIEC, either financially or otherwise.

13. The names and addresses of NRSC contributors are confidential and are treated as proprietary information. RNIEC is not and never has been authorized by NRSC to have custody, control, possession or use of this proprietary information. NRSC has taken and will continue to take whatever legal steps, formal and informal, it deems necessary, to prevent any unauthorized use of NRSC's proprietary information. Such steps have been taken with respect to RNIEC.

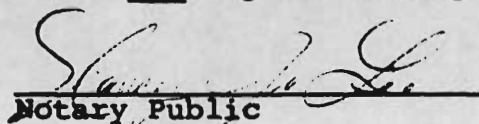
14. The mark, NATIONAL REPUBLICAN SENATORIAL COMMITTEE, is a service mark registered with the United States Office of Patents and Trademarks (Certificate No. 1222867). NRSC believes that the name "Republican National Independent Expenditure Committee" is a mark confusingly similar to NRSC's registered service mark. NRSC has expressed its objections to RNIEC. NRSC has taken and will take whatever legal steps, formal or informal, it deems necessary to pre-

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vent any unauthorized use of its registered service mark or any confusingly similar mark.


Richard G. Lugar

Subscribed and sworn before me this 12th day of January, 1984.


Notary Public

My commission expires:

My Commission Expires October 14, 1987

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JAMES A. MCCLURE, CHAIRMAN
JANE GARR, SECRETARY
COMMITTEE CHAIRMAN
JOHN TOWER, POLITY,
RICHARD G. LUGAR, SENATORIAL
NANCY LANDEN KASSABAUM, COMMITTEE
MARGO CARLILE
STAFF DIRECTOR

EXHIBIT A

HOWARD H. BAKER, JR., MAJORITY LEADER
TED STEVENS, ASSISTANT MAJORITY LEADER

United States Senate

THE REPUBLICAN CONFERENCE
MAR 16 1983
WASHINGTON, D.C. 20510

March 16, 1983

Honorable Richard G. Lugar, Chairman
National Republican Senatorial Committee
United States Senate
Washington, D.C. 20510

Dear Dick:

In my position as Chairman of the Republican Conference, I am appointing the following Conference Members to serve on the National Republican Senatorial Committee during the 98th Congress:

Alfonse M. D'Amato
John C. Danforth
Jeremiah Denton
John P. East
Slade Gorton
Charles E. Grassley
Orrin G. Hatch
John Heinz

Robert W. Kasten, Jr.
Paul Laxalt
Mack Mattingly
Frank H. Murkowski
Don Nickles
Warren Rudman
Steven D. Symms
Paul S. Tribble, Jr.

ex-officio: Howard H. Baker, Jr.

It is impossible to overstate the importance of the NRSC, and I wish to assure you of my cooperation as chairman as well as that of your fellow colleagues. Those of us who are incumbents will be looking to you for guidance and counsel, as well. If I or my staff can be of assistance, please do not hesitate to call upon us.

Sincerely,

Jim McClure
James A. McClure
Chairman

McC:C

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JOHN HEINZ
3322 O STREET, N. W.
WASHINGTON, D. C. 20007

EXHIBIT B

July 29, 1983

Dear [REDACTED]:

I would like you to have dinner with Teresa and me at our home in Washington, D.C. on September 20th.

I know it's asking a lot for you to travel so far but I have something extremely important to discuss with you.

You see, I've decided to spearhead the formation of the Republican National Independent Expenditure Committee.

And I'm anxious to talk with you personally because I want you to join with me as a Co-Founder.

Like me, you've worked hard over the years helping to elect and re-elect Republican candidates. And there's no doubt our efforts have been effective.

But the results of the 1982 elections clearly reveal they haven't been enough. That's why I'm hoping you'll accept a key role in the Republican National Independent Expenditure Committee, (RNIC).

You see, I believe the RNIC is the next logical step you and I must take to insure Republican control in Washington.

Here's why:

We came within a "hair's breath" of losing control of the Senate last November with nearly half our Senators winning by a margin of 51% or less.

In the House of Representatives, virtually all the gains we won in President Reagan's sweeping 1980 triumph were wiped out in 1982 with the defeat of 26 Republican Congressmen.

And with the Democrats now controlling nearly 70% of the Governor's Mansions, Republican Governors in this country have become an endangered species.

To make matters worse, Democratic candidates have consistently raised more money than Republican Candidates -- a fact rarely, if ever, mentioned by the national media.

And there's little more you and I can do through the Official Party structure to directly aid our fine Republican candidates and help them off-set this lopsided Democrat financial advantage.

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In fact, even Senator Paul Laxalt, General Chairman of the Republican Party, publicly admitted as much at a recent press briefing when he described current federal legal restrictions on political Party expenditures for House and Senate candidates.

He called these restrictions "a straitjacket . . . imposed on the Party structure". To underscore the importance of Senator Laxalt's statement, consider this:

During the 1981-82 election cycle the Republican National, Congressional, and Senatorial Committees (combined) raised six times as much money as they could legally spend to aid federal candidates directly!

In other words, the traditional vehicles you and I now rely on to help our candidates simply aren't enough anymore.

So if our Republican philosophy is to increase in influence, it's absolutely essential that dedicated Republicans like you and me work together in new ways so that more resources can be brought to bear in support of our candidates.

And the Republican National Independent Expenditure Committee is the perfect mechanism for doing just this.

You see, there are no limits -- I repeat "no limits" -- under federal law on the number of dollars the RNIC can spend in direct support of Republican candidates.

Consequently, you and I through the RNIC have the potential to revolutionize the American political process!

Frankly, I believe your joining with me in the RNIC is as politically important to America as anything you've done or are likely to do.

Let me tell you more about this over dinner at my house on the 10th. I'll be home at 7:00. I'll be glad to explain why this is like you to accept my invitation.

I want you to become a Charter Member of the Republican Roundtable -- an exclusive insiders group that will form the backbone of the RNIC.

And I'm asking only the most committed and trusted friends I know to join. Men and women whose opinion and judgment are highly regarded by myself and other leaders of the Party.

You and I have long enjoyed a special relationship. One granted to few Senators. So naturally, your name was at the top of my personal list of Roundtable co-founders.

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And I'll consider it a personal privilege to have you at my side in this exciting new venture. Because I strongly believe the RNIC is desperately needed to give Republican candidates a decisive edge in close races.

In fact, I believe an effort of this kind is so vitally important that I've already committed \$5,000 of my own funds.

And I'm asking you and every other person who accepts my invitation to sit at the Republican Roundtable to make the same annual \$5,000 commitment.

I know \$5,000 is a lot of money. But I also know that if you and I don't take this pioneering step right now to bring unlimited financial support to the aid of Republican candidates, the superior financial and numerical resources of the liberal Democratic power block will quickly take their toll. And if this happens, I'm not at all optimistic about America's future.

But if the Republican National Independent Expenditure Committee is as successful as I know it can be, there's a good chance Republican Policy will carry our country into the 21st Century.

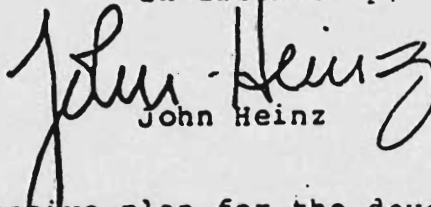
To me, that's a goal worth working for and I'm counting on you to help me accomplish it. And counting on friends like you is good enough for me.

Teresa and I look forward to seeing you at dinner and personally welcoming you to Charter Membership in the Republican Roundtable.

But if you can't make it to dinner, with Teresa and me in September, please don't let that stand in the way of your joining the Roundtable. Because Election Day 1984 is just around the corner and we've got lots to do between now and then.

So I urge you to mail me your \$5,000 membership check without delay.

In friendship,


John Heinz

P.S. As part of my comprehensive plan for the development of the RNIC, I need to raise \$125,000 in the next three weeks. So, if you can't send the entire \$5,000 today, please send \$2,500 or even \$1,000 and pay the balance later. Thanks!

P.P.S. Oh, yes if you wish to bring a dinner guest, please be sure to indicate that on the acceptance form I've enclosed. A schedule for the evening will be sent to you in a few weeks. See you in September!

June 13, 1983

TO: All NRSC staff

FROM: Mitch Daniels

Subject: Independent Expenditure Committees

Just a reminder that this committee cannot have any conversations with any independent expenditure committee (such as NCPAC and PROPAC) because it would endanger the independent status of that committee and whatever work it might be involved in at the time. This statement should not be construed to mean we endorse or do not endorse any of the work they are conducting.

But, it does mean that if any such independent expenditure committee should call, those calls should be directed either to me or Rick Messick, and we will explain our policy of no communication. The FEC and other groups such as Sommon Cause would love to find records of collusion so that such committees could be destroyed, and we could cause serious damage to some of our candidates. So, the policy is "No communication with independent expenditure committees".

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JOHN HEINZ
United States Sena__

EXHIBIT D

October 6, 1983

Honorable Richard L. Lugar
Chairman
National Republican Senatorial Committee
Washington, D. C. 20510

Dear Senator ^{Dick}Lugar:

As you know, I have agreed to become Chairman of the Advisory Council of the recently-formed Republican National Independent Expenditure Committee ("RNIEC"). The RNIEC is now involved in fund-raising and will, among other things, make "independent expenditures" within the meaning of the Federal election laws, in support of Republican candidates for National office. Considering the tremendous challenge that the Republican Party is facing in the upcoming elections, I am committed to doing everything possible to preserve the Republican majority in the Senate and in turning the tide in the House, and that the RNIEC can be a major force in helping to achieve these goals.

As you know, I am presently a member of the National Republican Senatorial Committee ("NRSC"), and have been active in NRSC affairs. However, with the recently scheduled Senatorial primary and special election in the State of Washington, it is now necessary that I alter my NRSC role.

In order that I may be involved in the independent expenditure activities of the RNIEC, it is necessary under the election laws that I not engage in any discussion or action in which a candidate, his staff or campaign committee(s) participate, concerning the plans, conduct or needs of that candidate or his campaign. The same is the case for my staff and the officers, directors and staff of the RNIEC. For this reason, effective immediately, I suspend myself from all-campaign related activities pertaining to the Dan Evans race and shall take a leave of absence from the NRSC through and including the special Senatorial election in Washington State to be decided on November 8. I am advised by counsel, however, that I may

Honorable Richard Lugar
Page Two
October 6, 1983

continue to remain active in fundraising activities for individual Republican candidates and all Party Committees, specifically including the NRSC. I therefore intend to remain active, as I have previously, in all fundraising activities that benefit the NRSC. I am advised by counsel that I will be free to resume my role in all NRSC activities subsequent to November 8, 1983.

For your information the RNIEC will make no independent expenditures in any primary election. However, it will, at some point in 1984, be necessary for me to suspend my NRSC campaign involvement in general election campaigns (other than for fundraising purposes) where there is the possibility of RNIEC involvement.

During the period of my leave of absence from the Evans campaign activities of the NRSC, I shall not engage in any consultation or communication with the NRSC or its staff, or with the candidate, his staff or committee, concerning the plans or activities of the candidate or his campaign. I have instructed my own staff and the officers, directors and staff of the RNIEC to act in the same way. Similarly, I request that the members and staff of the NRSC not engage in any such discussion with me or these persons during the period of my leave. I would appreciate your transmitting this request.

Republican success in these critical times is utterly dependent upon the broadest possible participation of committees such as the RNIEC and NRSC. I am confident that we can reach our goals.

With best wishes,

Sincerely,


John Heinz

JH/ml

cc Mitch Daniels
Kevin Talley
Rod Smith

85040514365

GCC#1387

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WASHINGTON, D.C. 20006
(202) 453-8700
ONE ROONEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 489-9200

January 10, 1984

Charles N. Steele
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Steele:

Enclosed are two affidavits which pertain to ~~MUR~~ 1602, which was filed against the Republican Independent Expenditure Committee by Common Cause. The first affidavit is that of Elizabeth Warren Smith. A footnote on page 15 of the Motion to Dismiss filed last Friday stated that her affidavit would be forwarded forthwith. The other affidavit is by Rodney A. Smith and replaces the certification originally filed with the Motion to Dismiss. Please attach these documents to our original pleading and to any copies which may have been distributed.

Sincerely,

Carol C. Darr
Carol C. Darr

Enclosures

/jar

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1 JAN 11 AM 1:1

GENERAL COUNSEL

VERIFICATION

JAN 11 AM: 14

The undersigned President for respondent, Republican Independent Expenditure Committee, swears that the statements in this complaint are true and correct to the best of his information and belief.

Rodney A. Smith
Rodney A. Smith

Subscribed and sworn before
me this 9th day of January,
1984.

Thyllis R. Beaver
Notary Public

My Commission Expires: My Commission Expires August 14, 1987

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AFFIDAVIT

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Washington)
) ss:
 District of Columbia)

On this 6th day of January, 1984, before me, Phyllis A. Beaver, a notary public in and for the District of Columbia, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Elizabeth Warren Smith, and, being duly sworn, deposes and says:

I, Elizabeth Warren Smith, certify that the statements contained in the certificate dated September 19, 1983, and filed as Exhibit B in MUR 1596, as follows:

I certify I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 nor was my decision to approve making independent expenditures by the RNIEC in support of Dan Evans made on the basis of any request or suggestion of the candidate, his committee or his or their agents.

I further certify that said independent expenditures are not being made in cooperation, consultation, or in concert with the candidate, his campaign committee or his or their agents. Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee. Further, I certify that these expenditures do not involve the financing of or dissemination, distribution or republication in whole or in part of any campaign material prepared by the candidate, his campaign committee or their agents.

were and are true and correct to the best of my knowledge and belief. These statements were made initially by me in my capacity as Director of the Republican National Independent Expenditure Committee, pursuant to the first meeting of the Board of Directors.

Elizabeth Warren Smith
 Elizabeth Warren Smith

Subscribed and sworn to before me this 6th day of January, 1984.

Phyllis A. Beaver
 Notary Public

My commission expires: My Commission Expires August 14, 1987

84 JAN 10 P 5: 37

BY HAND

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

KADDEN, ARPS, SLATE, MEAGHER & FLOM
919 EIGHTEENTH STREET, N.W.

WASHINGTON, D.C. 20006

GCC #1386

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WASHINGTON, D.C. 20006
(202) 463-6700
ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 429-6200

January 10, 1984


BY HAND

Robert Pease, Esquire
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Pease:

Enclosed is a copy of the Motion to Dismiss MUR 1602 delivered to the Office of General Counsel last Friday by the Republican Independent Expenditure Committee to the complaint filed by Common Cause. Also enclosed is the affidavit of Elizabeth Warren Smith and a certification by Rodney A. Smith. The certification by Mr. Smith replaces the certification originally filed with the Motion to Dismiss.

Sincerely,


Carol C. Darr

Enclosure

/jar

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VERIFICATION

1111 11:15

The undersigned President for respondent, Republican Independent Expenditure Committee, swears that the statements in this complaint are true and correct to the best of his information and belief.

Rodney A. Smith
Rodney A. Smith

Subscribed and sworn before
me this 9th day of January,
1984.

Thyllis L. Bauer
Notary Public

My Commission Expires: My Commission Expires August 14, 1987

85040514371

GENERAL INVESTIGATIVE

AFFIDAVIT

WIN 11 AM: 15

Washington)
) ss:
District of Columbia)

On this 6th day of January, 1984, before me, Thurman L. Ballinger, a notary public in and for the District of Columbia, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Elizabeth Warren Smith, and, being duly sworn, deposes and says:

I, Elizabeth Warren Smith, certify that the statements contained in the certificate dated September 19, 1983, and filed as Exhibit B in MUR 1596 as follows:

I certify I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 nor was my decision to approve making independent expenditures by the RNIEC in support of Dan Evans made on the basis of any request or suggestion of the candidate, his committee or his or their agents.

I further certify that said independent expenditures are not being made in cooperation, consultation, or in concert with the candidate, his campaign committee or his or their agents. Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee. Further, I certify that these expenditures do not involve the financing of or dissemination, distribution or republication in whole or in part of any campaign material prepared by the candidate, his campaign committee or their agents.

were and are true and correct to the best of my knowledge and belief. These statements were made initially by me in my capacity as Director of the Republican National Independent Expenditure Committee, pursuant to the first meeting of the Board of Directors.

Elizabeth Warren Smith
Elizabeth Warren Smith

Subscribed and sworn to before me this 6th day of January, 1984.

Thurman L. Ballinger
Notary Public

My commission expires: My Commission Expires on 11/14/1987

85040314372

In the Matter of
Republican National
Independent Expenditure
Committee

MUR 1602

RESPONDENT'S MOTION TO DISMISS

85040514373
This Matter Under Review ("MUR") comes before the Federal Election Commission ("Commission" or "FEC") upon a complaint dated November 22, 1983, filed by Common Cause. The Republican National Independent Expenditure Committee, by its attorneys, hereby responds to said complaint, and urges that it be dismissed.

The complaint attempts to show that certain expenditures made by RNIIEC in 1983 were not "independent expenditures" within the meaning of the statute, 2 U.S.C. § 431(17), and the Commission's Regulations, 11 C.F.R. § 109.1. The complaint alleges that relationships which would vitiate RNIIEC's independence existed between the RNIIEC and each of the following political committees: Evans for Senate Committee ("Evans campaign"); Republican National Committee ("RNC"); National Republican Senatorial Committee ("NRSC").

Statement of Facts

The RNEIC registered with the FEC on March 16, 1983, as a political committee making expenditures on behalf of more than one federal candidate.*/

The RNEIC was established by Rodney A. Smith**/ for the purpose of fostering the presence of responsible Republicans in public office by means of independently publicizing positive aspects of their qualifications. In order to raise funds for this endeavor, usual and customary methods of generating political contributions were utilized including direct mail, telephone solicitations and personal contacts.

On September 1, 1983, Senator Henry M. Jackson died unexpectedly. Daniel Evans was sworn in on or about September 12, 1983, to fill the vacancy left by Senator Jackson's death, and on the same day Senator Evans filed as a candidate for the special election to be held in Washington State on November 8, 1983.

On September 19, 1983, the RNEIC formally decided to make independent expenditures in support of the Dan Evans campaign during the general election.

*/ While RNEIC has contributed to more than one candidate, it has not qualified as a "multicandidate committee" as stated in the complaint. Complaint, para. 3.

**/ Smith served as Treasurer and Finance Director of the NRSC from January 1977 until his resignation in December 1982.

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On October 6, 1983, Senator Heinz voluntarily suspended his membership in the NRSC, by requesting a leave of absence, although he had attended no meetings of the NRSC after Senator Jackson's death.

During the week of October 18, 1983, the RNIEC mailed "election-grams" to selected geographic areas within the State of Washington. These "election-grams" were signed by Senator John Heinz and advocated the election of Daniel Evans.

On November 7, 1983, the Wall Street Journal published an article concerning these "election-grams." The same day the Democratic Senatorial Campaign Committee ("DSCC") held a press conference and filed a complaint (MUR 1596) denouncing the fact that the expenditures were made by individuals who were "in a position to" work in cooperation with the NRSC, and challenging the "independence" of these expenditures.

On November 22, 1983, Common Cause filed the instant complaint.

The Common Cause complaint challenging the independence of RNIEC's expenditures in the State of Washington relies on (pp. 7-8) four contentions:

- (1) that RNIEC is "a political committee established and maintained by a national political party;"
- (2) that RNIEC is "an affiliate" of NRSC;
- (3) that RNIEC has "impermissibly coordinated" and "acted in concert" with NRSC; and

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- (4) that RNIEC "obtained information from or about the Evans campaign . . . and thereby coordinated its expenditures" with the Evans campaign."

By its affidavit attached to the complaint, the complainant swore that the complaint is based on the "sources indicated" in the complaint (i.e., Wall Street Journal article, Nov. 7, 1983; Washington Post article, Nov. 16, 1983; RNIEC's October 25, 1983 report to the Commission).

APPLICABLE LAW

The legal framework within which the "independence" of an expenditure is determined is the statutory definition of "independent expenditure" found in Section 432(17) of the Federal Election Campaign Act, 2 U.S.C. § 431(17)^{*/} and in the implementing Commission Regulation, 11 C.F.R. § 109.1.^{**/}

Disposition of the complaint is governed by 11 C.F.R. §§ 111.7 and 111.9, which, respectively, allow the General Counsel to recommend to the Commission whether or not it should find reason to believe that RNIEC has violated the statute or a Commission Regulation,^{***/} and require the Commission to act by "an affirmative vote of four" on the complaint and response.^{****/}

^{*/} Attachment 1, note 1.

^{**/} Attachment 1, note 2.

^{***/} Attachment 1, note 3.

^{****/} Attachment 1, note 4.

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Other provisions of the Regulations which deal with complainant's allegations include 11 C.F.R. § 100.5, which defines "political committee, subsection (g) of which pertains to "affiliated committee."^{*/}

RESPONSE

I. RNIEC is not a political committee established or maintained by a national political party.

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The complaint contends that RNIEC is "a political committee established and maintained by the National Republican Party." The facts in no way support this absurd allegation. No effort is made to show that the Republican Party or its governing national committee (RNC) chartered this committee or that the governing document^{**/} of the RNC even mentions RNIEC. Without citing a shred of evidence the complainant alleges that "RNIEC was organized by key Republican Party officials." In fact, RNIEC was organized and operated solely by Rodney A. Smith. Moreover, while Mr. Smith is flattered by the description of "key Republican Party official," he believes that "political professional" more accurately reflects his position. Mr. Smith was employed by the RNC, but severed that relationship in January 1977.

^{*/} Attachment 1, note 5.

^{**/} The RNC is governed by the Rules adopted by the 1980 Republican National Convention.

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Apparently the complainant believes that its allegation is buttressed by the accusation that "RNIEC's goal is to elect Republican candidates." It goes without saying that a goal, indeed the only goal, of the RNIEC is to elect Republican candidates. For the complainant to suggest, however, that because a political committee's philosophical bent is Republican or Democratic, it is therefore established and maintained by a national political party committee is patently ridiculous. Such reasoning would require the FEC to treat as legal affiliates of the Democratic National Committee such political committees as the Committee for an Effective Congress, Democrats for the '80's, the Democratic Candidates Fund, and Committee for the Future of America; and of the Republican Party, committees including the National Conservative Political Action Committee (NCPAC), Fund for a Conservative Majority, National Congressional Club, Citizens for the Republic, Committee for a Free Congress, and the Republican Senate Majority Fund.

Even more specious is the complaint's reliance on the fact that two words, "Republican" and "National" appear in RNIEC's name. There is nothing in the Act, the Regulations, legislative history, the Advisory Opinions, or the MURs of the Commission that even remotely suggests that similarity in name might be treated as an indication of

affiliation, nor is there any basis in logic for such a conclusion. The allegation is immaterial.*/

The complainant further alleges that "RNIEC uses vendors that the official Republican Party committees use." Remarkably, the complaint does not list a single vendor which the RNC and RNIEC are alleged to have in common. The complaint lists three vendors which have been used at times by both the NRSC and the RNIEC. Yet, even those three vendors performed no more than routine services in their respective areas of business. James F. Schoener, who was engaged as one of several outside counsel to the NRSC concurrent with his serving as counsel to the RNIEC, is simply a lawyer with multiple clients in the same general area of business. The same situation applies to the other two vendors. Lynda Clancy was engaged by both committees for assistance in filling out FEC reports;**/ AAA-American Public Issues, for rental of its mailing lists.

And in arguing that the RNIEC raises money from the same donors, "perhaps" using some of the same fundraising

*/ Such an approach would, of course, tie the Democratic Party and its governing national committee, to the National Democratic Policy Committee, headed by Lyndon LaRouche. Similarly, there are well over 40 "non-connected" organizations currently registered with the FEC whose names contain the word "Republican;" over 200 organizations whose names contain the word "National," and at least one other "non-connected" political committee whose name contains both the words "National" and "Republican."

**/ Neither Schoener or Clancy performed services for the NRSC after Senator Jackson's death in September, 1983.

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lists as the "official Republican Party committees," Common Cause is alleging no more than that many of the same people may have contributed to all three committees.^{*/} It is hardly surprising, however, that an individual who would respond to a fundraising appeal from RNIEC might have responded previously to an appeal from the RNC, the NRSC or any number of Republican candidates or organizations. An examination of contributions previously made by such individuals would doubtless show that they have been responsive to requests for financial support from a multitude of political organizations including but not limited to the RNC and the NRSC. Furthermore, the names of these same individuals appear on numerous "prospecting" lists that are widely circulated and readily available to anyone interested in undertaking a fundraising effort.

It is equally unproductive -- and irresponsible -- for Common Cause to allege that RNIEC has made and will continue to make expenditures "in the same way" as NRSC. The insinuating ambiguity of the complaint is typical of the complainant's effort. It is unsurprising that complainant provides no examples of what it means by "makes campaign expenditures in the same way." To do so would serve only to strip off the thin veneer of credibility which it wishes its

^{*/} The complainant provides no evidence whatever of any overlap between contributors to the RNC and contributors to the RNIEC.

complaint to maintain. How one makes expenditures "in the same way" is left to the imagination. RNIEC can only deny the relevance of the point. RNIEC raises funds and makes expenditures using methods which are usual and customary for all political committees. There is nothing, however, in the way RNIEC makes its expenditures that is substantially dissimilar to methods used by any other political committee. Only from such a distinctive similarity could any affiliation be inferred.*

Thus, the allegation about RNIEC's structure and past activities are without foundation. Predictions of future RNIEC activities are mere speculation, and are contradicted by the brief history of RNIEC and its activities. In short, the complaint presents nothing to support its contention and, in the face of clear evidence to the contrary, the contention must be rejected.

II. RNIEC is not "an affiliate" of NRSC.

The complainant contends that "even if RNIEC is not itself a political committee established and maintained by the National Republican Party, RNIEC is an affiliate of NRSC." The complainant, however, cites no evidence to

*/ RNIEC's only expenditure in Washington State consisted of an "election-gram" sent out via bulk rate mail approximately two and half weeks before election, which, to the best knowledge of the respondent, constituted a strategy wholly unrelated to that of any other political organization.

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support this conclusory allegation. Instead, the complainant apparently expects the Commission and the respondent to pick through the random, largely irrelevant, and often erroneous "facts" listed at the beginning of the complaint to divine the basis for the complainant's allegation.

The only support for the complainant's assertion is a citation to the rule governing affiliated committees. ("See 11 C.F.R. § 100.5(g)(2)"). The rule requires that to be affiliated, two committees must be established, financed, maintained or controlled by the same person. (See Attachment 1, note 5). A review of the indicia of establishing, financing, maintaining or controlling shows clearly that RNIEC is not affiliated with NRSC:

- (1) there is no common ownership of a controlling interest in voting shares or securities, nor is any alleged;
- (2) there are no provisions of bylaws, constitutions, or other documents by which one entity has the authority, power, or ability to direct the other, nor does the complaint allege their existence;
- (3) no person or group of persons has the authority, power or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of both entities, nor has such been alleged;*/

*/ The only individual who had any concurrent official relationship with both NRSC and RNIEC was Senator John Heinz. It is clear from his affidavit (dated November 29, 1983, and filed in connection with MUR 1596) that Senator Heinz did not occupy a role in either committee of sufficient involvement to fall within the bounds of this provision.

- (4) there have been no transfers of funds between the NRSC and the RNIEC, nor have any been alleged; and
- (5) to the extent that there may be some duplication of contributions, there is nothing to suggest anything more than that because the universe of persons who contribute regularly to political causes is limited, many pleas for funds are addressed by many organizations, both political and otherwise, to the same persons. Thus, the similar pattern of contributions specified in the rule clearly requires something more than duplicated contributions as an indication of affiliation.

Here, again, there is no credible reason to believe that the NRSC and the RNIEC are "affiliated." Accordingly, this contention must be rejected.

III. The RNIEC has not "impermissibly coordinated and acted in concert with" the NRSC.

The respondent contends that "RNIEC and NRSC are so inseparably intertwined that their campaigns for the same Republican Senatorial candidates simply cannot be deemed independent of each other," and that the expenditures of RNIEC count therefore as contributions to and expenditures by the NRSC. Again, the complaint cites no supporting evidence, leaving the Commission and the respondent to wade through the "facts" listed at the beginning of the complaint.

Regardless of what evidence the complainant might offer that the two committees are not independent of each other, the complainant's conclusion is without legal effect. As noted above, the independence of expenditures is deter-

mined by applying the criteria set forth in Section 109.1 of the Commission's rules, 11 C.F.R. § 109.1, and the rule does not govern relationships between non-candidate committees. Non-candidate political committees may communicate freely with each other, and so long as the level of communication does not reach the threshold for "affiliation," i.e., if the committees are not established, maintained, financed or controlled by the same group of people, the contributions and expenditures of one committee will not be imputed to any other. The complainant's assertion that one committee's lack of "independence" from another will accomplish the same legal result is flatly wrong.*/

Even if it were assumed, for the sake of argument, that section 109.1 applied to the relationship between NRSC and RNIEC, applying the criteria of the rule to the facts in this case would show the requisite independence.**/

The respondent can only assume, since the complaint never so states, that the basis for the assertion is the

*/ The complainant's error is compounded by the further assertion that such a lack of independence between two political committees requires the expenditures of one committee to be treated as contributions to and expenditures by the other committee. The finding of affiliation required to treat the expenditures of one as the expenditures of the other, also requires that a conveyance of funds be treated as a "transfer of funds," not a "contribution."

**/ Legally it is required that factual evidence be produced which shows an arrangement, coordination or direction by the candidate or his or her committee or agents before independence of an expenditure can be vitiated. That standard clearly has not been met in this case.

alleged concurrent involvement of Senator Heinz in both the NRSC and the RNIEC.*

However, as stated in his affidavit of November 29, 1983, submitted in connection with MUR 1596 filed by the DSCC, Senator Heinz' chairmanship of the NRSC terminated in December 1980. Since that time his involvement with the NRSC has been limited to his "ex-officio" membership on the committee as a Republican Senator. He never attended any meetings of the NRSC at which the Washington State election was discussed; and there may have been no such meetings at all.

As his affidavit states, Senator Heinz attended no meetings of the NRSC after Senator Jackson's death. Senator Heinz was concerned, however, that even the appearance of his involvement in the NRSC might jeopardize his first amendment right to participate in independent expenditure activities; and on the advice of counsel, he voluntarily suspended his nominal membership in the NRSC on October 6, 1983, by requesting a leave of absence. By letter of the same date, he informed NRSC Chairman Richard Lugar of his determination to ensure his "independence from any activity

*/ The limited role of the few common vendors has been discussed above, as well as the errors in fact concerning the role of Mr. Smith. Mr. Lawrence C. McCarthy (Complaint, para. 11) does not have nor has ever had any role with RNIEC. The alleged involvement was reported in error by the Washington Post and retracted the day following the initial article, a fact apparently overlooked by complainant. See Attachment 2.

carried on by the NRSC or contact with the Evans' campaign;" and in his affidavit attested that "my staff and I, and to my knowledge and belief the RNIEC, have fully complied with the statements therein." See Attachments 3 and 4. On November 14, 1983, Senator Heinz submitted his resignation to the NRSC, never having resumed his suspended membership.

Even if Senator Heinz had not taken careful and prudent steps to remove himself from the activities of the NRSC, it is important to note that he was merely one Senator out of sixteen whose membership comprised the NRSC. Moreover, as indicated in his affidavit, none of those Senators "runs" the NRSC. That function belongs solely and exclusively to the Chairman of the NRSC, Senator Richard Lugar. In short, neither Senator Heinz, nor any of the other members of the NRSC (except Senator Lugar, the current NRSC Chairman), exercises any control over the activities, plans or expenditures of the NRSC.

Similarly, Senator Heinz also exercised no real control over the day-to-day operations of RNIEC. As evidenced by his affidavit, his involvement has been limited to signing an "election-gram," serving as Chairman of the RNIEC's "Advisory Panel," making a voluntary personal contribution and helping the RNIEC raise funds.

IV. The RNIEC maintained its legal independence from the Evans campaign and therefore had a constitutional right to make independent expenditures on behalf of Senator Evans.

The complainant alleges that "RNIEC obtained information from or about the Evans campaign through NRSC or elsewhere and thereby coordinated its expenditures with Senator Evans' campaign efforts." The facts prove just the opposite. As Senator Heinz stated in the sworn affidavit he submitted in response to MVR 1596, "at no time have I, my staff, or to my knowledge the RNIEC, ever conferred with Senator Evans, his agents or his authorized committee, or with any member or agent of any state or national party committee concerning the plans, projects or needs of the Evans' campaign." Moreover, the sworn statement of Rodney Smith^{*/} corroborates the independence between RNIEC and the NRSC and the Evans campaign. He states,

I certify that I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee.**/

No factual response is merited to so loose and legally inadequate an allegation as that RNIEC may have obtained information "elsewhere." This appears to be an even more imprecise version of complainant's previous

^{*/} A similar affidavit of Elizabeth Warren Smith will be forwarded forthwith.

^{**/} Attachment 5.

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unsuccessful attempts, in other proceedings, to argue that an expenditure is "coordinated with" a candidate's authorized campaign committee "through information conveyed by public statements, press releases, press reports, and campaign finance reports,"^{*/} and thereby becomes a "contribution" within the meaning of the federal election laws. That argument, and the equally imprecise allegation the complainant proffers here that RNIEC obtained information "elsewhere," carry far beyond the law as set forth in 11 C.F.R. § 109.1 and previous Commission actions.

V. The evidence does not support a finding of reason to believe

The facts presented in this case do not support a finding that there is reason to believe a violation of the Act has occurred with respect to RNIEC's activities. While the Commission will accept a complaint based on "substantial news stories" (6 FEC Record No. 1 at 3, Jan. 1980),^{**/} such a standard is far too tenuous to support a finding of reason to believe."

It would be charitable to say that the affidavit of verification accompanying the complaint rises to the

^{*/} Brief for complainant, Count II, Common Cause, et al. v. Harrison Schmitt, et al., (D.D.C.) Civil Act No. 80-1609.

^{**/} There remains the legitimate question as to whether the two news stories are worthy of being considered "substantial."

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level of information and belief. It states only that "statements are based on the sources indicated." Thus counsel for complainant, not the complainant, swears that the statements "are true and correct to the best of his information and belief" because he read them in newspapers. Such an affidavit cannot stand against an affidavit of personal knowledge, such as those submitted in this proceeding and in MUR 1596 by Senator Heinz and Mr. Smith, which swear to the truth of the statements contained therein, rather than to the existence of a newspaper article.

The facts provided by the respondent refute every point raised by the complaint to and beyond those issues that can be discerned in the complaint. When the applicable regulations and statutory provisions are applied to these facts it is clear that there is no reason to believe that a violation has occurred.

VI. Conclusion

It is patently clear that the complaint is unsupported by evidence and constructed with ambiguity in order to use the Commission's processes to chill the First Amendment rights specifically upheld in Buckley v. Valeo. The applicable law and the facts of this case speak compellingly in response to the complaint. They do not speak, however, to the serious policy question raised by invoking the slenderest reed of evidence, supported only by Common Cause's

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suspensions, to mute the free speech rights of RNIEC and its contributors.*/

The Commission must be vigilant against efforts to make it a party to violations of the civil rights of groups or individuals. It must resist such efforts by applying swiftly a fair but rigorous standard of proof to complaints which would result in a chilling effect on a respondent's freedom of speech and association.

In light of the information presented, it is respectfully submitted that there is insufficient evidence to warrant a reason to believe that RNIEC's expenditures supporting Senator Evans were not independent within the spirit and the letter of the law. Therefore, the Commission should find that there is no reason to believe that the

*/ Complainant is aware that by placing RNIEC under a cloud of uncertainty concerning its independence, it can preclude RNIEC from any effective political role. It knows that the longer that cloud can be maintained via the pendency of the complaint it has filed, the harder it will be for RNIEC to raise funds and to speak out should it choose to do so.

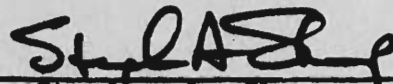
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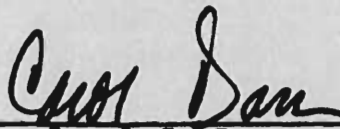
respondent has committed any violation of the Act and
dismiss the complaint.

Respectfully submitted,

REPUBLICAN NATIONAL INDEPENDENT
EXPENDITURE COMMITTEE

By


Stephen A. Sharp


Carol C. Darr

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM
919 Eighteenth Street, N.W.
Washington, D.C. 20006

Its Attorneys

January 6, 1984

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VERIFICATION

The undersigned President for respondent, Republican Independent Expenditure Committee, swears that the statements in this complaint are based on the sources indicated, and, as such, are true and correct to the best of his information and belief.

Rodney B. Smith
Rodney A. Smith

Subscribed and sworn before
me this 6th day of January,
1984.

Phillip B. Beaver
Notary Public

My Commission Expires: _____ My Commission Expires August 14, 1987

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Attachment 1

Note 1 The term "independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

Note 2 (a) "Independent expenditure" means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.

(b) For purposes of this definition --

. . . .

(4) "Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate" means --

(i) Any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is --

(A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made;

(B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent;

(ii) But does not include providing to the expending person upon request Commission guidelines on independent expenditures.

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(Note 2 continued)

(5) "Agent" means any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.

Note 3 § 111.7 General Counsel's recommendation on complaint-generated matters (2 U.S.C. 437g(a)(1)).

(a) Following either the expiration of the fifteen (15) day period specified by 11 C.F.R. 111.6(a) or the receipt of a response as specified by 11 C.F.R. 111.6(a), whichever occurs first, the General Counsel may recommend to the Commission whether or not it should find reason to believe that a respondent has committed or is about to commit a violation of statutes or regulations over which the Commission has jurisdiction.

(b) The General Counsel may recommend that the Commission find that there is no reason to believe that a violation has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of 11 C.F.R. 111.6(a).

Note 4 § 111.9 The reason to believe finding; notification (2 U.S.C. 437g(a)(2)).

(a) If the Commission, either after reviewing a complaint-generated recommendation as described in 11 C.F.R. 111.7 and any response of a respondent submitted pursuant to 11 C.F.R. 111.6, or after reviewing an internally-generated recommendation as described in 11 C.F.R. 111.8, determines by an affirmative vote of four (4) of its members that it has reason to believe that a respondent has violated a statute or regulation over which the Commission has jurisdiction, its Chairman or Vice Chairman shall notify such respondent of the Commission's finding by letter, setting forth the sections of the statute or regulations alleged to have been violated and the alleged factual basis supporting the finding.

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(Note 4 continued)

(b) If the Commission finds no reason to believe, or otherwise terminates its proceedings, the General Counsel shall so advise both complainant and respondent by letter.

Note 5

(2) All committees (including a separate segregated fund, see 11 CFR Part 114) established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated.

(ii) For organizations not covered by paragraph (g)(2)(i) of this section, indicia of establishing, financing, maintaining, or controlling include:

(A) Ownership of a controlling interest in voting shares or securities;

(B) Provisions of bylaws, constitutions, or other documents by which one entity has the authority, power, or ability to direct another entity;

(C) The authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of an entity;

(D) Similar patterns of contributions;

(2) All committees (including a separate segregated fund, see 11 CFR Part 114) established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated.

(E) The transfer of funds between committees which represent a substantial portion of the funds of either the transferor or transferee committee, other than the transfer of funds between the committees which jointly raised the funds so transferred.

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Washington Post Staff Writer

DES MOINES, Nov. 16—George McGovern today thrust himself into the national defense debate between former vice president Walter F. Mondale and Sen. John Glenn (D-Ohio), accusing the front-runners for the Democratic presidential nomination of not offering a clear alternative to President Reagan.

McGovern, the party's 1972 nominee, said Glenn and Mondale differ only in degree from Reagan and advocate increased defense spending "when we should be cutting the wasteful, bloated monster that is devouring our national substance and forcing an open-ended arms race." "If you want a 10 percent increase in military spending every year, vote

Corrections

Lawrence C. McCarthy was identified incorrectly yesterday as a member of the board of the Republican National Independent Expenditure Committee.

Annual trade between West Germany and the Soviet Union is 20 billion German marks (about \$9 billion), not \$20 billion as reported yesterday.

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JOHN HEINZ
United States Senate

October 6, 1983

Honorable Richard L. Lugar
Chairman
National Republican Senatorial Committee
Washington, D. C. 20510

Dear Senator ^{Dick}Lugar:

As you know, I have agreed to become Chairman of the Advisory Council of the recently-formed Republican National Independent Expenditure Committee ("RNIEC"). The RNIEC is now involved in fund-raising and will, among other things, make "independent expenditures" within the meaning of the Federal election laws, in support of Republican candidates for National office. Considering the tremendous challenge that the Republican Party is facing in the upcoming elections, I am committed to doing everything possible to preserve the Republican majority in the Senate and in turning the tide in the House, and that the RNIEC can be a major force in helping to achieve these goals.

As you know, I am presently a member of the National Republican Senatorial Committee ("NRSC"), and have been active in NRSC affairs. However, with the recently scheduled Senatorial primary and special election in the State of Washington, it is now necessary that I alter my NRSC role.

In order that I may be involved in the independent expenditure activities of the RNIEC, it is necessary under the election laws that I not engage in any discussion or action in which a candidate, his staff or campaign committee(s) participate, concerning the plans, conduct or needs of that candidate or his campaign. The same is the case for my staff and the officers, directors and staff of the RNIEC. For this reason, effective immediately, I suspend myself from all campaign related activities pertaining to the Dan Evans race and shall take a leave of absence from the NRSC through and including the special Senatorial election in Washington State to be decided on November 8. I am advised by counsel, however, that I may

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continue to remain active in fundraising activities for individual Republican candidates and all Party Committees, specifically including the NRSC. I therefore intend to remain active, as I have previously, in all fundraising activities that benefit the NRSC. I am advised by counsel that I will be free to resume my role in all NRSC activities subsequent to November 8, 1983.

For your information the RNIEC will make no independent expenditures in any primary election. However, it will, at some point in 1984, be necessary for me to suspend my NRSC campaign involvement in general election campaigns (other than for fundraising purposes) where there is the possibility of RNIEC involvement.

During the period of my leave of absence from the Evans campaign activities of the NRSC, I shall not engage in any consultation or communication with the NRSC or its staff, or with the candidate, his staff or committee, concerning the plans or activities of the candidate or his campaign. I have instructed my own staff and the officers, directors and staff of the RNIEC to act in the same way. Similarly, I request that the members and staff of the NRSC not engage in any such discussion with me or these persons during the period of my leave. I would appreciate your transmitting this request.

Republican success in these critical times is utterly dependent upon the broadest possible participation of committees such as the RNIEC and NRSC. I am confident that we can reach our goals.

With best wishes,

Sincerely,


John Heinz

JH/ml

cc Mitch Daniels
Kevin Talley
Rod Smith

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United States Senate

WASHINGTON, D. C. 20510

November 29, 1983

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, Northwest
Washington, D. C. 20463

RE: Matter MUR 1596

Dear Mr. Steele:

This letter is submitted in response to your letter to me dated November 15, 1983, and signed on your behalf by the Commission's Associate General Counsel. Thank you for the opportunity to address the ill-founded and misleading charge of the Democratic Senatorial and Congressional Campaign Committees that either the Republican National Independent Expenditure Committee ("RNIEC") or I somehow acted improperly in connection with the expenditures made during the recent senatorial campaign in the State of Washington.

I respectfully suggest to you and the Commission that this charge is based upon a fundamental and easily demonstrable factual error and that it is otherwise deficient as a matter of law and fact. At all times, my conduct has been utterly consistent with the requirements of the Federal Election Campaign Act of 1971. Additionally, to my knowledge and belief, the RNIEC, which will respond to the Commission separately, has also acted lawfully and properly in connection with the matter raised. For these reasons, I ask that the Commission decline to proceed further as to the instant complaint.

The complaint at issue has as its only "factual" basis a November 7, 1983, article from the Wall Street Journal. The Commission has addressed its authority to proceed on such hearsay complaints, concluding that it could do so under its supervisory powers (2 U.S.C. §437g(a)(2)). However, sensibly, the Commission historically has declined to proceed on complaints of this nature when they are based on nothing more than the reiteration of the contents of a newspaper article. The present matter amply demonstrates why this historical view of the Commission should be continued.

Charles N. Steele
Page Two
November 29, 1983

Contrary to the erroneous statement of the Wall Street Journal, reiterated as the basis for their complaint by the Democratic committees, I am not and never have been the Chairman of the RNIEC. I am the Chairman of that Committee's "Advisory Panel," and that function is precisely what the title should imply. I have provided general advice and have been the signatory on RNIEC mailings, but I have never directed the operations of the RNIEC, made its decisions or controlled its Chairman or agents. The Democratic committees' charge is premised upon their false belief that I am the Chairman of the RNIEC. This error derives from the incorrect Wall Street Journal article, and even a cursory investigation by the complainants could have disclosed it. In any event, it is at least fair to say that with the ultimate recognition of this compounded error, the stated basis for the charge has been eliminated and closure of this matter is therefore appropriate. I think it also important to note, however, that the charge is otherwise defective as well.

The complainants erroneously suggest that there might be an inherent impropriety when a member of a party committee is also involved in the activities of an organization making independent expenditures. This haphazard assertion is rebutted by the fact well recognized by the Commission that the first amendment rights of an independent spender under the Federal Election Campaign Act of 1971, as that Act has been interpreted by the Supreme Court in the case of Buckley v. Valeo, may only be vitiated by the independent spender's own actions, not his position. The complainants' charge is especially inappropriate in my own case.

I have been a member of the National Republican Senatorial Committee ("NRSC"), although I did resign that post formally on November 14, 1983. The Commission should be aware of the fact that on October 6, 1983, long before the expenditures at issue here were made and the Wall Street Journal article written and derivative charge filed, I took a leave of absence from the NRSC and informed its Chairman of the necessity to comply with the Federal elections laws by insuring my independence from any activity carried on by the NRSC or contact made with the Evans' campaign. Attached is a copy of my October 6, 1983, letter to the NRSC Chairman, and I attest that my staff and I, and to my knowledge and belief the RNIEC, have fully complied with the statements therein.

Charles N. Steele
Page Three
November 29, 1983

In further point of fact, the Commission should be aware that mere membership on the NRSC is an ex officio matter. All elected Republican senators are appointed to one of several party-related committees, one of which is the NRSC. A member, however, only has advisory functions. The NRSC Chairman employs and directs the Committee's staff which in no way reports to the Committee's members. He also initiates and directs by his sole discretion its programs and decides the expenditures and activities on behalf of individual candidates for the committee. Although I am a past Chairman of the NRSC, I have not held that post since December, 1980. Obviously, I was not the NRSC's Chairman at any time material to this case.

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In 1983, and prior to the death of Senator Henry Jackson and the subsequent appointment and candidacy of Senator Dan Evans to succeed him, the NRSC had three meetings which I attended. My role was entirely an auditory one at these meetings, which, because of their timing, could have had nothing to do with the Evans campaign, which then did not exist. Since Senator Jackson's untimely death, I have attended no meeting of the NRSC. In sum, I was neither "in a position to work through NRSC in close cooperation with Mr. Evans," as the complainants charge, nor did I in fact, or did the RNIEC, do anything to vitiate my dependence from Senator Evans or his campaign.

As is my first amendment right, I have urged persons to contribute to the RNIEC and signed an "electiongram" asking the voters of Washington to turn out on behalf of Senator Dan Evans in his November 1983 election. However, at no time have I, my staff, or to my knowledge the RNIEC, ever conferred with Senator Evans, his agents or his authorized committee, or with any member or agent of any state or national party committee regarding the plans, projects or needs of the Evans' campaign.

The charge of the Democratic committees is characterized by its exaggerated and pejorative tone. Such invective is both unwarranted and inconsistent with the stature and function of the Federal Election Commission. For present purposes, it is only necessary for me to restate that the instant charge has a factually-erroneous basis, and that said charge is otherwise substantively inaccurate in fact and in law. Accordingly, I respectfully urge both you and the Commission to close this matter after declining to proceed further as to the complaint.

Charles N. Steele
Page Four
November 29, 1983

Thank you for your consideration.

Sincerely,

John Heinz

CITY OF WASHINGTON)
) SS
DISTRICT OF COLUMBIA)

On this 29th day of November, 1983, personally appeared before me, a Notary Public in and for said City and District, John Heinz, who being duly sworn said that the above letter was true and correct.

Notary Public

My commission expires:

85040314406

85040514407

Washington)
District of Columbia) ss:

On this 6th day of January, 1984, before me, Phillip A. Beaver, a notary public in and for the District of Columbia, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Rodney A. Smith, and, being duly sworn, deposes and says:

I, Rodney A. Smith, certify that the statements contained in the certificate dated September 19, 1983, and filed as Exhibit B in MUR 1596, as follows:

I certify I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 nor was my decision to approve making independent expenditures by the RNIEC in support of Dan Evans made on the basis of any request or suggestion of the candidate, his committee or his or their agents.

I further certify that said independent expenditures are not being made in cooperation, consultation, or in concert with the candidate, his campaign committee or his or their agents. Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee. Further, I certify that these expenditures do not involve the financing of or dissemination, distribution or republication in whole or in part of any campaign material prepared by the candidate, his campaign committee or their agents.

were and are true and correct to the best of my knowledge and belief. These statements were made initially by me in my capacity as Director of the Republican National Independent Expenditure Committee, pursuant to the first meeting of the Board of Directors.

Rodney A. Smith
Rodney A. Smith

Subscribed and sworn to before me this 6th day of January, 1984.

Phillip A. Beaver
Notary Public

My commission expires: My Commission Expires August 14, 1987

85040514408

Washington)
) ss:
District of Columbia)

On this 6th day of January, 1984, before me, Christine Bell, a notary public in and for the District of Columbia, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared James F. Schoener, and, being duly sworn, deposes and says:

I, James F. Schoener, certify that the statements contained in the certificate dated September 19, 1983, and filed as Exhibit B in MUR 1596, as follows:

I certify I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 nor was my decision to approve making independent expenditures by the RNIEC in support of Dan Evans made on the basis of any request or suggestion of the candidate, his committee or his or their agents.

I further certify that said independent expenditures are not being made in cooperation, consultation, or in concert with the candidate, his campaign committee or his or their agents. Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee. Further, I certify that these expenditures do not involve the financing of or dissemination, distribution or republication in whole or in part of any campaign material prepared by the candidate, his campaign committee or their agents.

were and are true and correct to the best of my knowledge and belief. These statements were made initially by me in my capacity as Director of the Republican National Independent Expenditure Committee, pursuant to the first meeting of the Board of Directors.

James F. Schoener
James F. Schoener

Subscribed and sworn to before me this 6th day of January, 1984.

Christine Bell
Notary Public

My commission expires:

My Commission Expires January 1, 1985

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BY HAND

Robert Pease, Esquire
Office of the General Counsel
Seventh Floor
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

04 JAN 10 P 5: 37

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
919 EIGHTEENTH STREET, N.W.
WASHINGTON, D.C. 20006

G10#1428
MUR 1602
Pease

RECEIVED
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ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 426-9200

January 10, 1984

BY HAND

The Honorable Danny Lee McDonald
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Commissioner McDonald:

Enclosed is a copy of the Motion to Dismiss MUR 1602 delivered to the Office of General Counsel last Friday by the Republican Independent Expenditure Committee to the complaint filed by Common Cause. Also enclosed is the affidavit of Elizabeth Warren Smith and a certification by Rodney A. Smith. The certification by Mr. Smith replaces the certification originally filed with the Motion to Dismiss.

Sincerely,

Carol C. Darr
Carol C. Darr

Enclosure

/jar

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JAN 16 P 4:15

VERIFICATION

JAN 16 P 4:15
The undersigned President for respondent, Republican
Independent Expenditure Committee, swears that the statements
in this complaint are true and correct to the best of his
information and belief.

Rodney A. Smith
Rodney A. Smith

Subscribed and sworn before
me this 9th day of January,
1984.

Shylla L. Bauer
Notary Public

My Commission Expires: My Commission Expires Aug 14, 1987

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In the Matter of)

Republican National)
Independent Expenditure)
Committee)

MUR 1602

RESPONDENT'S MOTION TO DISMISS

This Matter Under Review ("MUR") comes before the Federal Election Commission ("Commission" or "FEC") upon a complaint dated November 22, 1983, filed by Common Cause. The Republican National Independent Expenditure Committee, by its attorneys, hereby responds to said complaint, and urges that it be dismissed.

The complaint attempts to show that certain expenditures made by RNIEC in 1983 were not "independent expenditures" within the meaning of the statute, 2 U.S.C. § 431(17), and the Commission's Regulations, 11 C.F.R. § 109.1. The complaint alleges that relationships which would vitiate RNIEC's independence existed between the RNIEC and each of the following political committees: Evans for Senate Committee ("Evans campaign"); Republican National Committee ("RNC"); National Republican Senatorial Committee ("NRSC").

Statement of Facts

The RNEIC registered with the FEC on March 16, 1983, as a political committee making expenditures on behalf of more than one federal candidate.*/

The RNEIC was established by Rodney A. Smith**/ for the purpose of fostering the presence of responsible Republicans in public office by means of independently publicizing positive aspects of their qualifications. In order to raise funds for this endeavor, usual and customary methods of generating political contributions were utilized including direct mail, telephone solicitations and personal contacts.

On September 1, 1983, Senator Henry M. Jackson died unexpectedly. Daniel Evans was sworn in on or about September 12, 1983, to fill the vacancy left by Senator Jackson's death, and on the same day Senator Evans filed as a candidate for the special election to be held in Washington State on November 8, 1983.

On September 19, 1983, the RNEIC formally decided to make independent expenditures in support of the Dan Evans campaign during the general election.

*/ While RNEIC has contributed to more than one candidate, it has not qualified as a "multicandidate committee" as stated in the complaint. Complaint, para. 3.

**/ Smith served as Treasurer and Finance Director of the NRSC from January 1977 until his resignation in December 1982.

On October 6, 1983, Senator Heinz voluntarily suspended his membership in the NRSC, by requesting a leave of absence, although he had attended no meetings of the NRSC after Senator Jackson's death.

During the week of October 18, 1983, the RNIEC mailed "election-grams" to selected geographic areas within the State of Washington. These "election-grams" were signed by Senator John Heinz and advocated the election of Daniel Evans.

On November 7, 1983, the Wall Street Journal published an article concerning these "election-grams." The same day the Democratic Senatorial Campaign Committee ("DSCC") held a press conference and filed a complaint (MUR 1596) denouncing the fact that the expenditures were made by individuals who were "in a position to" work in cooperation with the NRSC, and challenging the "independence" of these expenditures.

On November 22, 1983, Common Cause filed the instant complaint.

The Common Cause complaint challenging the independence of RNIEC's expenditures in the State of Washington relies on (pp. 7-8) four contentions:

- (1) that RNIEC is "a political committee established and maintained by a national political party;"
- (2) that RNIEC is "an affiliate" of NRSC;
- (3) that RNIEC has "impermissibly coordinated" and "acted in concert" with NRSC; and

- (4) that RNIEC "obtained information from or about the Evans campaign . . . and thereby coordinated its expenditures" with the Evans campaign."

By its affidavit attached to the complaint, the complainant swore that the complaint is based on the "sources indicated" in the complaint (i.e., Wall Street Journal article, Nov. 7, 1983; Washington Post article, Nov. 16, 1983; RNIEC's October 25, 1983 report to the Commission).

APPLICABLE LAW

The legal framework within which the "independence" of an expenditure is determined is the statutory definition of "independent expenditure" found in Section 432(17) of the Federal Election Campaign Act, 2 U.S.C. § 431(17)^{*/} and in the implementing Commission Regulation, 11 C.F.R. § 109.1.^{**/}

Disposition of the complaint is governed by 11 C.F.R. §§ 111.7 and 111.9, which, respectively, allow the General Counsel to recommend to the Commission whether or not it should find reason to believe that RNIEC has violated the statute or a Commission Regulation,^{***/} and require the Commission to act by "an affirmative vote of four" on the complaint and response.^{****/}

^{*/} Attachment 1, note 1.

^{**/} Attachment 1, note 2.

^{***/} Attachment 1, note 3.

^{****/} Attachment 1, note 4.

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Other provisions of the Regulations which deal with complainant's allegations include 11 C.F.R. § 100.5, which defines "political committee, subsection (g) of which pertains to "affiliated committee."^{*}/

RESPONSE

I. RNIEC is not a political committee established or maintained by a national political party.

The complaint contends that RNIEC is "a political committee established and maintained by the National Republican Party." The facts in no way support this absurd allegation. No effort is made to show that the Republican Party or its governing national committee (RNC) chartered this committee or that the governing document^{**}/ of the RNC even mentions RNIEC. Without citing a shred of evidence the complainant alleges that "RNIEC was organized by key Republican Party officials." In fact, RNIEC was organized and operated solely by Rodney A. Smith. Moreover, while Mr. Smith is flattered by the description of "key Republican Party official," he believes that "political professional" more accurately reflects his position. Mr. Smith was employed by the RNC, but severed that relationship in January 1977.

^{*}/ Attachment 1, note 5.

^{**}/ The RNC is governed by the Rules adopted by the 1980 Republican National Convention.

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Apparently the complainant believes that its allegation is buttressed by the accusation that "RNIEC's goal is to elect Republican candidates." It goes without saying that a goal, indeed the only goal, of the RNIEC is to elect Republican candidates. For the complainant to suggest, however, that because a political committee's philosophical bent is Republican or Democratic, it is therefore established and maintained by a national political party committee is patently ridiculous. Such reasoning would require the FEC to treat as legal affiliates of the Democratic National Committee such political committees as the Committee for an Effective Congress, Democrats for the '80's, the Democratic Candidates Fund, and Committee for the Future of America; and of the Republican Party, committees including the National Conservative Political Action Committee (NCPAC), Fund for a Conservative Majority, National Congressional Club, Citizens for the Republic, Committee for a Free Congress, and the Republican Senate Majority Fund.

Even more specious is the complaint's reliance on the fact that two words, "Republican" and "National" appear in RNIEC's name. There is nothing in the Act, the Regulations, legislative history, the Advisory Opinions, or the MURs of the Commission that even remotely suggests that similarity in name might be treated as an indication of

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affiliation, nor is there any basis in logic for such a conclusion. The allegation is immaterial.*/

The complainant further alleges that "RNIEC uses vendors that the official Republican Party committees use." Remarkably, the complaint does not list a single vendor which the RNC and RNIEC are alleged to have in common. The complaint lists three vendors which have been used at times by both the NRSC and the RNIEC. Yet, even those three vendors performed no more than routine services in their respective areas of business. James F. Schoener, who was engaged as one of several outside counsel to the NRSC concurrent with his serving as counsel to the RNIEC, is simply a lawyer with multiple clients in the same general area of business. The same situation applies to the other two vendors. Lynda Clancy was engaged by both committees for assistance in filling out FEC reports;**/ AAA-American Public Issues, for rental of its mailing lists.

And in arguing that the RNIEC raises money from the same donors, "perhaps" using some of the same fundraising

*/ Such an approach would, of course, tie the Democratic Party and its governing national committee, to the National Democratic Policy Committee, headed by Lyndon LaRouche. Similarly, there are well over 40 "non-connected" organizations currently registered with the FEC whose names contain the word "Republican;" over 200 organizations whose names contain the word "National," and at least one other "non-connected" political committee whose name contains both the words "National" and "Republican."

**/ Neither Schoener or Clancy performed services for the NRSC after Senator Jackson's death in September, 1983.

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lists as the "official Republican Party committees," Common Cause is alleging no more than that many of the same people may have contributed to all three committees.^{*/} It is hardly surprising, however, that an individual who would respond to a fundraising appeal from RNIEC might have responded previously to an appeal from the RNC, the NRSC or any number of Republican candidates or organizations. In examination of contributions previously made by such individuals would doubtless show that they have been responsive to requests for financial support from a multitude of political organizations including but not limited to the RNC and the NRSC. Furthermore, the names of these same individuals appear on numerous "prospecting" lists that are widely circulated and readily available to anyone interested in undertaking a fundraising effort.

It is equally unproductive -- and irresponsible -- for Common Cause to allege that RNIEC has made and will continue to make expenditures "in the same way" as NRSC. The insinuating ambiguity of the complaint is typical of the complainant's effort. It is unsurprising that complainant provides no examples of what it means by "makes campaign expenditures in the same way." To do so would serve only to strip off the thin veneer of credibility which it wishes its

^{*/} The complainant provides no evidence whatever of any overlap between contributors to the RNC and contributors to the RNIEC.

complaint to maintain. How one makes expenditures "in the same way" is left to the imagination. RNIEC can only deny the relevance of the point. RNIEC raises funds and makes expenditures using methods which are usual and customary for all political committees. There is nothing, however, in the way RNIEC makes its expenditures that is substantially dissimilar to methods used by any other political committee. Only from such a distinctive similarity could any affiliation be inferred.*/

Thus, the allegation about RNIEC's structure and past activities are without foundation. Predictions of future RNIEC activities are mere speculation, and are contradicted by the brief history of RNIEC and its activities. In short, the complaint presents nothing to support its contention and, in the face of clear evidence to the contrary, the contention must be rejected.

II. RNIEC is not "an affiliate" of NRSC.

The complainant contends that "even if RNIEC is not itself a political committee established and maintained by the National Republican Party, RNIEC is an affiliate of NRSC." The complainant, however, cites no evidence to

*/ RNIEC's only expenditure in Washington State consisted of an "election-gram" sent out via bulk rate mail approximately two and half weeks before election, which, to the best knowledge of the respondent, constituted a strategy wholly unrelated to that of any other political organization.

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support this conclusory allegation. Instead, the complainant apparently expects the Commission and the respondent to pick through the random, largely irrelevant, and often erroneous "facts" listed at the beginning of the complaint to divine the basis for the complainant's allegation.

The only support for the complainant's assertion is a citation to the rule governing affiliated committees. ("See 11 C.F.R. § 100.5(g)(2)"). The rule requires that to be affiliated, two committees must be established, financed, maintained or controlled by the same person. (See Attachment 1, note 5). A review of the indicia of establishing, financing, maintaining or controlling shows clearly that RNIEC is not affiliated with NRSC:

- (1) there is no common ownership of a controlling interest in voting shares or securities, nor is any alleged;
- (2) there are no provisions of bylaws, constitutions, or other documents by which one entity has the authority, power, or ability to direct the other, nor does the complaint allege their existence;
- (3) no person or group of persons has the authority, power or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of both entities, nor has such been alleged;*/

*/ The only individual who had any concurrent official relationship with both NRSC and RNIEC was Senator John Heinz. It is clear from his affidavit (dated November 29, 1983, and filed in connection with MUR 1596) that Senator Heinz did not occupy a role in either committee of sufficient involvement to fall within the bounds of this provision.

- (4) there have been no transfers of funds between the NRSC and the RNIEC, nor have any been alleged; and
- (5) to the extent that there may be some duplication of contributions, there is nothing to suggest anything more than that because the universe of persons who contribute regularly to political causes is limited, many pleas for funds are addressed by many organizations, both political and otherwise, to the same persons. Thus, the similar pattern of contributions specified in the rule clearly requires something more than duplicated contributions as an indication of affiliation.

Here, again, there is no credible reason to believe that the NRSC and the RNIEC are "affiliated." Accordingly, this contention must be rejected.

III. The RNIEC has not "impermissibly coordinated and acted in concert with" the NRSC.

The respondent contends that "RNIEC and NRSC are so inseparably intertwined that their campaigns for the same Republican Senatorial candidates simply cannot be deemed independent of each other," and that the expenditures of RNIEC count therefore as contributions to and expenditures by the NRSC. Again, the complaint cites no supporting evidence, leaving the Commission and the respondent to wade through the "facts" listed at the beginning of the complaint.

Regardless of what evidence the complainant might offer that the two committees are not independent of each other, the complainant's conclusion is without legal effect. As noted above, the independence of expenditures is deter-

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mined by applying the criteria set forth in Section 109.1 of the Commission's rules, 11 C.F.R. § 109.1, and the rule does not govern relationships between non-candidate committees. Non-candidate political committees may communicate freely with each other, and so long as the level of communication does not reach the threshold for "affiliation," i.e., if the committees are not established, maintained, financed or controlled by the same group of people, the contributions and expenditures of one committee will not be imputed to any other. The complainant's assertion that one committee's lack of "independence" from another will accomplish the same legal result is flatly wrong.*/

Even if it were assumed, for the sake of argument, that section 109.1 applied to the relationship between NRSC and RNIEC, applying the criteria of the rule to the facts in this case would show the requisite independence.**/

The respondent can only assume, since the complaint never so states, that the basis for the assertion is the

*/ The complainant's error is compounded by the further assertion that such a lack of independence between two political committees requires the expenditures of one committee to be treated as contributions to and expenditures by the other committee. The finding of affiliation required to treat the expenditures of one as the expenditures of the other, also requires that a conveyance of funds be treated as a "transfer of funds," not a "contribution."

**/ Legally it is required that factual evidence be produced which shows an arrangement, coordination or direction by the candidate or his or her committee or agents before independence of an expenditure can be vitiated. That standard clearly has not been met in this case.

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alleged concurrent involvement of Senator Heinz in both the NRSC and the RNIEC.* /

However, as stated in his affidavit of November 29, 1983, submitted in connection with MUR 1596 filed by the DSCC, Senator Heinz' chairmanship of the NRSC terminated in December 1980. Since that time his involvement with the NRSC has been limited to his "ex-officio" membership on the committee as a Republican Senator. He never attended any meetings of the NRSC at which the Washington State election was discussed; and there may have been no such meetings at all.

As his affidavit states, Senator Heinz attended no meetings of the NRSC after Senator Jackson's death. Senator Heinz was concerned, however, that even the appearance of his involvement in the NRSC might jeopardize his first amendment right to participate in independent expenditure activities; and on the advice of counsel, he voluntarily suspended his nominal membership in the NRSC on October 6, 1983, by requesting a leave of absence. By letter of the same date, he informed NRSC Chairman Richard Lugar of his determination to ensure his "independence from any activity

* / The limited role of the few common vendors has been discussed above, as well as the errors in fact concerning the role of Mr. Smith. Mr. Lawrence C. McCarthy (Complaint, para. 11) does not have nor has ever had any role with RNIEC. The alleged involvement was reported in error by the Washington Post and retracted the day following the initial article, a fact apparently overlooked by complainant. See Attachment 2.

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carried on by the NRSC or contact with the Evans' campaign;" and in his affidavit attested that "my staff and I, and to my knowledge and belief the RNIEC, have fully complied with the statements therein." See Attachments 3 and 4. On November 14, 1983, Senator Heinz submitted his resignation to the NRSC, never having resumed his suspended membership.

Even if Senator Heinz had not taken careful and prudent steps to remove himself from the activities of the NRSC, it is important to note that he was merely one Senator out of sixteen whose membership comprised the NRSC. Moreover, as indicated in his affidavit, none of those Senators "runs" the NRSC. That function belongs solely and exclusively to the Chairman of the NRSC, Senator Richard Lugar. In short, neither Senator Heinz, nor any of the other members of the NRSC (except Senator Lugar, the current NRSC Chairman), exercises any control over the activities, plans or expenditures of the NRSC.

Similarly, Senator Heinz also exercised no real control over the day-to-day operations of RNIEC. As evidenced by his affidavit, his involvement has been limited to signing an "election-gram," serving as Chairman of the RNIEC's "Advisory Panel," making a voluntary personal contribution and helping the RNIEC raise funds.

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IV. The RNIEC maintained its legal independence from the Evans campaign and therefore had a constitutional right to make independent expenditures on behalf of Senator Evans.

The complainant alleges that "RNIEC obtained information from or about the Evans campaign through NRSC or elsewhere and thereby coordinated its expenditures with Senator Evans' campaign efforts." The facts prove just the opposite. As Senator Heinz stated in the sworn affidavit he submitted in response to MVR 1596, "at no time have I, my staff, or to my knowledge the RNIEC, ever conferred with Senator Evans, his agents or his authorized committee, or with any member or agent of any state or national party committee concerning the plans, projects or needs of the Evans' campaign." Moreover, the sworn statement of Rodney Smith^{*/} corroborates the independence between RNIEC and the NRSC and the Evans campaign. He states,

I certify that I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee.^{**/}

No factual response is merited to so loose and legally inadequate an allegation as that RNIEC may have obtained information "elsewhere." This appears to be an even more imprecise version of complainant's previous

^{*/} A similar affidavit of Elizabeth Warren Smith will be forwarded forthwith.

^{**/} Attachment 5.

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unsuccessful attempts, in other proceedings, to argue that an expenditure is "coordinated with" a candidate's authorized campaign committee "through information conveyed by public statements, press releases, press reports, and campaign finance reports,"^{*} and thereby becomes a "contribution" within the meaning of the federal election laws. That argument, and the equally imprecise allegation the complainant proffers here that RNIEC obtained information "elsewhere," carry far beyond the law as set forth in 11 C.F.R. § 109.1 and previous Commission actions.

V. The evidence does not support a finding of reason to believe

The facts presented in this case do not support a finding that there is reason to believe a violation of the Act has occurred with respect to RNIEC's activities. While the Commission will accept a complaint based on "substantial news stories" (6 FEC Record No. 1 at 3, Jan. 1980),^{**} such a standard is far too tenuous to support a finding of reason to believe."

It would be charitable to say that the affidavit of verification accompanying the complaint rises to the

^{*}/ Brief for complainant, Count II, Common Cause, et al. v. Harrison Schmitt, et al., (D.D.C.) Civil Act No. 80-1609.

^{**}/ There remains the legitimate question as to whether the two news stories are worthy of being considered "substantial."

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level of information and belief. It states only that "statements are based on the sources indicated." Thus counsel for complainant, not the complainant, swears that the statements "are true and correct to the best of his information and belief" because he read them in newspapers. Such an affidavit cannot stand against an affidavit of personal knowledge, such as those submitted in this proceeding and in MUR 1596 by Senator Heinz and Mr. Smith, which swear to the truth of the statements contained therein, rather than to the existence of a newspaper article.

The facts provided by the respondent refute every point raised by the complaint to and beyond those issues that can be discerned in the complaint. When the applicable regulations and statutory provisions are applied to these facts it is clear that there is no reason to believe that a violation has occurred.

VI. Conclusion

It is patently clear that the complaint is unsupported by evidence and constructed with ambiguity in order to use the Commission's processes to chill the First Amendment rights specifically upheld in Buckley v. Valeo. The applicable law and the facts of this case speak compellingly in response to the complaint. They do not speak, however, to the serious policy question raised by invoking the slenderest reed of evidence, supported only by Common Cause's

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suspensions, to mute the free speech rights of RNIEC and its contributors.*

The Commission must be vigilant against efforts to make it a party to violations of the civil rights of groups or individuals. It must resist such efforts by applying swiftly a fair but rigorous standard of proof to complaints which would result in a chilling effect on a respondent's freedom of speech and association.

In light of the information presented, it is respectfully submitted that there is insufficient evidence to warrant a reason to believe that RNIEC's expenditures supporting Senator Evans were not independent within the spirit and the letter of the law. Therefore, the Commission should find that there is no reason to believe that the

*/ Complainant is aware that by placing RNIEC under a cloud of uncertainty concerning its independence, it can preclude RNIEC from any effective political role. It knows that the longer that cloud can be maintained via the pendency of the complaint it has filed, the harder it will be for RNIEC to raise funds and to speak out should it choose to do so.

R 5 0 4 0 5 1 4 4 3 0

respondent has committed any violation of the Act and
dismiss the complaint.

Respectfully submitted,

REPUBLICAN NATIONAL INDEPENDENT
EXPENDITURE COMMITTEE

By


Stephen A. Sharp


Carol C. Darr

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM
919 Eighteenth Street, N.W.
Washington, D.C. 20006

Its Attorneys

January 6, 1984

85040514431

VERIFICATION

The undersigned President for respondent, Republican Independent Expenditure Committee, swears that the statements in this complaint are based on the sources indicated, and, as such, are true and correct to the best of his information and belief.

Rodney B. Smith
Rodney A. Smith

Subscribed and sworn before
me this 6th day of January,
1984.

Phillip C. Beaver
Notary Public

My Commission Expires: _____ My Commission Expires August 14, 1987

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Attachment 1

Note 1 The term "independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

Note 2 (a) "Independent expenditure" means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.

(b) For purposes of this definition --

.

(4) "Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate" means --

(i) Any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is --

(A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made;

(B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent;

(ii) But does not include providing to the expending person upon request Commission guidelines on independent expenditures.

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(Note 2 continued)

(5) "Agent" means any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.

Note 3 § 111.7 General Counsel's recommendation on complaint-generated matters (2 U.S.C. 437g(a)(1)).

(a) Following either the expiration of the fifteen (15) day period specified by 11 C.F.R. 111.6(a) or the receipt of a response as specified by 11 C.F.R. 111.6(a), whichever occurs first, the General Counsel may recommend to the Commission whether or not it should find reason to believe that a respondent has committed or is about to commit a violation of statutes or regulations over which the Commission has jurisdiction.

(b) The General Counsel may recommend that the Commission find that there is no reason to believe that a violation has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of 11 C.F.R. 111.6(a).

Note 4 § 111.9 The reason to believe finding; notification (2 U.S.C. 437g(a)(2)).

(a) If the Commission, either after reviewing a complaint-generated recommendation as described in 11 C.F.R. 111.7 and any response of a respondent submitted pursuant to 11 C.F.R. 111.6, or after reviewing an internally-generated recommendation as described in 11 C.F.R. 111.8, determines by an affirmative vote of four (4) of its members that it has reason to believe that a respondent has violated a statute or regulation over which the Commission has jurisdiction, its Chairman or Vice Chairman shall notify such respondent of the Commission's finding by letter, setting forth the sections of the statute or regulations alleged to have been violated and the alleged factual basis supporting the finding.

85040514435

(Note 4 continued)

(b) If the Commission finds no reason to believe, or otherwise terminates its proceedings, the General Counsel shall so advise both complainant and respondent by letter.

Note 5

(2) All committees (including a separate segregated fund, see 11 CFR Part 114) established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated.

(ii) For organizations not covered by paragraph (g)(2)(i) of this section, indicia of establishing, financing, maintaining, or controlling include:

(A) Ownership of a controlling interest in voting shares or securities;

(B) Provisions of bylaws, constitutions, or other documents by which one entity has the authority, power, or ability to direct another entity;

(C) The authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of an entity;

(D) Similar patterns of contributions;

(2) All committees (including a separate segregated fund, see 11 CFR Part 114) established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated.

(E) The transfer of funds between committees which represent a substantial portion of the funds of either the transferor or transferee committee, other than the transfer of funds between the committees which jointly raised the funds so transferred.

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Washington Post Staff Writer

DES MOINES, Nov. 16—George McGovern today thrust himself into the national defense debate between former vice president Walter F. Mondale and Sen. John Glenn (D-Ohio), accusing the front-runners for the Democratic presidential nomination of not offering a clear alternative to President Reagan.

McGovern, the party's 1972 nominee, said Glenn and Mondale differ only in degree from Reagan and advocate increased defense spending "when we should be cutting the wasteful, bloated monster that is devouring our national substance and fueling an open-ended arms race."

"If you want a 10 percent increase in military spending every year, vote

Corrections

Lawrence C. McCarthy was identified incorrectly yesterday as a member of the board of the Republican National Independent Expenditure Committee.

Annual trade between West Germany and the Soviet Union is 20 billion German marks (about \$9 billion), not \$20 billion as reported yesterday.

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JOHN HEINZ
United States Senate

October 6, 1983

Honorable Richard L. Lugar
Chairman
National Republican Senatorial Committee
Washington, D. C. 20510

Dear *Dick* Senator Lugar:

As you know, I have agreed to become Chairman of the Advisory Council of the recently-formed Republican National Independent Expenditure Committee ("RNIEC"). The RNIEC is now involved in fund-raising and will, among other things, make "independent expenditures" within the meaning of the Federal election laws, in support of Republican candidates for National office. Considering the tremendous challenge that the Republican Party is facing in the upcoming elections, I am committed to doing everything possible to preserve the Republican majority in the Senate and in turning the tide in the House, and that the RNIEC can be a major force in helping to achieve these goals.

As you know, I am presently a member of the National Republican Senatorial Committee ("NRSC"), and have been active in NRSC affairs. However, with the recently scheduled Senatorial primary and special election in the State of Washington, it is now necessary that I alter my NRSC role.

In order that I may be involved in the independent expenditure activities of the RNIEC, it is necessary under the election laws that I not engage in any discussion or action in which a candidate, his staff or campaign committee(s) participate, concerning the plans, conduct or needs of that candidate or his campaign. The same is the case for my staff and the officers, directors and staff of the RNIEC. For this reason, effective immediately, I suspend myself from all campaign related activities pertaining to the Dan Evans race and shall take a leave of absence from the NRSC through and including the special Senatorial election in Washington State to be decided on November 8. I am advised by counsel, however, that I may

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continue to remain active in fundraising activities for individual Republican candidates and all Party Committees, specifically including the NRSC. I therefore intend to remain active, as I have previously, in all fundraising activities that benefit the NRSC. I am advised by counsel that I will be free to resume my role in all NRSC activities subsequent to November 8, 1983.

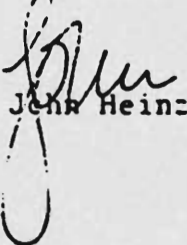
For your information the RNIEC will make no independent expenditures in any primary election. However, it will, at some point in 1984, be necessary for me to suspend my NRSC campaign involvement in general election campaigns (other than for fundraising purposes) where there is the possibility of RNIEC involvement.

During the period of my leave of absence from the Evans campaign activities of the NRSC, I shall not engage in any consultation or communication with the NRSC or its staff, or with the candidate, his staff or committee, concerning the plans or activities of the candidate or his campaign. I have instructed my own staff and the officers, directors and staff of the RNIEC to act in the same way. Similarly, I request that the members and staff of the NRSC not engage in any such discussion with me or these persons during the period of my leave. I would appreciate your transmitting this request.

Republican success in these critical times is utterly dependent upon the broadest possible participation of committees such as the RNIEC and NRSC. I am confident that we can reach our goals.

With best wishes,

Sincerely,


John Heinz

JH/ml

cc Mitch Daniels
Kevin Talley
Rod Smith

83040514441

85040514442

United States Senate

WASHINGTON, D. C. 20510

November 29, 1983

Charles N. Steele, Esquire,
General Counsel
Federal Election Commission
1325 K Street, Northwest
Washington, D. C. 20463

RE: Matter MUR 1596

Dear Mr. Steele:

This letter is submitted in response to your letter to me dated November 15, 1983, and signed on your behalf by the Commission's Associate General Counsel. Thank you for the opportunity to address the ill-founded and misleading charge of the Democratic Senatorial and Congressional Campaign Committees that either the Republican National Independent Expenditure Committee ("RNIEC") or I somehow acted improperly in connection with the expenditures made during the recent senatorial campaign in the State of Washington.

I respectfully suggest to you and the Commission that this charge is based upon a fundamental and easily demonstrable factual error and that it is otherwise deficient as a matter of law and fact. At all times, my conduct has been utterly consistent with the requirements of the Federal Election Campaign Act of 1971. Additionally, to my knowledge and belief, the RNIEC, which will respond to the Commission separately, has also acted lawfully and properly in connection with the matter raised. For these reasons, I ask that the Commission decline to proceed further as to the instant complaint.

The complaint at issue has as its only "factual" basis a November 7, 1983, article from the Wall Street Journal. The Commission has addressed its authority to proceed on such hearsay complaints, concluding that it could do so under its supervisory powers (2 U.S.C. §437g(a)(2)). However, sensibly, the Commission historically has declined to proceed on complaints of this nature when they are based on nothing more than the reiteration of the contents of a newspaper article. The present matter amply demonstrates why this historical view of the Commission should be continued.

Charles N. Steele
Page Two
November 29, 1983

Contrary to the erroneous statement of the Wall Street Journal, reiterated as the basis for their complaint by the Democratic committees, I am not and never have been the Chairman of the RNIEC. I am the Chairman of that Committee's "Advisory Panel," and that function is precisely what the title should imply. I have provided general advice and have been the signatory on RNIEC mailings, but I have never directed the operations of the RNIEC, made its decisions or controlled its Chairman or agents. The Democratic committees' charge is premised upon their false belief that I am the Chairman of the RNIEC. This error derives from the incorrect Wall Street Journal article, and even a cursory investigation by the complainants could have disclosed it. In any event, it is at least fair to say that with the ultimate recognition of this compounded error, the stated basis for the charge has been eliminated and closure of this matter is therefore appropriate. I think it also important to note, however, that the charge is otherwise defective as well.

The complainants erroneously suggest that there might be an inherent impropriety when a member of a party committee is also involved in the activities of an organization making independent expenditures. This haphazard assertion is rebutted by the fact well recognized by the Commission that the first amendment rights of an independent spender under the Federal Election Campaign Act of 1971, as that Act has been interpreted by the Supreme Court in the case of Buckley v. Valeo, may only be vitiated by the independent spender's own actions, not his position. The complainants' charge is especially inappropriate in my own case.

I have been a member of the National Republican Senatorial Committee ("NRSC"), although I did resign that post formally on November 14, 1983. The Commission should be aware of the fact that on October 6, 1983, long before the expenditures at issue here were made and the Wall Street Journal article written and derivative charge filed, I took a leave of absence from the NRSC and informed its Chairman of the necessity to comply with the Federal elections laws by insuring my independence from any activity carried on by the NRSC or contact made with the Evans' campaign. Attached is a copy of my October 6, 1983, letter to the NRSC Chairman, and I attest that my staff and I, and to my knowledge and belief the RNIEC, have fully complied with the statements therein.

In further point of fact, the Commission should be aware that mere membership on the NRSC is an ex officio matter. All elected Republican senators are appointed to one of several party-related committees, one of which is the NRSC. A member, however, only has advisory functions. The NRSC Chairman employs and directs the Committee's staff which in no way reports to the Committee's members. He also initiates and directs by his sole discretion its programs and decides the expenditures and activities on behalf of individual candidates for the committee. Although I am a past Chairman of the NRSC, I have not held that post since December, 1980. Obviously, I was not the NRSC's Chairman at any time material to this case.

In 1983, and prior to the death of Senator Henry Jackson and the subsequent appointment and candidacy of Senator Dan Evans to succeed him, the NRSC had three meetings which I attended. My role was entirely an auditory one at these meetings, which, because of their timing, could have had nothing to do with the Evans campaign, which then did not exist. Since Senator Jackson's untimely death, I have attended no meeting of the NRSC. In sum, I was neither "in a position to work through NRSC in close cooperation with Mr. Evans," as the complainants charge, nor did I in fact, or did the RNIEC, do anything to vitiate my dependence from Senator Evans or his campaign.

As is my first amendment right, I have urged persons to contribute to the RNIEC and signed an "electiongram" asking the voters of Washington to turn out on behalf of Senator Dan Evans in his November 1983 election. However, at no time have I, my staff, or to my knowledge the RNIEC, ever conferred with Senator Evans, his agents or his authorized committee, or with any member or agent of any state or national party committee regarding the plans, projects or needs of the Evans' campaign.

The charge of the Democratic committees is characterized by its exaggerated and pejorative tone. Such invective is both unwarranted and inconsistent with the stature and function of the Federal Election Commission. For present purposes, it is only necessary for me to restate that the instant charge has a factually-erroneous basis, and that said charge is otherwise substantively inaccurate in fact and in law. Accordingly, I respectfully urge both you and the Commission to close this matter after declining to proceed further as to the complaint.

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Charles N. Steele
Page Four
November 29, 1983

Thank you for your consideration.

Sincerely,

John Heinz

CITY OF WASHINGTON)
) SS
DISTRICT OF COLUMBIA)

On this 29th day of November, 1983, personally appeared before me, a Notary Public in and for said City and District, John Heinz, who being duly sworn said that the above letter was true and correct.

Notary Public

My commission expires:

85040514446

85040514447

Washington)
District of Columbia) ss:

On this 6th day of January, 1984, before me, Phillip A. Beaver, a notary public in and for the District of Columbia, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Rodney A. Smith, and, being duly sworn, deposes and says:

I, Rodney A. Smith, certify that the statements contained in the certificate dated September 19, 1983, and filed as Exhibit B in MUR 1596, as follows:

I certify I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 nor was my decision to approve making independent expenditures by the RNIEC in support of Dan Evans made on the basis of any request or suggestion of the candidate, his committee or his or their agents.

I further certify that said independent expenditures are not being made in cooperation, consultation, or in concert with the candidate, his campaign committee or his or their agents. Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee. Further, I certify that these expenditures do not involve the financing of or dissemination, distribution or republication in whole or in part of any campaign material prepared by the candidate, his campaign committee or their agents.

were and are true and correct to the best of my knowledge and belief. These statements were made initially by me in my capacity as Director of the Republican National Independent Expenditure Committee, pursuant to the first meeting of the Board of Directors.

Rodney A. Smith
Rodney A. Smith

Subscribed and sworn to before me this 6th day of January, 1984.

Phillip A. Beaver
Notary Public

My commission expires: My Commission Expires August 14, 1987

85040514448

Washington)
) ss:
District of Columbia)

On this 6th day of January, 1984, before me, Christine Bell, a notary public in and for the District of Columbia, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared James F. Schoener, and, being duly sworn, deposes and says:

I, James F. Schoener, certify that the statements contained in the certificate dated September 19, 1983, and filed as Exhibit B in MUR 1596, as follows:

I certify I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 nor was my decision to approve making independent expenditures by the RNIEC in support of Dan Evans made on the basis of any request or suggestion of the candidate, his committee or his or their agents.

I further certify that said independent expenditures are not being made in cooperation, consultation, or in concert with the candidate, his campaign committee or his or their agents. Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee. Further, I certify that these expenditures do not involve the financing of or dissemination, distribution or republication in whole or in part of any campaign material prepared by the candidate, his campaign committee or their agents.

were and are true and correct to the best of my knowledge and belief. These statements were made initially by me in my capacity as Director of the Republican National Independent Expenditure Committee, pursuant to the first meeting of the Board of Directors.

James F. Schoener

Subscribed and sworn to before me this 6th day of January, 1984.

Christine Bell
Notary Public

My commission expires:

My Commission Expires January 1985

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84 JAN 10 P 5: 37

BY HAND

The Honorable Lee Ann Elliott
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

919 EIGHTEENTH STREET, N.W.

WASHINGTON, D.C. 20006

GCC#1292

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COMMISSION SECRETARY
SKADDEN, ARPS, SLATE, MEAGHER & FLOM

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NEW YORK 10022-9931
(212) 371-8000

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BEARSLAW NEW YORK
FAX: 710-551-3814
TELEX: 645888
TELECOPIER:
(212) 752-1084

JAN 11 A10:43

ONE BEACON STREET
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(617) 552-0000
919 EIGHTEENTH STREET, N.W.
WASHINGTON, D.C. 20006
(202) 462-8700
ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 426-8800

January 10, 1984

BY HAND

The Honorable Lee Ann Elliott
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Chairman Elliott:

Enclosed is a copy of the Motion to Dismiss MUR 1602 delivered to the Office of General Counsel last Friday by the Republican Independent Expenditure Committee to the complaint filed by Common Cause. Also enclosed is the affidavit of Elizabeth Warren Smith and a certification by Rodney A. Smith. The certification by Mr. Smith replaces the certification originally filed with the Motion to Dismiss.

Sincerely,

Carol C. Darr
Carol C. Darr

Enclosure

/jar

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JAN 11 P12:21

VERIFICATION

The undersigned President for respondent, Republican Independent Expenditure Committee, swears that the statements in this complaint are true and correct to the best of his information and belief.

Rodney A. Smith
Rodney A. Smith

Subscribed and sworn before
me this 9th day of January,
1984.

Shylla C. Beaver
Notary Public

My Commission Expires: My Commission Expires August 14, 1987

85040514452

111 p12:21

AFFIDAVIT

Washington)
) ss:
District of Columbia)

On this 6th day of January, 1984, before me, Phillip L. [Signature], a notary public in and for the District of Columbia, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Elizabeth Warren Smith, and, being duly sworn, deposes and says:

I, Elizabeth Warren Smith, certify that the statements contained in the certificate dated September 19, 1983, and filed as Exhibit B in MUR 1596, as follows:

I certify I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 nor was my decision to approve making independent expenditures by the RNIEC in support of Dan Evans made on the basis of any request or suggestion of the candidate, his committee or his or their agents.

I further certify that said independent expenditures are not being made in cooperation, consultation, or in concert with the candidate, his campaign committee or his or their agents. Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee. Further, I certify that these expenditures do not involve the financing of or dissemination, distribution or republication in whole or in part of any campaign material prepared by the candidate, his campaign committee or their agents.

were and are true and correct to the best of my knowledge and belief. These statements were made initially by me in my capacity as Director of the Republican National Independent Expenditure Committee, pursuant to the first meeting of the Board of Directors.

Elizabeth Warren Smith
Elizabeth Warren Smith

Subscribed and sworn to before me this 6th day of January, 1984.

Phillip L. [Signature]
Notary Public

My commission expires: My Commission Expires August 14, 1987

85040314453

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Attachment 1

Note 1

The term "independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

Note 2

(a) "Independent expenditure" means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.

(b) For purposes of this definition --

.

(4) "Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate" means --

(i) Any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is --

(A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made;

(B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent;

(ii) But does not include providing to the expending person upon request Commission guidelines on independent expenditures.

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(Note 2 continued)

(5) "Agent" means any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.

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(Note 4 continued)

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Note 5

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Washington Post Staff Writer

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JOHN HEINZ
United States Senate

October 6, 1983

Honorable Richard L. Lugar
Chairman
National Republican Senatorial Committee
Washington, D. C. 20510

Dear Senator ^{Dick}Lugar:

As you know, I have agreed to become Chairman of the Advisory Council of the recently-formed Republican National Independent Expenditure Committee ("RNIEC"). The RNIEC is now involved in fund-raising and will, among other things, make "independent expenditures" within the meaning of the Federal election laws, in support of Republican candidates for National office. Considering the tremendous challenge that the Republican Party is facing in the upcoming elections, I am committed to doing everything possible to preserve the Republican majority in the Senate and in turning the tide in the House, and that the RNIEC can be a major force in helping to achieve these goals.

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85040314461

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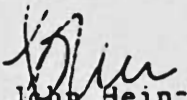
For your information the RNIEC will make no independent expenditures in any primary election. However, it will, at some point in 1984, be necessary for me to suspend my NRSC campaign involvement in general election campaigns (other than for fundraising purposes) where there is the possibility of RNIEC involvement.

During the period of my leave of absence from the Evans campaign activities of the NRSC, I shall not engage in any consultation or communication with the NRSC or its staff, or with the candidate, his staff or committee, concerning the plans or activities of the candidate or his campaign. I have instructed my own staff and the officers, directors and staff of the RNIEC to act in the same way. Similarly, I request that the members and staff of the NRSC not engage in any such discussion with me or these persons during the period of my leave. I would appreciate your transmitting this request.

Republican success in these critical times is utterly dependent upon the broadest possible participation of committees such as the RNIEC and NRSC. I am confident that we can reach our goals.

With best wishes,

Sincerely,


John Heinz

JH/ml

cc Mitch Daniels
Kevin Talley
Rod Smith

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United States Senate

WASHINGTON, D. C. 20510

November 29, 1983

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, Northwest
Washington, D. C. 20463

RE: Matter MUR 1596

Dear Mr. Steele:

This letter is submitted in response to your letter to me dated November 15, 1983, and signed on your behalf by the Commission's Associate General Counsel. Thank you for the opportunity to address the ill-founded and misleading charge of the Democratic Senatorial and Congressional Campaign Committees that either the Republican National Independent Expenditure Committee ("RNIEC") or I somehow acted improperly in connection with the expenditures made during the recent senatorial campaign in the State of Washington.

I respectfully suggest to you and the Commission that this charge is based upon a fundamental and easily demonstrable factual error and that it is otherwise deficient as a matter of law and fact. At all times, my conduct has been utterly consistent with the requirements of the Federal Election Campaign Act of 1971. Additionally, to my knowledge and belief, the RNIEC, which will respond to the Commission separately, has also acted lawfully and properly in connection with the matter raised. For these reasons, I ask that the Commission decline to proceed further as to the instant complaint.

The complaint at issue has as its only "factual" basis a November 7, 1983, article from the Wall Street Journal. The Commission has addressed its authority to proceed on such hearsay complaints, concluding that it could do so under its supervisory powers (2 U.S.C. §437g(a)(2)). However, sensibly, the Commission historically has declined to proceed on complaints of this nature when they are based on nothing more than the reiteration of the contents of a newspaper article. The present matter amply demonstrates why this historical view of the Commission should be continued.

Charles N. Steele
Page Two
November 29, 1983

Contrary to the erroneous statement of the Wall Street Journal, reiterated as the basis for their complaint by the Democratic committees, I am not and never have been the Chairman of the RNIEC. I am the Chairman of that Committee's "Advisory Panel," and that function is precisely what the title should imply. I have provided general advice and have been the signatory on RNIEC mailings, but I have never directed the operations of the RNIEC, made its decisions or controlled its Chairman or agents. The Democratic committees' charge is premised upon their false belief that I am the Chairman of the RNIEC. This error derives from the incorrect Wall Street Journal article, and even a cursory investigation by the complainants could have disclosed it. In any event, it is at least fair to say that with the ultimate recognition of this compounded error, the stated basis for the charge has been eliminated and closure of this matter is therefore appropriate. I think it also important to note, however, that the charge is otherwise defective as well.

The complainants erroneously suggest that there might be an inherent impropriety when a member of a party committee is also involved in the activities of an organization making independent expenditures. This haphazard assertion is rebutted by the fact well recognized by the Commission that the first amendment rights of an independent spender under the Federal Election Campaign Act of 1971, as that Act has been interpreted by the Supreme Court in the case of Buckley v. Valeo, may only be vitiated by the independent spender's own actions, not his position. The complainants' charge is especially inappropriate in my own case.

I have been a member of the National Republican Senatorial Committee ("NRSC"), although I did resign that post formally on November 14, 1983. The Commission should be aware of the fact that on October 6, 1983, long before the expenditures at issue here were made and the Wall Street Journal article written and derivative charge filed, I took a leave of absence from the NRSC and informed its Chairman of the necessity to comply with the Federal elections laws by insuring my independence from any activity carried on by the NRSC or contact made with the Evans' campaign. Attached is a copy of my October 6, 1983, letter to the NRSC Chairman, and I attest that my staff and I, and to my knowledge and belief the RNIEC, have fully complied with the statements therein.

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In further point of fact, the Commission should be aware that mere membership on the NRSC is an ex officio matter. All elected Republican senators are appointed to one of several party-related committees, one of which is the NRSC. A member, however, only has advisory functions. The NRSC Chairman employs and directs the Committee's staff which in no way reports to the Committee's members. He also initiates and directs by his sole discretion its programs and decides the expenditures and activities on behalf of individual candidates for the committee. Although I am a past Chairman of the NRSC, I have not held that post since December, 1980. Obviously, I was not the NRSC's Chairman at any time material to this case.

In 1983, and prior to the death of Senator Henry Jackson and the subsequent appointment and candidacy of Senator Dan Evans to succeed him, the NRSC had three meetings which I attended. My role was entirely an auditory one at these meetings, which, because of their timing, could have had nothing to do with the Evans campaign, which then did not exist. Since Senator Jackson's untimely death, I have attended no meeting of the NRSC. In sum, I was neither "in a position to work through NRSC in close cooperation with Mr. Evans," as the complainants charge, nor did I in fact, or did the RNIEC, do anything to vitiate my dependence from Senator Evans or his campaign.

As is my first amendment right, I have urged persons to contribute to the RNIEC and signed an "electiongram" asking the voters of Washington to turn out on behalf of Senator Dan Evans in his November 1983 election. However, at no time have I, my staff, or to my knowledge the RNIEC, ever conferred with Senator Evans, his agents or his authorized committee, or with any member or agent of any state or national party committee regarding the plans, projects or needs of the Evans' campaign.

The charge of the Democratic committees is characterized by its exaggerated and pejorative tone. Such invective is both unwarranted and inconsistent with the stature and function of the Federal Election Commission. For present purposes, it is only necessary for me to restate that the instant charge has a factually-erroneous basis, and that said charge is otherwise substantively inaccurate in fact and in law. Accordingly, I respectfully urge both you and the Commission to close this matter after declining to proceed further as to the complaint.

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Charles N. Steele
Page Four
November 29, 1983

Thank you for your consideration.

Sincerely,

John Heinz

CITY OF WASHINGTON)
) SS
DISTRICT OF COLUMBIA)

On this 29th day of November, 1983, personally appeared before me, a Notary Public in and for said City and District, John Heinz, who being duly sworn said that the above letter was true and correct.

Notary Public

My commission expires:

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Washington)
) ss:
District of Columbia)

On this 6th day of January, 1984, before me, Phillip A. Beaver, a notary public in and for the District of Columbia, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Rodney A. Smith, and, being duly sworn, deposes and says:

I, Rodney A. Smith, certify that the statements contained in the certificate dated September 19, 1983, and filed as Exhibit B in MUR 1596, as follows:

I certify I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 nor was my decision to approve making independent expenditures by the RNIIC in support of Dan Evans made on the basis of any request or suggestion of the candidate, his committee or his or their agents.

I further certify that said independent expenditures are not being made in cooperation, consultation, or in concert with the candidate, his campaign committee or his or their agents. Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee. Further, I certify that these expenditures do not involve the financing of or dissemination, distribution or republication in whole or in part of any campaign material prepared by the candidate, his campaign committee or their agents.

were and are true and correct to the best of my knowledge and belief. These statements were made initially by me in my capacity as Director of the Republican National Independent Expenditure Committee, pursuant to the first meeting of the Board of Directors.

Rodney A. Smith
Rodney A. Smith

Subscribed and sworn to before me this 6th day of January, 1984.

Phillip A. Beaver
Notary Public

My commission expires: My Commission Expires August 14, 1987

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Washington)
) ss:
District of Columbia)

On this 6th day of January, 1984, before me, Christine Bell, a notary public in and for the District of Columbia, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared James F. Schoener, and, being duly sworn, deposes and says:

I, James F. Schoener, certify that the statements contained in the certificate dated September 19, 1983, and filed as Exhibit B in MUR 1596, as follows:

I certify I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 nor was my decision to approve making independent expenditures by the RNIEC in support of Dan Evans made on the basis of any request or suggestion of the candidate, his committee or his or their agents.

I further certify that said independent expenditures are not being made in cooperation, consultation, or in concert with the candidate, his campaign committee or his or their agents. Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee. Further, I certify that these expenditures do not involve the financing of or dissemination, distribution or republication in whole or in part of any campaign material prepared by the candidate, his campaign committee or their agents.

were and are true and correct to the best of my knowledge and belief. These statements were made initially by me in my capacity as Director of the Republican National Independent Expenditure Committee, pursuant to the first meeting of the Board of Directors.

James F. Schoener

Subscribed and sworn to before me this 6th day of January, 1984.

Christine Bell
Notary Public

My commission expires:

My Commission Expires January 1985

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In the Matter of
Republican National
Independent Expenditure
Committee

MUR 1602

RESPONDENT'S MOTION TO DISMISS

This Matter Under Review ("MUR") comes before the Federal Election Commission ("Commission" or "FEC") upon a complaint dated November 22, 1983, filed by Common Cause. The Republican National Independent Expenditure Committee, by its attorneys, hereby responds to said complaint, and urges that it be dismissed.

The complaint attempts to show that certain expenditures made by RNIIEC in 1983 were not "independent expenditures" within the meaning of the statute, 2 U.S.C. § 431(17), and the Commission's Regulations, 11 C.F.R. § 109.1. The complaint alleges that relationships which would vitiate RNIIEC's independence existed between the RNIIEC and each of the following political committees: Evans for Senate Committee ("Evans campaign"); Republican National Committee ("RNC"); National Republican Senatorial Committee ("NRSC").

Statement of Facts

The RNIEC registered with the FEC on March 16, 1983, as a political committee making expenditures on behalf of more than one federal candidate.*/

The RNEIC was established by Rodney A. Smith**/ for the purpose of fostering the presence of responsible Republicans in public office by means of independently publicizing positive aspects of their qualifications. In order to raise funds for this endeavor, usual and customary methods of generating political contributions were utilized including direct mail, telephone solicitations and personal contacts.

On September 1, 1983, Senator Henry M. Jackson died unexpectedly. Daniel Evans was sworn in on or about September 12, 1983, to fill the vacancy left by Senator Jackson's death, and on the same day Senator Evans filed as a candidate for the special election to be held in Washington State on November 8, 1983.

On September 19, 1983, the RNIEC formally decided to make independent expenditures in support of the Dan Evans campaign during the general election.

*/ While RNIEC has contributed to more than one candidate, it has not qualified as a "multicandidate committee" as stated in the complaint. Complaint, para. 3.

**/ Smith served as Treasurer and Finance Director of the NRSC from January 1977 until his resignation in December 1982.

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On October 6, 1983, Senator Heinz voluntarily suspended his membership in the NRSC, by requesting a leave of absence, although he had attended no meetings of the NRSC after Senator Jackson's death.

During the week of October 18, 1983, the RNIEC mailed "election-grams" to selected geographic areas within the State of Washington. These "election-grams" were signed by Senator John Heinz and advocated the election of Daniel Evans.

On November 7, 1983, the Wall Street Journal published an article concerning these "election-grams." The same day the Democratic Senatorial Campaign Committee ("DSCC") held a press conference and filed a complaint (MUR 1596) denouncing the fact that the expenditures were made by individuals who were "in a position to" work in cooperation with the NRSC, and challenging the "independence" of these expenditures.

On November 22, 1983, Common Cause filed the instant complaint.

The Common Cause complaint challenging the independence of RNIEC's expenditures in the State of Washington relies on (pp. 7-8) four contentions:

- (1) that RNIEC is "a political committee established and maintained by a national political party;"
- (2) that RNIEC is "an affiliate" of NRSC;
- (3) that RNIEC has "impermissibly coordinated" and "acted in concert" with NRSC; and

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- (4) that RNIEC "obtained information from or about the Evans campaign . . . and thereby coordinated its expenditures" with the Evans campaign."

By its affidavit attached to the complaint, the complainant swore that the complaint is based on the "sources indicated" in the complaint (i.e., Wall Street Journal article, Nov. 7, 1983; Washington Post article, Nov. 16, 1983; RNIEC's October 25, 1983 report to the Commission).

APPLICABLE LAW

The legal framework within which the "independence" of an expenditure is determined is the statutory definition of "independent expenditure" found in Section 432(17) of the Federal Election Campaign Act, 2 U.S.C. § 431(17)^{*/} and in the implementing Commission Regulation, 11 C.F.R. § 109.1.^{**/}

Disposition of the complaint is governed by 11 C.F.R. §§ 111.7 and 111.9, which, respectively, allow the General Counsel to recommend to the Commission whether or not it should find reason to believe that RNIEC has violated the statute or a Commission Regulation,^{***/} and require the Commission to act by "an affirmative vote of four" on the complaint and response.^{****/}

^{*/} Attachment 1, note 1.

^{**/} Attachment 1, note 2.

^{***/} Attachment 1, note 3.

^{****/} Attachment 1, note 4.

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Other provisions of the Regulations which deal with complainant's allegations include 11 C.F.R. § 100.5, which defines "political committee, subsection (g) of which pertains to "affiliated committee."^{*}/

RESPONSE

I. RNIEC is not a political committee established or maintained by a national political party.

The complaint contends that RNIEC is "a political committee established and maintained by the National Republican Party." The facts in no way support this absurd allegation. No effort is made to show that the Republican Party or its governing national committee (RNC) chartered this committee or that the governing document^{**}/ of the RNC even mentions RNIEC. Without citing a shred of evidence the complainant alleges that "RNIEC was organized by key Republican Party officials." In fact, RNIEC was organized and operated solely by Rodney A. Smith. Moreover, while Mr. Smith is flattered by the description of "key Republican Party official," he believes that "political professional" more accurately reflects his position. Mr. Smith was employed by the RNC, but severed that relationship in January 1977.

^{*}/ Attachment 1, note 5.

^{**}/ The RNC is governed by the Rules adopted by the 1980 Republican National Convention.

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Apparently the complainant believes that its allegation is buttressed by the accusation that "RNIEC's goal is to elect Republican candidates." It goes without saying that a goal, indeed the only goal, of the RNIEC is to elect Republican candidates. For the complainant to suggest, however, that because a political committee's philosophical bent is Republican or Democratic, it is therefore established and maintained by a national political party committee is patently ridiculous. Such reasoning would require the FEC to treat as legal affiliates of the Democratic National Committee such political committees as the Committee for an Effective Congress, Democrats for the '80's, the Democratic Candidates Fund, and Committee for the Future of America; and of the Republican Party, committees including the National Conservative Political Action Committee (NCPAC), Fund for a Conservative Majority, National Congressional Club, Citizens for the Republic, Committee for a Free Congress, and the Republican Senate Majority Fund.

Even more specious is the complaint's reliance on the fact that two words, "Republican" and "National" appear in RNIEC's name. There is nothing in the Act, the Regulations, legislative history, the Advisory Opinions, or the MURs of the Commission that even remotely suggests that similarity in name might be treated as an indication of

affiliation, nor is there any basis in logic for such a conclusion. The allegation is immaterial.*/

The complainant further alleges that "RNIEC uses vendors that the official Republican Party committees use." Remarkably, the complaint does not list a single vendor which the RNC and RNIEC are alleged to have in common. The complaint lists three vendors which have been used at times by both the NRSC and the RNIEC. Yet, even those three vendors performed no more than routine services in their respective areas of business. James F. Schoener, who was engaged as one of several outside counsel to the NRSC concurrent with his serving as counsel to the RNIEC, is simply a lawyer with multiple clients in the same general area of business. The same situation applies to the other two vendors. Lynda Clancy was engaged by both committees for assistance in filling out FEC reports; **/ AAA-American Public Issues, for rental of its mailing lists.

And in arguing that the RNIEC raises money from the same donors, "perhaps" using some of the same fundraising

*/ Such an approach would, of course, tie the Democratic Party and its governing national committee, to the National Democratic Policy Committee, headed by Lyndon LaRouche. Similarly, there are well over 40 "non-connected" organizations currently registered with the FEC whose names contain the word "Republican;" over 200 organizations whose names contain the word "National," and at least one other "non-connected" political committee whose name contains both the words "National" and "Republican."

**/ Neither Schoener or Clancy performed services for the NRSC after Senator Jackson's death in September, 1983.

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lists as the "official Republican Party committees," Common Cause is alleging no more than that many of the same people may have contributed to all three committees.^{*/} It is hardly surprising, however, that an individual who would respond to a fundraising appeal from RNIEC might have responded previously to an appeal from the RNC, the NRSC or any number of Republican candidates or organizations. An examination of contributions previously made by such individuals would doubtless show that they have been responsive to requests for financial support from a multitude of political organizations including but not limited to the RNC and the NRSC. Furthermore, the names of these same individuals appear on numerous "prospecting" lists that are widely circulated and readily available to anyone interested in undertaking a fundraising effort.

It is equally unproductive -- and irresponsible -- for Common Cause to allege that RNIEC has made and will continue to make expenditures "in the same way" as NRSC. The insinuating ambiguity of the complaint is typical of the complainant's effort. It is unsurprising that complainant provides no examples of what it means by "makes campaign expenditures in the same way." To do so would serve only to strip off the thin veneer of credibility which it wishes its

^{*/} The complainant provides no evidence whatever of any overlap between contributors to the RNC and contributors to the RNIEC.

complaint to maintain. How one makes expenditures "in the same way" is left to the imagination. RNIEC can only deny the relevance of the point. RNIEC raises funds and makes expenditures using methods which are usual and customary for all political committees. There is nothing, however, in the way RNIEC makes its expenditures that is substantially dissimilar to methods used by any other political committee. Only from such a distinctive similarity could any affiliation be inferred.*

Thus, the allegation about RNIEC's structure and past activities are without foundation. Predictions of future RNIEC activities are mere speculation, and are contradicted by the brief history of RNIEC and its activities. In short, the complaint presents nothing to support its contention and, in the face of clear evidence to the contrary, the contention must be rejected.

II. RNIEC is not "an affiliate" of NRSC.

The complainant contends that "even if RNIEC is not itself a political committee established and maintained by the National Republican Party, RNIEC is an affiliate of NRSC." The complainant, however, cites no evidence to

*/ RNIEC's only expenditure in Washington State consisted of an "election-gram" sent out via bulk rate mail approximately two and half weeks before election, which, to the best knowledge of the respondent, constituted a strategy wholly unrelated to that of any other political organization.

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support this conclusory allegation. Instead, the complainant apparently expects the Commission and the respondent to pick through the random, largely irrelevant, and often erroneous "facts" listed at the beginning of the complaint to divine the basis for the complainant's allegation.

The only support for the complainant's assertion is a citation to the rule governing affiliated committees. ("See 11 C.F.R. § 100.5(g)(2)"). The rule requires that to be affiliated, two committees must be established, financed, maintained or controlled by the same person. (See Attachment 1, note 5). A review of the indicia of establishing, financing, maintaining or controlling shows clearly that RNIEC is not affiliated with NRSC:

- (1) there is no common ownership of a controlling interest in voting shares or securities, nor is any alleged;
- (2) there are no provisions of bylaws, constitutions, or other documents by which one entity has the authority, power, or ability to direct the other, nor does the complaint allege their existence;
- (3) no person or group of persons has the authority, power or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of both entities, nor has such been alleged;*/

*/ The only individual who had any concurrent official relationship with both NRSC and RNIEC was Senator John Heinz. It is clear from his affidavit (dated November 29, 1983, and filed in connection with MUR 1596) that Senator Heinz did not occupy a role in either committee of sufficient involvement to fall within the bounds of this provision.

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- (4) there have been no transfers of funds between the NRSC and the RNIEC, nor have any been alleged; and
- (5) to the extent that there may be some duplication of contributions, there is nothing to suggest anything more than that because the universe of persons who contribute regularly to political causes is limited, many pleas for funds are addressed by many organizations, both political and otherwise, to the same persons. Thus, the similar pattern of contributions specified in the rule clearly requires something more than duplicated contributions as an indication of affiliation.

Here, again, there is no credible reason to believe that the NRSC and the RNIEC are "affiliated." Accordingly, this contention must be rejected.

III. The RNIEC has not "impermissibly coordinated and acted in concert with" the NRSC.

The respondent contends that "RNIEC and NRSC are so inseparably intertwined that their campaigns for the same Republican Senatorial candidates simply cannot be deemed independent of each other," and that the expenditures of RNIEC count therefore as contributions to and expenditures by the NRSC. Again, the complaint cites no supporting evidence, leaving the Commission and the respondent to wade through the "facts" listed at the beginning of the complaint.

Regardless of what evidence the complainant might offer that the two committees are not independent of each other, the complainant's conclusion is without legal effect. As noted above, the independence of expenditures is deter-

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mined by applying the criteria set forth in Section 109.1 of the Commission's rules, 11 C.F.R. § 109.1, and the rule does not govern relationships between non-candidate committees. Non-candidate political committees may communicate freely with each other, and so long as the level of communication does not reach the threshold for "affiliation," i.e., if the committees are not established, maintained, financed or controlled by the same group of people, the contributions and expenditures of one committee will not be imputed to any other. The complainant's assertion that one committee's lack of "independence" from another will accomplish the same legal result is flatly wrong.*/

Even if it were assumed, for the sake of argument, that section 109.1 applied to the relationship between NRSC and RNIEC, applying the criteria of the rule to the facts in this case would show the requisite independence.**/

The respondent can only assume, since the complaint never so states, that the basis for the assertion is the

*/ The complainant's error is compounded by the further assertion that such a lack of independence between two political committees requires the expenditures of one committee to be treated as contributions to and expenditures by the other committee. The finding of affiliation required to treat the expenditures of one as the expenditures of the other, also requires that a conveyance of funds be treated as a "transfer of funds," not a "contribution."

**/ Legally it is required that factual evidence be produced which shows an arrangement, coordination or direction by the candidate or his or her committee or agents before independence of an expenditure can be vitiated. That standard clearly has not been met in this case.

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alleged concurrent involvement of Senator Heinz in both the NRSC and the RNIEC.*

However, as stated in his affidavit of November 29, 1983, submitted in connection with MUR 1596 filed by the DSCC, Senator Heinz' chairmanship of the NRSC terminated in December 1980. Since that time his involvement with the NRSC has been limited to his "ex-officio" membership on the committee as a Republican Senator. He never attended any meetings of the NRSC at which the Washington State election was discussed; and there may have been no such meetings at all.

As his affidavit states, Senator Heinz attended no meetings of the NRSC after Senator Jackson's death. Senator Heinz was concerned, however, that even the appearance of his involvement in the NRSC might jeopardize his first amendment right to participate in independent expenditure activities; and on the advice of counsel, he voluntarily suspended his nominal membership in the NRSC on October 6, 1983, by requesting a leave of absence. By letter of the same date, he informed NRSC Chairman Richard Lugar of his determination to ensure his "independence from any activity

*/ The limited role of the few common vendors has been discussed above, as well as the errors in fact concerning the role of Mr. Smith. Mr. Lawrence C. McCarthy (Complaint, para. 11) does not have nor has ever had any role with RNIEC. The alleged involvement was reported in error by the Washington Post and retracted the day following the initial article, a fact apparently overlooked by complainant. See Attachment 2.

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carried on by the NRSC or contact with the Evans' campaign;" and in his affidavit attested that "my staff and I, and to my knowledge and belief the RNIEC, have fully complied with the statements therein." See Attachments 3 and 4. On November 14, 1983, Senator Heinz submitted his resignation to the NRSC, never having resumed his suspended membership.

Even if Senator Heinz had not taken careful and prudent steps to remove himself from the activities of the NRSC, it is important to note that he was merely one Senator out of sixteen whose membership comprised the NRSC. Moreover, as indicated in his affidavit, none of those Senators "runs" the NRSC. That function belongs solely and exclusively to the Chairman of the NRSC, Senator Richard Lugar. In short, neither Senator Heinz, nor any of the other members of the NRSC (except Senator Lugar, the current NRSC Chairman), exercises any control over the activities, plans or expenditures of the NRSC.

Similarly, Senator Heinz also exercised no real control over the day-to-day operations of RNIEC. As evidenced by his affidavit, his involvement has been limited to signing an "election-gram," serving as Chairman of the RNIEC's "Advisory Panel," making a voluntary personal contribution and helping the RNIEC raise funds.

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IV. The RNIEC maintained its legal independence from the Evans campaign and therefore had a constitutional right to make independent expenditures on behalf of Senator Evans.

The complainant alleges that "RNIEC obtained information from or about the Evans campaign through NRSC or elsewhere and thereby coordinated its expenditures with Senator Evans' campaign efforts." The facts prove just the opposite. As Senator Heinz stated in the sworn affidavit he submitted in response to MVR 1596, "at no time have I, my staff, or to my knowledge the RNIEC, ever conferred with Senator Evans, his agents or his authorized committee, or with any member or agent of any state or national party committee concerning the plans, projects or needs of the Evans' campaign." Moreover, the sworn statement of Rodney Smith^{*/} corroborates the independence between RNIEC and the NRSC and the Evans campaign. He states,

I certify that I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee.^{**/}

No factual response is merited to so loose and legally inadequate an allegation as that RNIEC may have obtained information "elsewhere." This appears to be an even more imprecise version of complainant's previous

^{*/} A similar affidavit of Elizabeth Warren Smith will be forwarded forthwith.

^{**/} Attachment 5.

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unsuccessful attempts, in other proceedings, to argue that an expenditure is "coordinated with" a candidate's authorized campaign committee "through information conveyed by public statements, press releases, press reports, and campaign finance reports,"^{*/} and thereby becomes a "contribution" within the meaning of the federal election laws. That argument, and the equally imprecise allegation the complainant proffers here that RNIEC obtained information "elsewhere," carry far beyond the law as set forth in 11 C.F.R. § 109.1 and previous Commission actions.

V. The evidence does not support a finding of reason to believe

The facts presented in this case do not support a finding that there is reason to believe a violation of the Act has occurred with respect to RNIEC's activities. While the Commission will accept a complaint based on "substantial news stories" (6 FEC Record No. 1 at 3, Jan. 1980),^{**/} such a standard is far too tenuous to support a finding of reason to believe."

It would be charitable to say that the affidavit of verification accompanying the complaint rises to the

^{*/} Brief for complainant, Count II, Common Cause, et al. v. Harrison Schmitt, et al., (D.D.C.) Civil Act No. 80-1609.

^{**/} There remains the legitimate question as to whether the two news stories are worthy of being considered "substantial."

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level of information and belief. It states only that "statements are based on the sources indicated." Thus counsel for complainant, not the complainant, swears that the statements "are true and correct to the best of his information and belief" because he read them in newspapers. Such an affidavit cannot stand against an affidavit of personal knowledge, such as those submitted in this proceeding and in MUR 1596 by Senator Heinz and Mr. Smith, which swear to the truth of the statements contained therein, rather than to the existence of a newspaper article.

The facts provided by the respondent refute every point raised by the complaint to and beyond those issues that can be discerned in the complaint. When the applicable regulations and statutory provisions are applied to these facts it is clear that there is no reason to believe that a violation has occurred.

VI. Conclusion

It is patently clear that the complaint is unsupported by evidence and constructed with ambiguity in order to use the Commission's processes to chill the First Amendment rights specifically upheld in Buckley v. Valeo. The applicable law and the facts of this case speak compellingly in response to the complaint. They do not speak, however, to the serious policy question raised by invoking the slenderest reed of evidence, supported only by Common Cause's

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suspensions, to mute the free speech rights of RNIEC and its contributors.* /

The Commission must be vigilant against efforts to make it a party to violations of the civil rights of groups or individuals. It must resist such efforts by applying swiftly a fair but rigorous standard of proof to complaints which would result in a chilling effect on a respondent's freedom of speech and association.

In light of the information presented, it is respectfully submitted that there is insufficient evidence to warrant a reason to believe that RNIEC's expenditures supporting Senator Evans were not independent within the spirit and the letter of the law. Therefore, the Commission should find that there is no reason to believe that the

* / Complainant is aware that by placing RNIEC under a cloud of uncertainty concerning its independence, it can preclude RNIEC from any effective political role. It knows that the longer that cloud can be maintained via the pendency of the complaint it has filed, the harder it will be for RNIEC to raise funds and to speak out should it choose to do so.

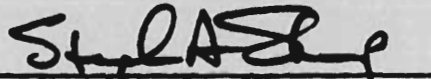
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respondent has committed any violation of the Act and
dismiss the complaint.

Respectfully submitted,

REPUBLICAN NATIONAL INDEPENDENT
EXPENDITURE COMMITTEE

By


Stephen A. Sharp


Carol C. Darr

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM
919 Eighteenth Street, N.W.
Washington, D.C. 20006

Its Attorneys

January 6, 1984

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VERIFICATION

The undersigned President for respondent, Republican Independent Expenditure Committee, swears that the statements in this complaint are based on the sources indicated, and, as such, are true and correct to the best of his information and belief.

Rodney B. Smith
Rodney A. Smith

Subscribed and sworn before
me this 6th day of January,
1984.

Phillip B. Beaver
Notary Public

My Commission Expires: _____ My Commission Expires August 14, 1987

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Doc # 1371
Mur 1602

In the Matter of
Republican National
Independent Expenditure
Committee

MUR 1602

RESPONDENT'S MOTION TO DISMISS

This Matter Under Review ("MUR") comes before the Federal Election Commission ("Commission" or "FEC") upon a complaint dated November 22, 1983, filed by Common Cause. The Republican National Independent Expenditure Committee, by its attorneys, hereby responds to said complaint, and urges that it be dismissed.

The complaint attempts to show that certain expenditures made by RNIEC in 1983 were not "independent expenditures" within the meaning of the statute, 2 U.S.C. § 431(17), and the Commission's Regulations, 11 C.F.R. § 109.1. The complaint alleges that relationships which would vitiate RNIEC's independence existed between the RNIEC and each of the following political committees: Evans for Senate Committee ("Evans campaign"); Republican National Committee ("RNC"); National Republican Senatorial Committee ("NRSC").

116 p5:15

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Statement of Facts

The RNIEC registered with the FEC on March 16, 1983, as a political committee making expenditures on behalf of more than one federal candidate.*/

The RNEIC was established by Rodney A. Smith**/ for the purpose of fostering the presence of responsible Republicans in public office by means of independently publicizing positive aspects of their qualifications. In order to raise funds for this endeavor, usual and customary methods of generating political contributions were utilized including direct mail, telephone solicitations and personal contacts.

On September 1, 1983, Senator Henry M. Jackson died unexpectedly. Daniel Evans was sworn in on or about September 12, 1983, to fill the vacancy left by Senator Jackson's death, and on the same day Senator Evans filed as a candidate for the special election to be held in Washington State on November 8, 1983.

On September 19, 1983, the RNIEC formally decided to make independent expenditures in support of the Dan Evans campaign during the general election.

*/ While RNIEC has contributed to more than one candidate, it has not qualified as a "multicandidate committee" as stated in the complaint. Complaint, para. 3.

**/ Smith served as Treasurer and Finance Director of the NRSC from January 1977 until his resignation in December 1982.

On October 6, 1983, Senator Heinz voluntarily suspended his membership in the NRSC, by requesting a leave of absence, although he had attended no meetings of the NRSC after Senator Jackson' death.

During the week of October 18, 1983, the RNIEC mailed "election-grams" to selected geographic areas within the State of Washington. These "election-grams" were signed by Senator John Heinz and advocated the election of Daniel Evans.

On November 7, 1983, the Wall Street Journal published an article concerning these "election-grams." The same day the Democratic Senatorial Campaign Committee ("DSCC") held a press conference and filed a complaint (MUR 1596) denouncing the fact that the expenditures were made by individuals who were "in a position to" work in cooperation with the NRSC, and challenging the "independence" of these expenditures.

On November 22, 1983, Common Cause filed the instant complaint.

The Common Cause complaint challenging the independence of RNIEC's expenditures in the State of Washington relies on (pp. 7-8) four contentions:

- (1) that RNIEC is "a political committee established and maintained by a national political party;"
- (2) that RNIEC is "an affiliate" of NRSC;
- (3) that RNIEC has "impermissibly coordinated" and "acted in concert" with NRSC; and

- (4) that RNIEC "obtained information from or about the Evans campaign . . . and thereby coordinated its expenditures" with the Evans campaign."

By its affidavit attached to the complaint, the complainant swore that the complaint is based on the "sources indicated" in the complaint (i.e., Wall Street Journal article, Nov. 7, 1983; Washington Post article, Nov. 16, 1983; RNIEC's October 25, 1983 report to the Commission).

APPLICABLE LAW

The legal framework within which the "independence" of an expenditure is determined is the statutory definition of "independent expenditure" found in Section 432(17) of the Federal Election Campaign Act, 2 U.S.C. § 431(17)^{*/} and in the implementing Commission Regulation, 11 C.F.R. § 109.1.^{**/}

Disposition of the complaint is governed by 11 C.F.R. §§ 111.7 and 111.9, which, respectively, allow the General Counsel to recommend to the Commission whether or not it should find reason to believe that RNIEC has violated the statute or a Commission Regulation,^{***/} and require the Commission to act by "an affirmative vote of four" on the complaint and response.^{****/}

^{*/} Attachment 1, note 1.

^{**/} Attachment 1, note 2.

^{***/} Attachment 1, note 3.

^{****/} Attachment 1, note 4.

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Other provisions of the Regulations which deal with complainant's allegations include 11 C.F.R. § 100.5, which defines "political committee, subsection (g) of which pertains to "affiliated committee."^{*/}

RESPONSE

I. RNIEC is not a political committee established or maintained by a national political party.

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The complaint contends that RNIEC is "a political committee established and maintained by the National Republican Party." The facts in no way support this absurd allegation. No effort is made to show that the Republican Party or its governing national committee (RNC) chartered this committee or that the governing document^{**/} of the RNC even mentions RNIEC. Without citing a shred of evidence the complainant alleges that "RNIEC was organized by key Republican Party officials." In fact, RNIEC was organized and operated solely by Rodney A. Smith. Moreover, while Mr. Smith is flattered by the description of "key Republican Party official," he believes that "political professional" more accurately reflects his position. Mr. Smith was employed by the RNC, but severed that relationship in January 1977.

^{*/} Attachment 1, note 5.

^{**/} The RNC is governed by the Rules adopted by the 1980 Republican National Convention.

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Apparently the complainant believes that its allegation is buttressed by the accusation that "RNIEC's goal is to elect Republican candidates." It goes without saying that a goal, indeed the only goal, of the RNIEC is to elect Republican candidates. For the complainant to suggest, however, that because a political committee's philosophical bent is Republican or Democratic, it is therefore established and maintained by a national political party committee is patently ridiculous. Such reasoning would require the FEC to treat as legal affiliates of the Democratic National Committee such political committees as the Committee for an Effective Congress, Democrats for the '80's, the Democratic Candidates Fund, and Committee for the Future of America; and of the Republican Party, committees including the National Conservative Political Action Committee (NCPAC), Fund for a Conservative Majority, National Congressional Club, Citizens for the Republic, Committee for a Free Congress, and the Republican Senate Majority Fund.

Even more specious is the complaint's reliance on the fact that two words, "Republican" and "National" appear in RNIEC's name. There is nothing in the Act, the Regulations, legislative history, the Advisory Opinions, or the MURs of the Commission that even remotely suggests that similarity in name might be treated as an indication of

affiliation, nor is there any basis in logic for such a conclusion. The allegation is immaterial.*/

The complainant further alleges that "RNIEC uses vendors that the official Republican Party committees use." Remarkably, the complaint does not list a single vendor which the RNC and RNIEC are alleged to have in common. The complaint lists three vendors which have been used at times by both the NRSC and the RNIEC. Yet, even those three vendors performed no more than routine services in their respective areas of business. James F. Schoener, who was engaged as one of several outside counsel to the NRSC concurrent with his serving as counsel to the RNIEC, is simply a lawyer with multiple clients in the same general area of business. The same situation applies to the other two vendors. Lynda Clancy was engaged by both committees for assistance in filling out FEC reports;**/ AAA-American Public Issues, for rental of its mailing lists.

And in arguing that the RNIEC raises money from the same donors, "perhaps" using some of the same fundraising

*/ Such an approach would, of course, tie the Democratic Party and its governing national committee, to the National Democratic Policy Committee, headed by Lyndon LaRouche. Similarly, there are well over 40 "non-connected" organizations currently registered with the FEC whose names contain the word "Republican;" over 200 organizations whose names contain the word "National," and at least one other "non-connected" political committee whose name contains both the words "National" and "Republican."

**/ Neither Schoener or Clancy performed services for the NRSC after Senator Jackson's death in September, 1983.

lists as the "official Republican Party committees," Common Cause is alleging no more than that many of the same people may have contributed to all three committees.^{*/} It is hardly surprising, however, that an individual who would respond to a fundraising appeal from RNIEC might have responded previously to an appeal from the RNC, the NRSC or any number of Republican candidates or organizations. An examination of contributions previously made by such individuals would doubtless show that they have been responsive to requests for financial support from a multitude of political organizations including but not limited to the RNC and the NRSC. Furthermore, the names of these same individuals appear on numerous "prospecting" lists that are widely circulated and readily available to anyone interested in undertaking a fundraising effort.

It is equally unproductive -- and irresponsible -- for Common Cause to allege that RNIEC has made and will continue to make expenditures "in the same way" as NRSC. The insinuating ambiguity of the complaint is typical of the complainant's effort. It is unsurprising that complainant provides no examples of what it means by "makes campaign expenditures in the same way." To do so would serve only to strip off the thin veneer of credibility which it wishes its

^{*/} The complainant provides no evidence whatever of any overlap between contributors to the RNC and contributors to the RNIEC.

complaint to maintain. How one makes expenditures "in the same way" is left to the imagination. RNIEC can only deny the relevance of the point. RNIEC raises funds and makes expenditures using methods which are usual and customary for all political committees. There is nothing, however, in the way RNIEC makes its expenditures that is substantially dissimilar to methods used by any other political committee. Only from such a distinctive similarity could any affiliation be inferred.*/

Thus, the allegation about RNIEC's structure and past activities are without foundation. Predictions of future RNIEC activities are mere speculation, and are contradicted by the brief history of RNIEC and its activities. In short, the complaint presents nothing to support its contention and, in the face of clear evidence to the contrary, the contention must be rejected.

II. RNIEC is not "an affiliate" of NRSC.

The complainant contends that "even if RNIEC is not itself a political committee established and maintained by the National Republican Party, RNIEC is an affiliate of NRSC." The complainant, however, cites no evidence to

*/ RNIEC's only expenditure in Washington State consisted of an "election-gram" sent out via bulk rate mail approximately two and half weeks before election, which, to the best knowledge of the respondent, constituted a strategy wholly unrelated to that of any other political organization.

support this conclusory allegation. Instead, the complainant apparently expects the Commission and the respondent to pick through the random, largely irrelevant, and often erroneous "facts" listed at the beginning of the complaint to divine the basis for the complainant's allegation.

The only support for the complainant's assertion is a citation to the rule governing affiliated committees. ("See 11 C.F.R. § 100.5(g)(2)"). The rule requires that to be affiliated, two committees must be established, financed, maintained or controlled by the same person. (See Attachment 1, note 5). A review of the indicia of establishing, financing, maintaining or controlling shows clearly that RNIEC is not affiliated with NRSC:

- (1) there is no common ownership of a controlling interest in voting shares or securities, nor is any alleged;
- (2) there are no provisions of bylaws, constitutions, or other documents by which one entity has the authority, power, or ability to direct the other, nor does the complaint allege their existence;
- (3) no person or group of persons has the authority, power or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of both entities, nor has such been alleged;*/

*/ The only individual who had any concurrent official relationship with both NRSC and RNIEC was Senator John Heinz. It is clear from his affidavit (dated November 29, 1983, and filed in connection with MUR 1596) that Senator Heinz did not occupy a role in either committee of sufficient involvement to fall within the bounds of this provision.

- (4) there have been no transfers of funds between the NRSC and the RNIEC, nor have any been alleged; and
- (5) to the extent that there may be some duplication of contributions, there is nothing to suggest anything more than that because the universe of persons who contribute regularly to political causes is limited, many pleas for funds are addressed by many organizations, both political and otherwise, to the same persons. Thus, the similar pattern of contributions specified in the rule clearly requires something more than duplicated contributions as an indication of affiliation.

Here, again, there is no credible reason to believe that the NRSC and the RNIEC are "affiliated." Accordingly, this contention must be rejected.

III. The RNIEC has not "impermissibly coordinated and acted in concert with" the NRSC.

The respondent contends that "RNIEC and NRSC are so inseparably intertwined that their campaigns for the same Republican Senatorial candidates simply cannot be deemed independent of each other," and that the expenditures of RNIEC count therefore as contributions to and expenditures by the NRSC. Again, the complaint cites no supporting evidence, leaving the Commission and the respondent to wade through the "facts" listed at the beginning of the complaint.

Regardless of what evidence the complainant might offer that the two committees are not independent of each other, the complainant's conclusion is without legal effect. As noted above, the independence of expenditures is deter-

mined by applying the criteria set forth in Section 109.1 of the Commission's rules, 11 C.F.R. § 109.1, and the rule does not govern relationships between non-candidate committees. Non-candidate political committees may communicate freely with each other, and so long as the level of communication does not reach the threshold for "affiliation," i.e., if the committees are not established, maintained, financed or controlled by the same group of people, the contributions and expenditures of one committee will not be imputed to any other. The complainant's assertion that one committee's lack of "independence" from another will accomplish the same legal result is flatly wrong.*/

Even if it were assumed, for the sake of argument, that section 109.1 applied to the relationship between NRSC and RNIEC, applying the criteria of the rule to the facts in this case would show the requisite independence.**/

The respondent can only assume, since the complaint never so states, that the basis for the assertion is the

*/ The complainant's error is compounded by the further assertion that such a lack of independence between two political committees requires the expenditures of one committee to be treated as contributions to and expenditures by the other committee. The finding of affiliation required to treat the expenditures of one as the expenditures of the other, also requires that a conveyance of funds be treated as a "transfer of funds," not a "contribution."

**/ Legally it is required that factual evidence be produced which shows an arrangement, coordination or direction by the candidate or his or her committee or agents before independence of an expenditure can be vitiated. That standard clearly has not been met in this case.

alleged concurrent involvement of Senator Heinz in both the NRSC and the RNIEC.* /

However, as stated in his affidavit of November 29, 1983, submitted in connection with MUR 1596 filed by the DSCC, Senator Heinz' chairmanship of the NRSC terminated in December 1980. Since that time his involvement with the NRSC has been limited to his "ex-officio" membership on the committee as a Republican Senator. He never attended any meetings of the NRSC at which the Washington State election was discussed; and there may have been no such meetings at all.

As his affidavit states, Senator Heinz attended no meetings of the NRSC after Senator Jackson's death. Senator Heinz was concerned, however, that even the appearance of his involvement in the NRSC might jeopardize his first amendment right to participate in independent expenditure activities; and on the advice of counsel, he voluntarily suspended his nominal membership in the NRSC on October 6, 1983, by requesting a leave of absence. By letter of the same date, he informed NRSC Chairman Richard Lugar of his determination to ensure his "independence from any activity

* / The limited role of the few common vendors has been discussed above, as well as the errors in fact concerning the role of Mr. Smith. Mr. Lawrence C. McCarthy (Complaint, para. 11) does not have nor has ever had any role with RNIEC. The alleged involvement was reported in error by the Washington Post and retracted the day following the initial article, a fact apparently overlooked by complainant. See Attachment 2.

carried on by the NRSC or contact with the Evans' campaign;" and in his affidavit attested that "my staff and I, and to my knowledge and belief the RNIEC, have fully complied with the statements therein." See Attachments 3 and 4. On November 14, 1983, Senator Heinz submitted his resignation to the NRSC, never having resumed his suspended membership.

Even if Senator Heinz had not taken careful and prudent steps to remove himself from the activities of the NRSC, it is important to note that he was merely one Senator out of sixteen whose membership comprised the NRSC. Moreover, as indicated in his affidavit, none of those Senators "runs" the NRSC. That function belongs solely and exclusively to the Chairman of the NRSC, Senator Richard Lugar. In short, neither Senator Heinz, nor any of the other members of the NRSC (except Senator Lugar, the current NRSC Chairman), exercises any control over the activities, plans or expenditures of the NRSC.

Similarly, Senator Heinz also exercised no real control over the day-to-day operations of RNIEC. As evidenced by his affidavit, his involvement has been limited to signing an "election-gram," serving as Chairman of the RNIEC's "Advisory Panel," making a voluntary personal contribution and helping the RNIEC raise funds.

IV. The RNIEC maintained its legal independence from the Evans campaign and therefore had a constitutional right to make independent expenditures on behalf of Senator Evans.

The complainant alleges that "RNIEC obtained information from or about the Evans campaign through NRSC or elsewhere and thereby coordinated its expenditures with Senator Evans' campaign efforts." The facts prove just the opposite. As Senator Heinz stated in the sworn affidavit he submitted in response to MVR 1596, "at no time have I, my staff, or to my knowledge the RNIEC, ever conferred with Senator Evans, his agents or his authorized committee, or with any member or agent of any state or national party committee concerning the plans, projects or needs of the Evans' campaign." Moreover, the sworn statement of Rodney Smith^{*/} corroborates the independence between RNIEC and the NRSC and the Evans campaign. He states,

I certify that I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee.^{**/}

No factual response is merited to so loose and legally inadequate an allegation as that RNIEC may have obtained information "elsewhere." This appears to be an even more imprecise version of complainant's previous

^{*/} A similar affidavit of Elizabeth Warren Smith will be forwarded forthwith.

^{**/} Attachment 5.

unsuccessful attempts, in other proceedings, to argue that an expenditure is "coordinated with" a candidate's authorized campaign committee "through information conveyed by public statements, press releases, press reports, and campaign finance reports,"^{*/} and thereby becomes a "contribution" within the meaning of the federal election laws. That argument, and the equally imprecise allegation the complainant proffers here that RNIEC obtained information "elsewhere," carry far beyond the law as set forth in 11 C.F.R. § 109.1 and previous Commission actions.

V. The evidence does not support a finding of reason to believe

The facts presented in this case do not support a finding that there is reason to believe a violation of the Act has occurred with respect to RNIEC's activities. While the Commission will accept a complaint based on "substantial news stories" (6 FEC Record No. 1 at 3, Jan. 1980),^{**/} such a standard is far too tenuous to support a finding of reason to believe."

It would be charitable to say that the affidavit of verification accompanying the complaint rises to the

^{*/} Brief for complainant, Count II, Common Cause, et al. v. Harrison Schmitt, et al., (D.D.C.) Civil Act No. 80-1609.

^{**/} There remains the legitimate question as to whether the two news stories are worthy of being considered "substantial."

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level of information and belief. It states only that "statements are based on the sources indicated." Thus counsel for complainant, not the complainant, swears that the statements "are true and correct to the best of his information and belief" because he read them in newspapers. Such an affidavit cannot stand against an affidavit of personal knowledge, such as those submitted in this proceeding and in MUR 1596 by Senator Heinz and Mr. Smith, which swear to the truth of the statements contained therein, rather than to the existence of a newspaper article.

The facts provided by the respondent refute every point raised by the complaint to and beyond those issues that can be discerned in the complaint. When the applicable regulations and statutory provisions are applied to these facts it is clear that there is no reason to believe that a violation has occurred.

VI. Conclusion

It is patently clear that the complaint is unsupported by evidence and constructed with ambiguity in order to use the Commission's processes to chill the First Amendment rights specifically upheld in Buckley v. Valeo. The applicable law and the facts of this case speak compellingly in response to the complaint. They do not speak, however, to the serious policy question raised by invoking the slenderest reed of evidence, supported only by Common Cause's

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suspensions, to mute the free speech rights of RNIEC and its contributors.*

The Commission must be vigilant against efforts to make it a party to violations of the civil rights of groups or individuals. It must resist such efforts by applying swiftly a fair but rigorous standard of proof to complaints which would result in a chilling effect on a respondent's freedom of speech and association.

In light of the information presented, it is respectfully submitted that there is insufficient evidence to warrant a reason to believe that RNIEC's expenditures supporting Senator Evans were not independent within the spirit and the letter of the law. Therefore, the Commission should find that there is no reason to believe that the

*/ Complainant is aware that by placing RNIEC under a cloud of uncertainty concerning its independence, it can preclude RNIEC from any effective political role. It knows that the longer that cloud can be maintained via the pendency of the complaint it has filed, the harder it will be for RNIEC to raise funds and to speak out should it choose to do so.

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respondent has committed any violation of the Act and
dismiss the complaint.

Respectfully submitted,

REPUBLICAN NATIONAL INDEPENDENT
EXPENDITURE COMMITTEE

By 
Stephen A. Sharp


Carol C. Darr

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM
919 Eighteenth Street, N.W.
Washington, D.C. 20006

Its Attorneys

January 6, 1984

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VERIFICATION

The undersigned President for respondent, Republican Independent Expenditure Committee, swears that the statements in this complaint are based on the sources indicated, and, as such, are true and correct to the best of his information and belief.

Rodney A. Smith
Rodney A. Smith

Subscribed and sworn before
me this 6th day of January,
1984.

Thyllis R. Beaver
Notary Public

My Commission Expires: August 14, 1987

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Attachment 1

Note 1 The term "independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

Note 2 (a) "Independent expenditure" means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.

(b) For purposes of this definition --

. . . .

(4) "Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate" means --

(i) Any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is --

(A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made;

(B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent;

(ii) But does not include providing to the expending person upon request Commission guidelines on independent expenditures.

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(Note 2 continued)

(5) "Agent" means any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.

Note 3 § 111.7 General Counsel's recommendation on complaint-generated matters (2 U.S.C. 437g(a)(1)).

(a) Following either the expiration of the fifteen (15) day period specified by 11 C.F.R. 111.6(a) or the receipt of a response as specified by 11 C.F.R. 111.6(a), whichever occurs first, the General Counsel may recommend to the Commission whether or not it should find reason to believe that a respondent has committed or is about to commit a violation of statutes or regulations over which the Commission has jurisdiction.

(b) The General Counsel may recommend that the Commission find that there is no reason to believe that a violation has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of 11 C.F.R. 111.6(a).

Note 4 § 111.9 The reason to believe finding; notification (2 U.S.C. 437g(a)(2)).

(a) If the Commission, either after reviewing a complaint-generated recommendation as described in 11 C.F.R. 111.7 and any response of a respondent submitted pursuant to 11 C.F.R. 111.6, or after reviewing an internally-generated recommendation as described in 11 C.F.R. 111.8, determines by an affirmative vote of four (4) of its members that it has reason to believe that a respondent has violated a statute or regulation over which the Commission has jurisdiction, its Chairman or Vice Chairman shall notify such respondent of the Commission's finding by letter, setting forth the sections of the statute or regulations alleged to have been violated and the alleged factual basis supporting the finding.

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(Note 4 continued)

(b) If the Commission finds no reason to believe, or otherwise terminates its proceedings, the General Counsel shall so advise both complainant and respondent by letter.

Note 5

(2) All committees (including a separate segregated fund, see 11 CFR Part 114) established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated.

(1i) For organizations not covered by paragraph (g)(2)(i) of this section, indicia of establishing, financing, maintaining, or controlling include:

(A) Ownership of a controlling interest in voting shares or securities;

(B) Provisions of bylaws, constitutions, or other documents by which one entity has the authority, power, or ability to direct another entity;

(C) The authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of an entity;

(D) Similar patterns of contributions;

(2) All committees (including a separate segregated fund, see 11 CFR Part 114) established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated.

(E) The transfer of funds between committees which represent a substantial portion of the funds of either the transferor or transferee committee, other than the transfer of funds between the committees which jointly raised the funds so transferred.

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Washington Post Staff Writer

DES MOINES, Nov. 16—George McGovern today thrust himself into the national defense debate between former vice president Walter F. Mondale and Sen. John Glenn (D-Ohio), accusing the front-runner for the Democratic presidential nomination of not offering a clear alternative to President Reagan.

McGovern, the party's 1972 nominee, said Glenn and Mondale differ only in degree from Reagan and advocate increased defense spending "when we should be cutting the wasteful, bloated monster that is devouring our national substance and fueling an open-ended arms race." "If you want a 10 percent increase in military spending every year, vote

Corrections

Lawrence C. McCarthy was identified incorrectly yesterday as a member of the board of the Republican National Independent Expenditure Committee.

Annual trade between West Germany and the Soviet Union is 20 billion German marks (about \$9 billion), not \$20 billion as reported yesterday.

FLY **Première** WINTER 83/84
TO EUROPE
\$479 RT LONDON \$479 RT
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1
528, 533, 7
Area's Largest
125 in Stock & On

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JOHN HEINZ
United States Senate

October 6, 1983

Honorable Richard L. Lugar
Chairman
National Republican Senatorial Committee
Washington, D. C. 20510

Dear Senator ^{Dick}Lugar:

As you know, I have agreed to become Chairman of the Advisory Council of the recently-formed Republican National Independent Expenditure Committee ("RNIEC"). The RNIEC is now involved in fund-raising and will, among other things, make "independent expenditures" within the meaning of the Federal election laws, in support of Republican candidates for National office. Considering the tremendous challenge that the Republican Party is facing in the upcoming elections, I am committed to doing everything possible to preserve the Republican majority in the Senate and in turning the tide in the House, and that the RNIEC can be a major force in helping to achieve these goals.

As you know, I am presently a member of the National Republican Senatorial Committee ("NRSC"), and have been active in NRSC affairs. However, with the recently scheduled Senatorial primary and special election in the State of Washington, it is now necessary that I alter my NRSC role.

In order that I may be involved in the independent expenditure activities of the RNIEC, it is necessary under the election laws that I not engage in any discussion or action in which a candidate, his staff or campaign committee(s) participate, concerning the plans, conduct or needs of that candidate or his campaign. The same is the case for my staff and the officers, directors and staff of the RNIEC. For this reason, effective immediately, I suspend myself from all campaign related activities pertaining to the Dan Evans race and shall take a leave of absence from the NRSC through and including the special Senatorial election in Washington State to be decided on November 8. I am advised by counsel, however, that I may

continue to remain active in fundraising activities for individual Republican candidates and all Party Committees, specifically including the NRSC. I therefore intend to remain active, as I have previously, in all fundraising activities that benefit the NRSC. I am advised by counsel that I will be free to resume my role in all NRSC activities subsequent to November 8, 1983.

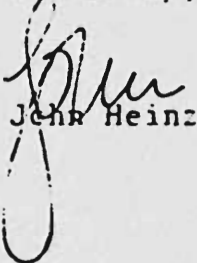
For your information the RNIEC will make no independent expenditures in any primary election. However, it will, at some point in 1984, be necessary for me to suspend my NRSC campaign involvement in general election campaigns (other than for fundraising purposes) where there is the possibility of RNIEC involvement.

During the period of my leave of absence from the Evans campaign activities of the NRSC, I shall not engage in any consultation or communication with the NRSC or its staff, or with the candidate, his staff or committee, concerning the plans or activities of the candidate or his campaign. I have instructed my own staff and the officers, directors and staff of the RNIEC to act in the same way. Similarly, I request that the members and staff of the NRSC not engage in any such discussion with me or these persons during the period of my leave. I would appreciate your transmitting this request.

Republican success in these critical times is utterly dependent upon the broadest possible participation of committees such as the RNIEC and NRSC. I am confident that we can reach our goals.

With best wishes,

Sincerely,


John Heinz

JH/ml

cc Mitch Daniels
Kevin Talley
Rod Smith

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United States Senate

WASHINGTON, D. C. 20510

November 29, 1983

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, Northwest
Washington, D. C. 20463

RE: Matter MUR 1596

Dear Mr. Steele:

This letter is submitted in response to your letter to me dated November 15, 1983, and signed on your behalf by the Commission's Associate General Counsel. Thank you for the opportunity to address the ill-founded and misleading charge of the Democratic Senatorial and Congressional Campaign Committees that either the Republican National Independent Expenditure Committee ("RNIEC") or I somehow acted improperly in connection with the expenditures made during the recent senatorial campaign in the State of Washington.

I respectfully suggest to you and the Commission that this charge is based upon a fundamental and easily demonstrable factual error and that it is otherwise deficient as a matter of law and fact. At all times, my conduct has been utterly consistent with the requirements of the Federal Election Campaign Act of 1971. Additionally, to my knowledge and belief, the RNIEC, which will respond to the Commission separately, has also acted lawfully and properly in connection with the matter raised. For these reasons, I ask that the Commission decline to proceed further as to the instant complaint.

The complaint at issue has as its only "factual" basis a November 7, 1983, article from the Wall Street Journal. The Commission has addressed its authority to proceed on such hearsay complaints, concluding that it could do so under its supervisory powers (2 U.S.C. §437g(a)(2)). However, sensibly, the Commission historically has declined to proceed on complaints of this nature when they are based on nothing more than the reiteration of the contents of a newspaper article. The present matter amply demonstrates why this historical view of the Commission should be continued.

Charles N. Steele
Page Two
November 29, 1983

Contrary to the erroneous statement of the Wall Street Journal, reiterated as the basis for their complaint by the Democratic committees, I am not and never have been the Chairman of the RNIEC. I am the Chairman of that Committee's "Advisory Panel," and that function is precisely what the title should imply. I have provided general advice and have been the signatory on RNIEC mailings, but I have never directed the operations of the RNIEC, made its decisions or controlled its Chairman or agents. The Democratic committees' charge is premised upon their false belief that I am the Chairman of the RNIEC. This error derives from the incorrect Wall Street Journal article, and even a cursory investigation by the complainants could have disclosed it. In any event, it is at least fair to say that with the ultimate recognition of this compounded error, the stated basis for the charge has been eliminated and closure of this matter is therefore appropriate. I think it also important to note, however, that the charge is otherwise defective as well.

The complainants erroneously suggest that there might be an inherent impropriety when a member of a party committee is also involved in the activities of an organization making independent expenditures. This haphazard assertion is rebutted by the fact well recognized by the Commission that the first amendment rights of an independent spender under the Federal Election Campaign Act of 1971, as that Act has been interpreted by the Supreme Court in the case of Buckley v. Valeo, may only be vitiated by the independent spender's own actions, not his position. The complainants' charge is especially inappropriate in my own case.

I have been a member of the National Republican Senatorial Committee ("NRSC"), although I did resign that post formally on November 14, 1983. The Commission should be aware of the fact that on October 6, 1983, long before the expenditures at issue here were made and the Wall Street Journal article written and derivative charge filed, I took a leave of absence from the NRSC and informed its Chairman of the necessity to comply with the Federal elections laws by insuring my independence from any activity carried on by the NRSC or contact made with the Evans' campaign. Attached is a copy of my October 6, 1983, letter to the NRSC Chairman, and I attest that my staff and I, and to my knowledge and belief the RNIEC, have fully complied with the statements therein.

In further point of fact, the Commission should be aware that mere membership on the NRSC is an ex officio matter. All elected Republican senators are appointed to one of several party-related committees, one of which is the NRSC. A member, however, only has advisory functions. The NRSC Chairman employs and directs the Committee's staff which in no way reports to the Committee's members. He also initiates and directs by his sole discretion its programs and decides the expenditures and activities on behalf of individual candidates for the committee. Although I am a past Chairman of the NRSC, I have not held that post since December, 1980. Obviously, I was not the NRSC's Chairman at any time material to this case.

In 1983, and prior to the death of Senator Henry Jackson and the subsequent appointment and candidacy of Senator Dan Evans to succeed him, the NRSC had three meetings which I attended. My role was entirely an auditory one at these meetings, which, because of their timing, could have had nothing to do with the Evans campaign, which then did not exist. Since Senator Jackson's untimely death, I have attended no meeting of the NRSC. In sum, I was neither "in a position to work through NRSC in close cooperation with Mr. Evans," as the complainants charge, nor did I in fact, or did the RNIEC, do anything to vitiate my dependence from Senator Evans or his campaign.

As is my first amendment right, I have urged persons to contribute to the RNIEC and signed an "electiongram" asking the voters of Washington to turn out on behalf of Senator Dan Evans in his November 1983 election. However, at no time have I, my staff, or to my knowledge the RNIEC, ever conferred with Senator Evans, his agents or his authorized committee, or with any member or agent of any state or national party committee regarding the plans, projects or needs of the Evans' campaign.

The charge of the Democratic committees is characterized by its exaggerated and pejorative tone. Such invective is both unwarranted and inconsistent with the stature and function of the Federal Election Commission. For present purposes, it is only necessary for me to restate that the instant charge has a factually-erroneous basis, and that said charge is otherwise substantively inaccurate in fact and in law. Accordingly, I respectfully urge both you and the Commission to close this matter after declining to proceed further as to the complaint.

Charles N. Steele
Page Four
November 29, 1983

Thank you for your consideration.

Sincerely,

John Heinz

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA) SS

On this 29th day of November, 1983, personally appeared before me, a Notary Public in and for said City and District, John Heinz, who being duly sworn said that the above letter was true and correct.

Notary Public

My commission expires:

85040514524

8504034525

AFFIDAVIT

Washington)
) ss:
 District of Columbia)

On this 6th day of January, 1984, before me, Phillip A. Beaver, a notary public in and for the District of Columbia, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Rodney A. Smith, and, being duly sworn, deposes and says:

I, Rodney A. Smith, certify that the statements contained in the certificate dated September 19, 1983, and filed as Exhibit B in MUR 1596, as follows:

I certify I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 nor was my decision to approve making independent expenditures by the RNIEC in support of Dan Evans made on the basis of any request or suggestion of the candidate, his committee or his or their agents.

I further certify that said independent expenditures are not being made in cooperation, consultation, or in concert with the candidate, his campaign committee or his or their agents. Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee. Further, I certify that these expenditures do not involve the financing of or dissemination, distribution or republication in whole or in part of any campaign material prepared by the candidate, his campaign committee or their agents.

were and are true and correct to the best of my knowledge and belief. These statements were made initially by me in my capacity as Director of the Republican National Independent Expenditure Committee, pursuant to the first meeting of the Board of Directors.

Rodney A. Smith
 Rodney A. Smith

Subscribed and sworn to before me this 6th day of January, 1984.

Phillip A. Beaver
 Notary Public

My commission expires: My Commission Expires August 14, 1987

AFFIDAVIT

Washington)
) ss:
 District of Columbia)

On this 6th day of January, 1984, before me, Christine Bell, a notary public in and for the District of Columbia, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared James F. Schoener, and, being duly sworn, deposes and says:

I, James F. Schoener, certify that the statements contained in the certificate dated September 19, 1983, and filed as Exhibit B in MUR 1596, as follows:

I certify I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 nor was my decision to approve making independent expenditures by the RNIEC in support of Dan Evans made on the basis of any request or suggestion of the candidate, his committee or his or their agents.

I further certify that said independent expenditures are not being made in cooperation, consultation, or in concert with the candidate, his campaign committee or his or their agents. Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee. Further, I certify that these expenditures do not involve the financing of or dissemination, distribution or republication in whole or in part of any campaign material prepared by the candidate, his campaign committee or their agents.

were and are true and correct to the best of my knowledge and belief. These statements were made initially by me in my capacity as Director of the Republican National Independent Expenditure Committee, pursuant to the first meeting of the Board of Directors.

James F. Schoener
 James F. Schoener

Subscribed and sworn to before me this 6th day of January, 1984.

Christine Bell
 Notary Public

My commission expires:

My Commission Expires January 1, 1986

3cc# 1378

BAKER & HOSTETLER

ATTORNEYS AT LAW

810 CONNECTICUT AVE., N.W.

WASHINGTON, D. C. 20006

(202) 661-1900

TELESCOPIER (202) 667-0000

IN CLEVELAND, OHIO
3200 NATIONAL CITY CENTER
CLEVELAND, OHIO 44114
(216) 421-0000
TWX 510 481 0375

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 226-1241

IN DENVER, COLORADO
3015 250, 303 EAST 17TH AVENUE
DENVER, COLORADO 80202
(303) 661-0000

IN ORLANDO, FLORIDA
850 CNA TOWER
ORLANDO, FLORIDA 32802
(305) 661-1111

January 9, 1984

WRITER'S DIRECT DIAL NO.:

(202) 661- 1572

8
P2:40
04:24

BY HAND

Robert Pease, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D.C. 20463

Re: MURs 1596 and 1602

Dear Mr. Pease:

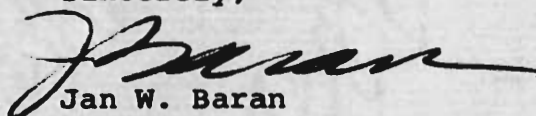
This office represents the National Republican Senatorial Committee ("NRSC") and has been so designated by Robert J. Perkins, Treasurer, in his letter of December 9, 1983.

I am writing to confirm my previous request for an extension of time within which to file a response on behalf of NRSC to the complaints filed in the above-captioned matters. This extension was required because of the absences of various individuals during the recent holidays. I had represented to you that personal travel schedules should have permitted us to file our response by Friday, January 6, 1984. Unfortunately, this has not been the case.

Senator Richard G. Lugar, Chairman of NRSC, will not be in his Washington office until Thursday, January 12. Senator Lugar's presence in Washington is necessary in order that he execute an affidavit which is a part of NRSC's response to the complaints. Accordingly, we anticipate filing both the response and Senator Lugar's Affidavit on Thursday, January 12.

We appreciate the General Counsel's willingness to extend the time for this filing.

Sincerely,


Jan W. Baran

85040514528

BAKER & HOSTETLER

819 CONNECTICUT AVE., N. W.
WASHINGTON, D. C. 20006

BY HAND

Robert Pease, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D.C. 20463

BAKER & HOSTETLER

ATTORNEYS AT LAW

818 CONNECTICUT AVE., N.W.

WASHINGTON, D. C. 20006

(202) 661-1800

TELECOPIER (202) 667-0010

IN CLEVELAND, OHIO
3200 NATIONAL CITY CENTER
CLEVELAND, OHIO 44114
(216) 591-0000
TWX 910 481 8375

IN COLUMBUS, OHIO
100 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 228-1541

WRITER'S DIRECT DIAL NO.:

(202) 661- 1572

IN DENVER, COLORADO
SUITE 100, 303 EAST 17TH AVENUE
DENVER, COLORADO, 80203
(303) 661-0000

IN ORLANDO, FLORIDA
850 CNA TOWER
ORLANDO, FLORIDA 32802
(305) 641-1111

January 9, 1984

Gcc# 1396
MUR 1596
+ 1602
Pease
2:02

BY HAND

Robert Pease, Esquire
Federal Election Commission
1325 K Street, N. W.
Washington, D.C. 20463

Re: MURs 1596 and 1602

Dear Mr. Pease:

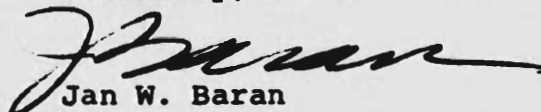
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Senator Richard G. Lugar, Chairman of NRSC, will not be in his Washington office until Thursday, January 12. Senator Lugar's presence in Washington is necessary in order that he execute an affidavit which is a part of NRSC's response to the complaints. Accordingly, we anticipate filing both the response and Senator Lugar's Affidavit on Thursday, January 12.

We appreciate the General Counsel's willingness to extend the time for this filing.

Sincerely,


Jan W. Baran

bcc: Richard E. Messick, Esquire

85040514530

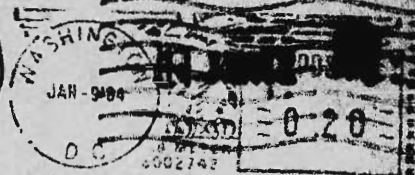
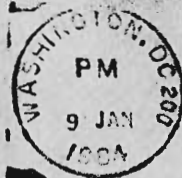
ER & HOSTETLER

CONNECTICUT AVE., N. W.

WASHINGTON, D. C. 20006

8504051453

Richard E. Messick, Esquire
National Republican Senatorial Committee
404 C Street, N. E.
Washington, D.C. 20463



604 1352

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

919 EIGHTEENTH STREET, N.W.
WASHINGTON, D. C. 20006

(202) 463-8700

TELECOPIER
(202) 293-3931

January 4, 1984

222 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 371-6000
ONE DEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 553-0002
ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 488-8200

BY HAND

Robert Pease, Esq.
Attorney
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

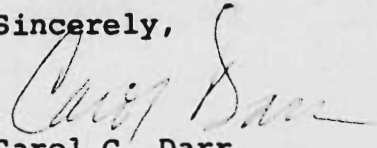
Re: In the Matter of Republican National
Independent Expenditure Committee,
MUR 1602

Dear Mr. Pease:

On behalf of my client, the National Republican
Independent Expenditure Committee, I am writing to request
a two day extension of time in which to respond to the
allegations contained in MUR 1602. We will hand deliver
our response by close of business Friday, January 6, 1984.

Thank you for your consideration of this matter.

Sincerely,


Carol C. Darr

CCD:llr

85040514532

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

919 EIGHTEENTH STREET, N. W.

WASHINGTON, D. C. 20006

Robert Pease, Esq.

Attorney

Federal Election Commission

1325 K Street, N.W.

Washington, D.C. 20463

BY HAND

5040514533



The Dan Evans Senate Committee
P.O. Box 520, Seattle, WA 98111

RECEIVED AT THE FEC
Cct# 1353
84 JAN 4 P12:44

RP

5
49:55

December 23, 1983

Kenneth A. Gross
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: FEC Reference MUR 1602
The Dan Evans Senate Committee

Dear Mr. Gross:

I am replying to your December 8, 1983, letter.

Common Causes' complaint appears to contain allegations against the Republican National Independent Expenditure Committee. However, Common Cause's complaint does not appear to contain any allegations against The Dan Evans Senate Committee.

As I mentioned to you in my last letter, I have never met or talked with Senator Heinz or to my knowledge anyone associated with his committee. I am not aware or do I have any reason to believe that anyone associated with The Dan Evans Senate Committee had any contact with Senator Heinz or his committee.

I hope my reply is sufficient for your purposes.

Very truly yours,

J. J. Gilmour, Treasurer
The Dan Evans Senate Committee

JJG:can

85040514534



**DAN
EVANS**
U.S. SENATE



The Dan Evans Senate Committee
P.O. Box 520, Seattle, WA 98111

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CERTIFIED

P 222 173 810

MAIL

Kenneth A. Gross
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

Paid for by The Dan Evans Senate Committee. Campaign Headquarters: 7th & Union, Seattle, Washington 98101 (206) 624-5200 Republican

6CC#1351
RP

EPSTEIN BECKER BORSODY & GREEN, P.C.

ATTORNEYS AT LAW

1140 19TH STREET, N.W.

WASHINGTON, D. C. 20036

(202) 861-0900

**250 PARK AVENUE
NEW YORK, NEW YORK 10177
(212) 370-9800**

**MALLICK TOWER
ONE SUMMIT AVENUE
FORT WORTH, TEXAS 76102¹
(817) 334-0701**

**1875 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067
(213) 556-8861**

**235 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94104¹
(415) 398-8865**

¹P.C. IN NEW YORK AND
WASHINGTON, D.C. ONLY

January 4, 1984

JAN 4 P2:28
ORIGINAL FILED

**Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463**

Dear Mr. Steele:

Pursuant to our earlier discussion, please note my appearance on behalf of Senator John Heinz in connection with his responses in MUR 1596 and MUR 1602. You may address all items distributed in connection with these matters to me at the above address.

Pursuant to his authorization, I am delivering to you herewith, Senator Heinz' notarized letter response to you and the Commission in MUR 1602.

Thank you for your consideration.

Sincerely,


Stuart M. Gerson

85040514536

United States Senate

WASHINGTON, D. C. 20510

January 4, 1984

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, Northwest
Washington, D. C. 20463

JAN 4 P2:28

RE: Matter MUR 1602

Dear Mr. Steele:

This letter responds to the complaint filed on or about November 22, 1983, by Common Cause concerning expenditures made by the Republican National Independent Expenditure Committee ("RNIEC") during the recent senatorial campaign in the State of Washington. This complaint rather closely resembles that previously filed by two committees of the Democratic Party and subject to the Commission's review in Matter MUR 1596. On November 29, 1983, by letter addressed to you, I replied to that charge, as did the RNIEC in a separate document. I respectfully suggest to the Commission that, for the reasons previously addressed, the complaint of Common Cause is without factual or legal merit and the Commission should therefore decline to proceed further.

It is my understanding that the RNIEC is filing a response to the complaint of Common Cause. I have seen a draft of that document and subscribe to it in full. Having adopted the positions stated in that response, there is no need to restate them here. However, I wish to make several additional points.

First, let me reiterate that my conduct, and to the best of my belief, that of the RNIEC, has at all times been lawful and proper and has fully complied with the requirements of the Federal Election Campaign Act of 1971.

Second, despite its more elaborate presentation, Common Cause states no other factual basis for its position than that set forth by the Democratic committees in Matter MUR 1596. Both complaints are derived from newspaper articles whose reportage as to my role with the RNIEC and the activities of that committee are substantially in error. The Commission has traditionally refused to proceed on such media-based complaints, and a review of Common Cause's papers (as does a review of the papers of the Democratic committees), offers ample reason for the continuation of that precedent.

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Common Cause has presented three arguments. The first two are linked attempts to show that RNIEC is an appendage of or a cipher for the National Republican Senatorial Committee. These arguments are new versions of positions previously taken by Common Cause and others in an attempt to overturn through administrative means the Supreme Court's holding in Buckley v. Valeo that the First Amendment guarantees the right of a person or committee to make unlimited "independent expenditures" in support of or in opposition to various national political candidates. In the wake of the Buckley case, the Commission has been most sensitive to First Amendment considerations. Especially because Common Cause alleges no material fact in support of its position, it is unavailing for it to attempt to influence the Commission to evade judicial and constitutional mandate. As to Common Cause's third argument, that RNIEC violated the law by acting without independence of the Evans campaign, there is not even a purported factual basis for it.

Common Cause alleges first that RNIEC is "affiliated" with the National Republican Senatorial Committee ("NRSC") within the meaning of 11 C.F.R. § 100.5(g)(2). This claim is particularly untenable in view of the fact that the NRSC has publicly stated that it and its Chairman did not support the RNIEC's establishment and view RNIEC as a competitor. In addition, Common Cause's stock position cannot be validated by any evidence of common establishment or control between the RNIEC and the NRSC. Indeed, the facts are otherwise, particularly as they relate to my own conduct.

Its "affiliation" argument is so nebulous that Common Cause quickly asserts its related point that however it was established, the RNIEC is so inextricably intertwined with the NRSC that by its conduct it cannot be independent of the NRSC. This point makes no sense even in theory, but in fact is even less tenable.

As I have previously attested to the Commission, except for its Chairman, the members of the NRSC serve a mere ex officio role of an advisory nature. The NRSC Chairman hires and directs the Committee's staff which does not report to the Committee's members. The initiation and direction of NRSC programs and expenditures are also matters entirely within the discretion of the Committee Chairman. I am a past Chairman of the NRSC, but my term ended in December 1980, long before any event even remotely material to the Evans' campaign. The current NRSC Chairman is

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Charles N. Steele, Esquire
Page Three
January 4, 1984

not alleged to have given any direction to or exercised any control over the RNIEC. In fact, according to the NRSC's statement, the opposite is the case. It is, therefore, apparent that concerning my own activities and the powers of the NRSC Chairman, there is nothing that would demonstrate an impermissible linkage between the two committees.

Although I did remain an ex officio member of the NRSC, my desire to avoid any appearance which might raise any question about my independence led me to suspend my participation in NRSC activities as of October 6, 1983 (see attachment), and then to resign from the NRSC on November 14, 1983, never having resumed participation. Throughout this period, and indeed at all times, nothing that I did in connection with the NRSC had anything to do with the Evans' campaign or the Washington election.

The Evans campaign was not an event long planned for; it arose following the untimely death of Senator Jackson. Moreover, in 1983, and prior to the death of Senator Jackson and the subsequent appointment of Senator Evans to succeed him, the NRSC had three meetings which I attended, which meetings, I believe were the only meetings the NRSC had during the period. I was a passive participant at these meetings, which themselves had nothing to do with the Evans campaign, which did not then even exist. After Senator Jackson's death, I attended no meeting of the NRSC and do not even know if there were any such meetings.

Obviously, by its exigent nature, the Evans campaign was not a matter of strategic planning by the NRSC. During my chairmanship of the NRSC and thereafter, I was not in any position to know anything about Senator Evans' plans and activities through the NRSC. Additionally, I did not work through the NRSC to aid Mr. Evans or do anything to negate my independence or that of the RNIEC from Senator Evans or his campaign.

This brings me to the final contention of Common Cause, a contention made without even any pretense that it is based in fact, that RNIEC obtained information "from or about" the Evans campaign "through NRSC or elsewhere." Given the flimsiness of this charge, there is little else that need be said about it but to deny it. I repeat my earlier statement to the Commission that at no time have I, my staff, or to my knowledge the RNIEC, ever conferred with Senator Evans, his agents or his authorized committee, or with any member or agent of any state or national party committee regarding the plans, projects or needs of the Evans campaign.

When the unsupportable claims of Common Cause are stripped away, the Commission is left with nothing more than

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Charles N. Steele, Esquire
Page Four
January 4, 1984

an argument that a committee cannot make an independent expenditure when it shares the same goal -- in this case, electing Republicans -- as a party committee. The Supreme Court in Buckley, to say nothing of common sense, puts that argument to rest. Additionally, the fact that I, or anyone else, might have been an official or member of a party committee cannot, as a mere issue of status, vitiate my ability to act "independently" as to a given campaign. The determinative issue, given individual First Amendment rights, is whether a person in fact acted with independence. In the case of the Evans campaign, I can say that both the RNIEC and myself were in fact independent and had no information of the kind claimed, without any support, by Common Cause.

For these reasons, I respectfully request that the Commission close this matter after declining to proceed further as to the complaint.

Thank you for your consideration.

Sincerely,

John Heinz

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA) SS

On this 4th day of January, 1984, personally appeared before me, a Notary Public in and for said City and District, John Heinz, who being duly sworn, said that the above letter was true and correct.

David H. Ringle

Notary Public
District of Columbia

NOTARY PUBLIC

DISTRICT OF COLUMBIA

My commission expires:

MY COMMISSION EXPIRES JUNE 30, 1986

85040314540

JOHN HEINZ
United States Senate

October 6, 1983

Honorable Richard L. Lugar
Chairman
National Republican Senatorial Committee
Washington, D. C. 20510

Dear Senator ^{Dick}Lugar:

As you know, I have agreed to become Chairman of the Advisory Council of the recently-formed Republican National Independent Expenditure Committee ("RNIEC"). The RNIEC is now involved in fund-raising and will, among other things, make "independent expenditures" within the meaning of the Federal election laws, in support of Republican candidates for National office. Considering the tremendous challenge that the Republican Party is facing in the upcoming elections, I am committed to doing everything possible to preserve the Republican majority in the Senate and in turning the tide in the House, and that the RNIEC can be a major force in helping to achieve these goals.

As you know, I am presently a member of the National Republican Senatorial Committee ("NRSC"), and have been active in NRSC affairs. However, with the recently scheduled Senatorial primary and special election in the State of Washington, it is now necessary that I alter my NRSC role.

In order that I may be involved in the independent expenditure activities of the RNIEC, it is necessary under the election laws that I not engage in any discussion or action in which a candidate, his staff or campaign committee(s) participate, concerning the plans, conduct or needs of that candidate or his campaign. The same is the case for my staff and the officers, directors and staff of the RNIEC. For this reason, effective immediately, I suspend myself from all campaign related activities pertaining to the Dan Evans race and shall take a leave of absence from the NRSC through and including the special Senatorial election in Washington State to be decided on November 8. I am advised by counsel, however, that I may

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continue to remain active in fundraising activities for individual Republican candidates and all Party Committees, specifically including the NRSC. I therefore intend to remain active, as I have previously, in all fundraising activities that benefit the NRSC. I am advised by counsel that I will be free to resume my role in all NRSC activities subsequent to November 8, 1983.

For your information the RNIEC will make no independent expenditures in any primary election. However, it will, at some point in 1984, be necessary for me to suspend my NRSC campaign involvement in general election campaigns (other than for fundraising purposes) where there is the possibility of RNIEC involvement.

During the period of my leave of absence from the Evans campaign activities of the NRSC, I shall not engage in any consultation or communication with the NRSC or its staff, or with the candidate, his staff or committee, concerning the plans or activities of the candidate or his campaign. I have instructed my own staff and the officers, directors and staff of the RNIEC to act in the same way. Similarly, I request that the members and staff of the NRSC not engage in any such discussion with me or these persons during the period of my leave. I would appreciate your transmitting this request.

Republican success in these critical times is utterly dependent upon the broadest possible participation of committees such as the RNIEC and NRSC. I am confident that we can reach our goals.

With best wishes,

Sincerely,


John Heinz

JH/ml

cc Mitch Daniels
Kevin Talley
Rod Smith

85040514542



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 15, 1983

Carol C. Darr, Esquire
Skadden, Arps, Slate, Meagher
and Flom
919 Eighteenth Street, N.W.
Washington, D.C. 20006

Dear Ms. Darr:

In your letter of December 13, 1983, you requested a twenty day extension for both Senator Heinz and the Republican National Independent Expenditure Committee to respond to MUR 1602. This extension for both Senator Heinz and the NRIEC is granted. The responses are now due on January 4, 1984.

Sincerely,

Charles N. Steele
General Counsel

A handwritten signature in cursive script, appearing to read "Kenneth A. Gross", is written over the typed name.

BY: Kenneth A. Gross
Associate General Counsel

35040514543

GCCT# 1259

1602

Rease

STATEMENT OF DESIGNATION OF COUNSEL

DEC 15 AIO: 57

NAME OF COUNSEL: Carol C. Darr
Skadden, Arps, Slate, Meagher & Flom
ADDRESS: 919 18th Street, N.W.
Washington, D.C. 20006
TELEPHONE: 463-8700

The above-named individual is hereby designated as my
counsel and is authorized to receive any notifications and
other communications from the Commission and to act on my
behalf before the Commission.

December 15, 1983
Date

Rodney A. Smith
Signature

NAME: Rodney A. Smith
ADDRESS: Republican National Independent Expenditure Comm.
5085 Lowell Street, N.W.
Washington, D.C. 20016
HOME PHONE: 362-5994
BUSINESS PHONE: 362-5994

85040514544

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
919 18TH STREET, N.W.,
WASHINGTON, D.C., 20006

Robert Peace
General Counsel
Federal Election Commission
1325 K Street
7th Floor
Washington, D.C.

85040314545

600 1245
Pearce
1602

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

919 EIGHTEENTH STREET, N.W.

WASHINGTON, D.C. 20006

TELECOMPER
(202) 293-3931

(202) 463-6700

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 577-8000
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 552-6002
ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 498-8800
515 SOUTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90071
(213) 456-4800

December 13, 1983

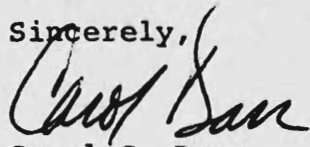
Charles N. Steele
General Counsel
Federal Election Committee
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Steele:

The purpose of this letter is to request a twenty-day extension in our time to respond to MUR 1602 filed by Common Cause. Senator Heinz has had a death in his family which has required substantial amounts of his time to be spent on the west coast. This request for an extension is made on behalf of Senator Heinz through his counsel Stuart Gersen, and RNIEC through me.

This is also to inform you that I will be representing RNIEC in this matter. Thank you for your consideration of this matter.

Sincerely,


Carol C. Darr

85040314546

8 5 0 4 0 5 1 4 5 4 7

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

919 EIGHTEENTH STREET, N.W.

WASHINGTON, D.C. 20006

HAND DELIVERY

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

Charles N. Steele
General Counsel
Federal Election Committee
1325 K Street, N.W.
Washington, D.C. 20463

HAND DELIVERY ☒
PICK UP ☐
AIR COURIER ☐

RECEIVED AT THE FEC
GCC#1236
83 DEC 8 P2: 8

**DA
EV
U.S.**
The Dan Evans Senate Com
P.O. Box 520, Seattle, WA 9

December 83

Kenneth Gross
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: FEC Reference MUR 1596
The Dan Evans Senate Committee

Dear Mr. Gross:

I am replying to your November 15, 1983 letter.

The Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee's November 7, 1983 letter appears to contain several allegations pertaining to the "Republican National Independent Expenditure Committee." According to the Wall Street Journal article enclosed with your letter, Senator John Heinz of Pennsylvania is chairman of this committee.

I have never met or talked with Senator Heinz or to my knowledge anyone associated with his committee. I am not aware or do I have any reason to believe that anyone associated with The Dan Evans Senate Committee had any contact with Senator Heinz or his committee.

I hope my reply is sufficient for your purposes.

Yours very truly,

J. J. Gilmour
J. J. Gilmour, Treasurer
The Dan Evans Senate Committee

JJG:can

**DAN
EVANS**
U.S. SENATE

Dan Evans Senate Committee
Box 520, Seattle, WA 98111

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

CERTIFIED

P 222 173 816

MAIL



RECEIVED AT THE FEC

75TH ANNIVERSARY

3 DEC 3 1983

1908 - 1983

Kenneth A. Gross
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

RECEIVED AT THE FEC
G.C.C.#1238
83 DEC 9 P12: 48

United States Senate

WASHINGTON, D.C. 20510

December 5, 1983

3206 Federal Building
915 Second Avenue
Seattle, WA 98174
206-442-0350

DEC 9 10:07

Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington, D.C. 20463

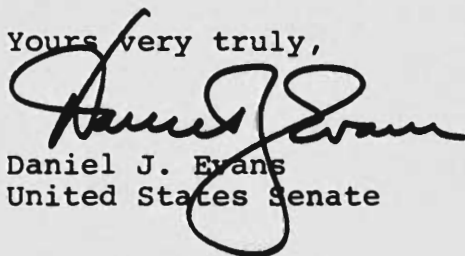
Attention: Kenneth A. Gross
Associate General Counsel
RE: Your File: MUR1596

Dear Mr. Steele:

Thank you for sending me a copy of your November 15 letter to Mr. Gilmour, Treasurer of the Dan Evans Senate Committee. I have requested that Mr. Gilmour cooperate fully with the Commission in this matter.

I would appreciate being kept advised of developments; and if I can be of any assistance to you personally, please let me know.

Yours very truly,



Daniel J. Evans
United States Senate

DJE:db

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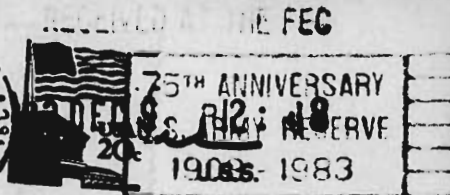
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United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, D.C. 20510
OFFICIAL BUSINESS

Mr. Charles N. Steele
General Counsel
Federal Election Commission
Washington, D.C. 20463



United States Senate

WASHINGTON, D. C. 20510

November 29, 1983

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, Northwest
Washington, D. C. 20463

RE: Matter MUR 1596

Dear Mr. Steele:

This letter is submitted in response to your letter to me dated November 15, 1983, and signed on your behalf by the Commission's Associate General Counsel. Thank you for the opportunity to address the ill-founded and misleading charge of the Democratic Senatorial and Congressional Campaign Committees that either the Republican National Independent Expenditure Committee ("RNIEC") or I somehow acted improperly in connection with the expenditures made during the recent senatorial campaign in the State of Washington.

I respectfully suggest to you and the Commission that this charge is based upon a fundamental and easily demonstrable factual error and that it is otherwise deficient as a matter of law and fact. At all times, my conduct has been utterly consistent with the requirements of the Federal Election Campaign Act of 1971. Additionally, to my knowledge and belief, the RNIEC, which will respond to the Commission separately, has also acted lawfully and properly in connection with the matter raised. For these reasons, I ask that the Commission decline to proceed further as to the instant complaint.

The complaint at issue has as its only "factual" basis a November 7, 1983, article from the Wall Street Journal. The Commission has addressed its authority to proceed on such hearsay complaints, concluding that it could do so under its supervisory powers (2 U.S.C. §437g(a)(2)). However, sensibly, the Commission historically has declined to proceed on complaints of this nature when they are based on nothing more than the reiteration of the contents of a newspaper article. The present matter amply demonstrates why this historical view of the Commission should be continued.

85040514552

Charles N. Steele
Page Two
November 29, 1983

Contrary to the erroneous statement of the Wall Street Journal, reiterated as the basis for their complaint by the Democratic committees, I am not and never have been the Chairman of the RNIEC. I am the Chairman of that Committee's "Advisory Panel," and that function is precisely what the title should imply. I have provided general advice and have been the signatory on RNIEC mailings, but I have never directed the operations of the RNIEC, made its decisions or controlled its Chairman or agents. The Democratic committees' charge is premised upon their false belief that I am the Chairman of the RNIEC. This error derives from the incorrect Wall Street Journal article, and even a cursory investigation by the complainants could have disclosed it. In any event, it is at least fair to say that with the ultimate recognition of this compounded error, the stated basis for the charge has been eliminated and closure of this matter is therefore appropriate. I think it also important to note, however, that the charge is otherwise defective as well.

The complainants erroneously suggest that there might be an inherent impropriety when a member of a party committee is also involved in the activities of an organization making independent expenditures. This haphazard assertion is rebutted by the fact well recognized by the Commission that the first amendment rights of an independent spender under the Federal Election Campaign Act of 1971, as that Act has been interpreted by the Supreme Court in the case of Buckley v. Valeo, may only be vitiated by the independent spender's own actions, not his position. The complainants' charge is especially inappropriate in my own case.

I have been a member of the National Republican Senatorial Committee ("NRSC"), although I did resign that post formally on November 14, 1983. The Commission should be aware of the fact that on October 6, 1983, long before the expenditures at issue here were made and the Wall Street Journal article written and derivative charge filed, I took a leave of absence from the NRSC and informed its Chairman of the necessity to comply with the Federal elections laws by insuring my independence from any activity carried on by the NRSC or contact made with the Evans' campaign. Attached is a copy of my October 6, 1983, letter to the NRSC Chairman, and I attest that my staff and I, and to my knowledge and belief the RNIEC, have fully complied with the statements therein.

83040514553

Charles N. Steele
Page Three
November 29, 1983

In further point of fact, the Commission should be aware that mere membership on the NRSC is an ex officio matter. All elected Republican senators are appointed to one of several party-related committees, one of which is the NRSC. A member, however, only has advisory functions. The NRSC Chairman employs and directs the Committee's staff which in no way reports to the Committee's members. He also initiates and directs by his sole discretion its programs and decides the expenditures and activities on behalf of individual candidates for the committee. Although I am a past Chairman of the NRSC, I have not held that post since December, 1980. Obviously, I was not the NRSC's Chairman at any time material to this case.

9 5 0 4 0 5 1 4 5 5 4
In 1983, and prior to the death of Senator Henry Jackson and the subsequent appointment and candidacy of Senator Dan Evans to succeed him, the NRSC had three meetings which I attended. My role was entirely an auditory one at these meetings, which, because of their timing, could have had nothing to do with the Evans campaign, which then did not exist. Since Senator Jackson's untimely death, I have attended no meeting of the NRSC. In sum, I was neither "in a position to work through NRSC in close cooperation with Mr. Evans," as the complainants charge, nor did I in fact, or did the RNIEC, do anything to vitiate my independence from Senator Evans or his campaign.

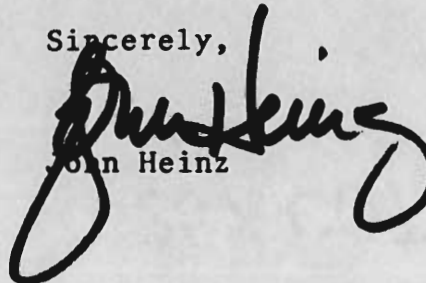
As is my first amendment right, I have urged persons to contribute to the RNIEC and signed an "electiongram" asking the voters of Washington to turn out on behalf of Senator Dan Evans in his November 1983 election. However, at no time have I, my staff, or to my knowledge the RNIEC, ever conferred with Senator Evans, his agents or his authorized committee, or with any member or agent of any state or national party committee regarding the plans, projects or needs of the Evans' campaign.

The charge of the Democratic committees is characterized by its exaggerated and pejorative tone. Such invective is both unwarranted and inconsistent with the stature and function of the Federal Election Commission. For present purposes, it is only necessary for me to restate that the instant charge has a factually-erroneous basis, and that said charge is otherwise substantively inaccurate in fact and in law. Accordingly, I respectfully urge both you and the Commission to close this matter after declining to proceed further as to the complaint.

Charles N. Steele
Page Four
November 29, 1983

Thank you for your consideration.

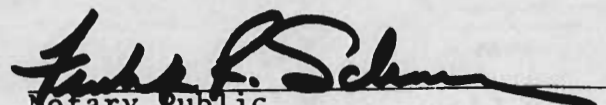
Sincerely,



John Heinz

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA) SS

On this 29th day of November, 1983, personally appeared before me, a Notary Public in and for said City and District, John Heinz, who being duly sworn said that the above letter was true and correct.



Notary Public
District of Columbia

My commission expires:

June 30, 1986

85040514555

JOHN HEINZ
United States Senate

October 6, 1983

Honorable Richard L. Lugar
Chairman
National Republican Senatorial Committee
Washington, D. C. 20510

Dear Senator ^{Dick}Lugar:

As you know, I have agreed to become Chairman of the Advisory Council of the recently-formed Republican National Independent Expenditure Committee ("RNIEC"). The RNIEC is now involved in fund-raising and will, among other things, make "independent expenditures" within the meaning of the Federal election laws, in support of Republican candidates for National office. Considering the tremendous challenge that the Republican Party is facing in the upcoming elections, I am committed to doing everything possible to preserve the Republican majority in the Senate and in turning the tide in the House, and that the RNIEC can be a major force in helping to achieve these goals.

As you know, I am presently a member of the National Republican Senatorial Committee ("NRSC"), and have been active in NRSC affairs. However, with the recently scheduled Senatorial primary and special election in the State of Washington, it is now necessary that I alter my NRSC role.

In order that I may be involved in the independent expenditure activities of the RNIEC, it is necessary under the election laws that I not engage in any discussion or action in which a candidate, his staff or campaign committee(s) participate, concerning the plans, conduct or needs of that candidate or his campaign. The same is the case for my staff and the officers, directors and staff of the RNIEC. For this reason, effective immediately, I suspend myself from all campaign related activities pertaining to the Dan Evans race and shall take a leave of absence from the NRSC through and including the special Senatorial election in Washington State to be decided on November 8. I am advised by counsel, however, that I may

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Honorable Richard Lugar
Page Two
October 6, 1983

continue to remain active in fundraising activities for individual Republican candidates and all Party Committees, specifically including the NRSC. I therefore intend to remain active, as I have previously, in all fundraising activities that benefit the NRSC. I am advised by counsel that I will be free to resume my role in all NRSC activities subsequent to November 8, 1983.

For your information the RNIEC will make no independent expenditures in any primary election. However, it will, at some point in 1984, be necessary for me to suspend my NRSC campaign involvement in general election campaigns (other than for fundraising purposes) where there is the possibility of RNIEC involvement.

During the period of my leave of absence from the Evans campaign activities of the NRSC, I shall not engage in any consultation or communication with the NRSC or its staff, or with the candidate, his staff or committee, concerning the plans or activities of the candidate or his campaign. I have instructed my own staff and the officers, directors and staff of the RNIEC to act in the same way. Similarly, I request that the members and staff of the NRSC not engage in any such discussion with me or these persons during the period of my leave. I would appreciate your transmitting this request.

Republican success in these critical times is utterly dependent upon the broadest possible participation of committees such as the RNIEC and NRSC. I am confident that we can reach our goals.

With best wishes,

Sincerely,


John Heinz

JH/ml

cc Mitch Daniels
Kevin Talley
Rod Smith

85040514557

35040:1438

H. JOHN HEINZ III

ited States Senate

WASHINGTON, D. C. 20510

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, Northwest
Washington, D. C. 20463



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 8, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dan Evans Senate Committee
John Jones Gilmour, Treasurer
P. O. Box 520
Seattle, Washington 98111

Re: MUR 1602

Dear Mr. Gilmour:

This letter is to notify you that on November 22, 1983 the Federal Election Commission received a complaint which alleges that your committee may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1602. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against your committee in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

Page -2-
Dan Evans Senate Committee

If you have any questions, please contact Robert Pease, the staff member assigned to this matter at (202) 523-4529. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

Keith A. Gross
By Kenneth A. Gross
Associate General Counsel

cc: Senator Dan Evans

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PS Form 3811, July 1982

• **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery

2. ☐ RESTRICTED DELIVERY.....
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO:
Senator Dan Evans
4202 Lavelle Street, N.E.
Olympia, Washington 98502

4. TYPE OF SERVICE: ARTICLE NUMBER
☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD 943885
☐ EXPRESS MAIL

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☒ Addressee ☐ Authorized agent
Senator Dan Evans

5. DATE OF DELIVERY 12/12/83 POSTMARK (may be on reverse side)

6. ADDRESSEE'S ADDRESS (only if requested)

7. UNABLE TO DELIVER BECAUSE: 7a. EMPLOYEE'S INITIALS

RETURN RECEIPT

MUR 1602 - Pease

(1578783)

PS Form 3811, July 1982

• **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery

2. ☐ RESTRICTED DELIVERY.....
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO: Evans Senate Cmte
John Jones Gilmour, Treas.
P.O. BOX 520
Seattle, Washington 98111

4. TYPE OF SERVICE: ARTICLE NUMBER
☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD 943886
☐ EXPRESS MAIL

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☒ Authorized agent
Keith A. Gross

5. DATE OF DELIVERY POSTMARK (may be on reverse side)

6. ADDRESSEE'S ADDRESS (only if requested)

7. UNABLE TO DELIVER BECAUSE: 7a. EMPLOYEE'S INITIALS

RETURN RECEIPT

MUR 1602 - Pease

(1578783)



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

National Republican Senatorial Committee
Bob Perkins, Treasurer
404 C Street, N.E.
Washington, D.C. 20002

Re: MUR 1602

Dear Mr. Perkins:

This letter is to notify you that on November 22, 1983 the Federal Election Commission received a complaint which alleges that your committee may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1602. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against your committee in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

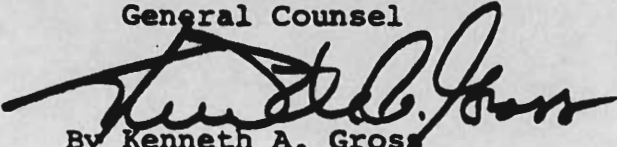
Page -2-

Letter to National Republican
Senatorial Committee

If you have any questions, please contact Robert Pease,
the staff member assigned to this matter at (202) 523-4529.
For your information, we have attached a brief description of
the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel


By Kenneth A. Gross
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

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Cat 1160
Pence

UNITED STATES OF AMERICA
In The
FEDERAL ELECTION COMMISSION

In the Matter of

MUR 1596

REPUBLICAN NATIONAL
INDEPENDENT EXPENDITURE COMMITTEE

11/29 P 3:39

35040514563

The Republican National Independent Expenditure Committee responds to the Complaint dated November 7, 1983 filed by the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee, as follows:¹

IMPROPER COMPLAINT

Respondent in filing this response does not waive the technical deficiencies of the Complaint's allegations. Respondent submits that this Complaint does not meet the minimum technical requirements as set forth by the General Counsel and reported in the Federal Election Commission, 7 Record No. 4 at 4 (April 1981).

Specifically, the Complaint fails to properly set forth those matters known to the complainant and those matters based on information and belief; it fails to identify which of the potential respondents is accused of violating the Federal Election Campaign Act; it fails to describe clearly and concisely

¹ Senator John Heinz, who was also made a subject of this Complaint, is responding separately to the Commission.

a violation of the Act or Committee regulations; and it fails to indicate that it believes the attached article is true and correct. Given these patent deficiencies, it is obvious that it has been made as a publicity-seeking ploy by the complainants. The complaint is, therefore, unworthy of further attention of this Commission.

POINT BY POINT RESPONSE
TO COMPLAINANTS' LETTER

1. In response to paragraph 1, respondent denies any violation of "our election laws", much less a "brazen violation".

2. In response to paragraph 2, respondent admits making independent expenditures on behalf of Senator Dan Evans.² Respondent admits sending "election grams" urging voter support and turn-out in the November special election. A copy of the election gram which was used is attached hereto as Exhibit A (Please note the disclaimer at the bottom thereof). Respondent specifically denies that the independence of the Committee is a "sham", as alleged by the complainants.

² Part of such expenditures were for the so-called "election gram" and some were used in general fundraising efforts and for administrative expenses; because of F.E.C. requirements, all are shown to be involved in the only election in whose behalf the Committee is acting at this time. In future elections we anticipate that such expenditures would be apportioned against the various candidates supported. This procedure is in accordance with our understanding of F.E.C. record keeping requirements and usual accounting procedures.

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3. In response to paragraph 3, respondent admits that an article was published in the Wall Street Journal on November 7, 1983, but denies the accuracy of the headline or the implications of such article.

4. In response to paragraph 4, respondent admits that Senator John Heinz is the author of the "election gram" referred to in Exhibit A, but denies that he is chairman of respondent committee. The Committee is a non-profit corporation under the laws of the District of Columbia, the Chairman and Treasurer of which is Rodney A. Smith. Senator Heinz is Chairman of the National Advisory Panel of the Committee. In one mailing piece, Senator Heinz was erroneously designated "National Chairman" of the Republican National Independent Expenditure Committee, rather than National Chairman of the Advisory Committee, but that has been his proper designation and role since this Committee was organized.

Senator Heinz was also a member of the Republican Senatorial Committee, but took a leave of absence from this position effective October 6, 1983 and at no time participated in any discussion or conference regarding the activities of the N.R.S.C. in regard to the Dan Evans election. On November 14, 1983, Senator Heinz formally resigned from the N.R.S.C. In addition, it acknowledges that Senator Heinz is a former Chairman of the National Republican Senatorial Committee (January 1979-December 1980). Respondent also admits that Rodney A. Smith is a former

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Treasurer and former Finance Director of the N.R.S.C., but has not held such position since December, 1982.

5. In response to paragraph 5, respondent particularly denies the allegation of lack of independence and, to the contrary, states that all expenditures have been made with particular and specific regard to the Federal Election Campaign Act and, specifically, Part 109 of the F.E.C. Regulations (Independent Expenditures). The Board of Directors of the Committee, its chairman, treasurer, secretary, legal counsel all signed the certificate attached hereto as Exhibit B prior to any expenditures on behalf of any candidates. Respondent specifically denies that any direct or indirect communication, consultation, cooperation or coordination concerning the Washington special election with Senator Dan Evans, his committee or his agents. Respondent further denies any such cooperation, consultation or coordination with any state or national party committee that was involved in making §441a (d) (3) expenditures in behalf of Senator Dan Evans.

Respondent further points out that there was no nominee for this office at any time when Mr. Smith was in the employ of the N.R.S.C. or when Senator Heinz was active on the Committee, and neither of them could, of course, have been involved in those capacities with any plans, needs or programs which were developed at a much later date, when they were no longer in such positions. Respondent also denies any coordinated spending in behalf of Senator Evans, or that it intends to make any expenditures in

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cooperation or consultation with other Republican candidates in 1984, as is so groundlessly alleged at the conclusion of the paragraph. The respondent committee specifically spelled out its intended actions at the first official meeting of contributors and potential contributors. See Exhibit C.

6. In response to paragraph 6, respondent denies any plan or intent to "work in close cooperation and coordination" with Senator Evans or any other candidate, and specifically and categorically denies the allegations of the two subparagraphs.

The allegations of these subparagraphs presuppose matters that are completely untrue. Respondent does not believe that the N.R.S.C. became an "agent" or "authorized committee" of a candidate by the mere fact of making coordinated expenditures and believes that it would be a strange construction of that section of the Act. The act of authorization of a committee by a candidate involves specific and legal actions not involved with party committees. Even assuming this unlikely legal construction, there has not been any coordination between the respondents and the N.R.S.C., or any other national or state party committee in regard to the Dan Evans contest (See Exhibit B attached hereto). No such coordination or consultation has ever been engaged in, nor will it be in the future.

7. In answer to paragraph 7, respondent denies that the "presumption" of non-independence applies to the matters involved here (See MURs 1299, 1252 and 1459).

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8. In answer to paragraph 8, respondent denies any "smokescreen" and "iceberg" and can find no reference which describes these words as legal terms.

9. Respondent denies any disregard of the election laws, but again says to the contrary, these activities have been undertaken with care to comply with all provisions of the law and regulations.

The complainants' attempt to sensationalize this case in the press grossly violates the spirit of confidentiality contained in the F.E.C. regulations. In addition, the introduction of irrelevant inferences about totally unrelated but controversial cases and committees by complainants is a blatant attempt to raise unjustified prejudice in the mind of the Commission.

10. In answer to the last paragraph of the Complaint, such self-serving pious phrases demand no response and the vague threat of court action should be stricken from this frivolous Complaint. Respondent asserts that this threat is an abuse of legal process and urge the Commission to reject this apparent attempt to force respondents to spend donated funds for legal fees rather than for the political purposes for which such funds were given.

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WHEREFORE, respondents pray that this Commission close this matter forthwith and decline to proceed further.

REPUBLICAN NATIONAL INDEPENDENT
EXPENDITURE COMMITTEE

By Rodney A. Smith
Rodney A. Smith,
Its Chairman and Treasurer

DISTRICT OF COLUMBIA)
CITY OF WASHINGTON) SS

On this 29th day of November, 1983, personally appeared Rodney A. Smith to me known to be the person who executed the foregoing instrument, and who declared that he knows the contents thereof, and that the same was true and correct to his best knowledge, information and belief, and that he executes this response as chairman and treasurer of the said Committee.

C. Lynette Burton
Notary Public

My Commission Expires:

February 14, 1987

James F. Schoener
Counsel for Respondent
Miller, Canfield, Paddock and Stone
Suite 300, 2555 M Street, N.W.
Washington, D.C. 20037
(202) 822-9333

EXHIBIT A

JOHN HEINZ
WASHINGTON

ELECTION-GRAM

5-940466E24F 10/83 LJM TN22MP RAS WASH ST.
4200 367125 WGL EDMT WASHINGTON, DC 100-06-10

Dear Friend:

In just a few days a special election is being held to select Washington States next United States Senator.

And the outcome of this election may be decided by only a few votes either way.

That's why, I urge you to take 5 minutes on Tuesday November 8th to go to the polls and vote for Dan Evans.

I say this because Dan has impeccable credentials for election to the Senate.

For example, Dan is the only man in the history of Washington State to be elected to three consecutive terms as Governor.

And while serving as Governor, Dan Evans proved he was a man of vision and a skillful leader who possessed the perseverance necessary to turn good ideas into reality.

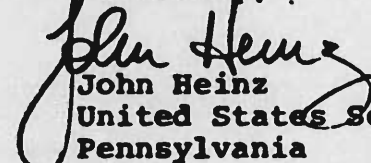
Additionally, Dan Evans has been named one of the "Ten Best Governors" of this century and on several occasions considered as a potential vice presidential nominee.

And during his recent interim appointment to the U. S. Senate, his intelligence and integrity earned him the instant respect of his colleagues.

Frankly, thousands of concerned citizens outside the borders of the Evergreen State are as desirous as I am to see Dan Evans elected to the Senate.

That's why, I thought it appropriate for a Senator from a distant state to write to you personally to ask you to please vote for Dan Evans on November 8th.

Sincerely,


John Heinz
United States Senator
Pennsylvania

Authorized and Paid for by the Republican National Independent Expenditure Committee, Rodney, A. Smith, President.
This piece prepared Independent of and without authorization of Dan Evans or his campaign committee.

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EXHIBIT B.

CERTIFICATE REGARDING

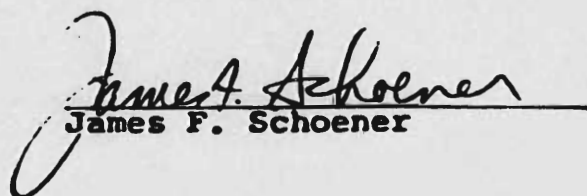
STATE OF WASHINGTON SPECIAL ELECTION
For United States Senate (November, 1983)
Republican Nominee: Dan Evans

"I certify I have not had any contact with Dan Evans, his campaign committee or agents with regard to the special election set for November 8th, 1983 nor was my decision to approve making independent expenditures by the RNIEC in support of Dan Evans made on the basis of any request or suggestion of the candidate, his committee or his or their agents.

I further certify that said independent expenditures are not being made in cooperation, consultation, or in concert with the candidate, his campaign committee or his or their agents. Neither has any suggestion or request to make these expenditures been made to me by any State or National political party committee. Further, I certify that these expenditures do not involve the financing of or dissemination, distribution or republication in whole or in part of any campaign material prepared by the candidate, his campaign committee or their agents."


Rodney A. Smith


Elizabeth Warren Smith


James F. Schoener

Dated: 19 Sept 1983

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**FACTS ABOUT CONTRIBUTING TO
AND RAISING FUNDS FOR THE
REPUBLICAN NATIONAL INDEPENDENT
EXPENDITURE COMMITTEE (RNIC)**

Federal Election law provides that any organization planning to make an independent expenditure in direct support of a specific campaign must do so totally on its own without any contact with or encouragement from the campaign to be supported. To insure compliance with this restriction, the RNIC has adopted the following guidelines:

A. CONTRIBUTION LIMITS AND RESTRICTIONS

1. An individual may give up to \$5,000 in each calendar year to the RNIC. This amount would count against the individual's \$25,000 maximum contribution limit in the year the money is given.
2. The spouse of the contributor may also give an additional \$5,000 contribution to the RNIC. Such contribution would count against the giving spouse's \$25,000 limit in the year the money is given.
3. The children of a contributor may also give to the RNIC if the contribution comes from the child's own funds and the decision to give is the child's decision.
4. Contributions must be delivered to the treasurer within 10 days of receipt.
5. Contributions cannot be received from foreign nationals, but "Green Card" aliens, living and working in the United States may contribute to the RNIC.
6. Contributions cannot be received from Federal contractors or persons making a donation in the name of another person.
7. Contributions cannot be solicited or received on Federal property; contributions cannot be "earmarked" for a candidate.
8. Contributions to the RNIC are eligible for the political tax credit on your I.R.S. Form 1040--up to \$50.00 for a single person, \$100.00 on a joint return.
9. Corporate contributions to the RNIC Federal account are prohibited, but voluntary contributions from a corporate political action committee are acceptable.
10. "In-kind" contributions from individuals can be accepted by the RNIC, but anyone wishing to make such a contribution should check with the treasurer of the committee.

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B. INDEPENDENT EXPENDITURES ARE SUBJECT TO SPECIFIC RESTRICTIONS

1. There is absolutely no limit on the amount of money an independent expenditure committee can spend in direct support of a candidate. The RNIC intends to make such independent expenditures to insure the election or re-election of targeted Republican candidates.
2. Any individual can be a voluntary fund raiser for the RNIC and also act as a voluntary fund raiser for other political organizations or candidates, including candidates supported by RNIC.
3. In the course of fundraising (referred to in item #2) for campaigns targeted by the RNIC, care must be taken to see that no "insider information" about the candidates strategy, plans, projections or needs is communicated to any individual having input into RNIC decisions involving independent expenditures in support of that campaign.
4. If "insider information" is passed on to any person involved in the RNIC's expenditure process, such persons must excuse themselves from all deliberations concerning that candidate's campaign.
5. Contributors to the RNIC who wish to have input and/or make suggestions as to how and where RNIC "independent expenditures funds" should be committed must forego active involvement in those campaigns where they want to have such input.
6. Subject to the conditions above, individuals may contribute to the RNIC and to other party committees or candidate committees including candidates for whom RNIC makes independent expenditures.
7. The activities and communications involved in fund raising for RNIC will at all times be kept separate from any and all RNIC activities involved in making independent expenditures.
8. Further internal procedures have been established by the RNIC to maintain its legal status as an independent expenditure committee. Specifically, professionals already committed to a candidate will not be retained by the RNIC to do work in support of that same candidate.
9. Regulations issued by the Federal Election Commission prevent the RNIC from the republication of any candidate's campaign materials.
10. In short, this committee will use caution to follow the law in order to avoid injuring the very candidates we want to help.

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UNITED STATES OF AMERICA
In The
FEDERAL ELECTION COMMISSION

In the Matter of

MUR 1596

REPUBLICAN NATIONAL
INDEPENDENT EXPENDITURE COMMITTEE

10/29 P 3:39

The Republican National Independent Expenditure Committee responds to the Complaint dated November 7, 1983 filed by the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee, as follows:¹

IMPROPER COMPLAINT

Respondent in filing this response does not waive the technical deficiencies of the Complaint's allegations. Respondent submits that this Complaint does not meet the minimum technical requirements as set forth by the General Counsel and reported in the Federal Election Commission, 7 Record No. 4 at 4 (April 1981).

Specifically, the Complaint fails to properly set forth those matters known to the complainant and those matters based on information and belief; it fails to identify which of the potential respondents is accused of violating the Federal Election Campaign Act; it fails to describe clearly and concisely

¹ Senator John Heinz, who was also made a subject of this Complaint, is responding separately to the Commission.

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a violation of the Act or Committee regulations; and it fails to indicate that it believes the attached article is true and correct. Given these patent deficiencies, it is obvious that it has been made as a publicity-seeking ploy by the complainants. The complaint is, therefore, unworthy of further attention of this Commission.

POINT BY POINT RESPONSE
TO COMPLAINANTS' LETTER

1. In response to paragraph 1, respondent denies any violation of "our election laws", much less a "brazen violation".

2. In response to paragraph 2, respondent admits making independent expenditures on behalf of Senator Dan Evans.² Respondent admits sending "election grams" urging voter support and turn-out in the November special election. A copy of the election gram which was used is attached hereto as Exhibit A (Please note the disclaimer at the bottom thereof). Respondent specifically denies that the independence of the Committee is a "sham", as alleged by the complainants.

² Part of such expenditures were for the so-called "election gram" and some were used in general fundraising efforts and for administrative expenses; because of F.E.C. requirements, all are shown to be involved in the only election in whose behalf the Committee is acting at this time. In future elections we anticipate that such expenditures would be apportioned against the various candidates supported. This procedure is in accordance with our understanding of F.E.C. record keeping requirements and usual accounting procedures.

3. In response to paragraph 3, respondent admits that an article was published in the Wall Street Journal on November 7, 1983, but denies the accuracy of the headline or the implications of such article.

4. In response to paragraph 4, respondent admits that Senator John Heinz is the author of the "election gram" referred to in Exhibit A, but denies that he is chairman of respondent committee. The Committee is a non-profit corporation under the laws of the District of Columbia, the Chairman and Treasurer of which is Rodney A. Smith. Senator Heinz is Chairman of the National Advisory Panel of the Committee. In one mailing piece, Senator Heinz was erroneously designated "National Chairman" of the Republican National Independent Expenditure Committee, rather than National Chairman of the Advisory Committee, but that has been his proper designation and role since this Committee was organized.

Senator Heinz was also a member of the Republican Senatorial Committee, but took a leave of absence from this position effective October 6, 1983 and at no time participated in any discussion or conference regarding the activities of the N.R.S.C. in regard to the Dan Evans election. On November 14, 1983, Senator Heinz formally resigned from the N.R.S.C. In addition, it acknowledges that Senator Heinz is a former Chairman of the National Republican Senatorial Committee (January 1979-December 1980). Respondent also admits that Rodney A. Smith is a former

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Treasurer and former Finance Director of the N.R.S.C., but has not held such position since December, 1982.

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5. In response to paragraph 5, respondent particularly denies the allegation of lack of independence and, to the contrary, states that all expenditures have been made with particular and specific regard to the Federal Election Campaign Act and, specifically, Part 109 of the F.E.C. Regulations (Independent Expenditures). The Board of Directors of the Committee, its chairman, treasurer, secretary, legal counsel all signed the certificate attached hereto as Exhibit B prior to any expenditures on behalf of any candidates. Respondent specifically denies that any direct or indirect communication, consultation, cooperation or coordination concerning the Washington special election with Senator Dan Evans, his committee or his agents. Respondent further denies any such cooperation, consultation or coordination with any state or national party committee that was involved in making \$441a (d)(3) expenditures in behalf of Senator Dan Evans.

Respondent further points out that there was no nominee for this office at any time when Mr. Smith was in the employ of the N.R.S.C. or when Senator Heinz was active on the Committee, and neither of them could, of course, have been involved in those capacities with any plans, needs or programs which were developed at a much later date, when they were no longer in such positions. Respondent also denies any coordinated spending in behalf of Senator Evans, or that it intends to make any expenditures in

cooperation or consultation with other Republican candidates in 1984, as is so groundlessly alleged at the conclusion of the paragraph. The respondent committee specifically spelled out its intended actions at the first official meeting of contributors and potential contributors. See Exhibit C.

6. In response to paragraph 6, respondent denies any plan or intent to "work in close cooperation and coordination" with Senator Evans or any other candidate, and specifically and categorically denies the allegations of the two subparagraphs.

The allegations of these subparagraphs presuppose matters that are completely untrue. Respondent does not believe that the N.R.S.C. became an "agent" or "authorized committee" of a candidate by the mere fact of making coordinated expenditures and believes that it would be a strange construction of that section of the Act. The act of authorization of a committee by a candidate involves specific and legal actions not involved with party committees. Even assuming this unlikely legal construction, there has not been any coordination between the respondents and the N.R.S.C., or any other national or state party committee in regard to the Dan Evans contest (See Exhibit B attached hereto). No such coordination or consultation has ever been engaged in, nor will it be in the future.

7. In answer to paragraph 7, respondent denies that the "presumption" of non-independence applies to the matters involved here (See MURs 1299, 1252 and 1459).

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8. In answer to paragraph 8, respondent denies any "smokescreen" and "iceberg" and can find no reference which describes these words as legal terms.

9. Respondent denies any disregard of the election laws, but again says to the contrary, these activities have been undertaken with care to comply with all provisions of the law and regulations.

The complainants' attempt to sensationalize this case in the press grossly violates the spirit of confidentiality contained in the F.E.C. regulations. In addition, the introduction of irrelevant inferences about totally unrelated but controversial cases and committees by complainants is a blatant attempt to raise unjustified prejudice in the mind of the Commission.

10. In answer to the last paragraph of the Complaint, such self-serving pious phrases demand no response and the vague threat of court action should be stricken from this frivolous Complaint. Respondent asserts that this threat is an abuse of legal process and urge the Commission to reject this apparent attempt to force respondents to spend donated funds for legal fees rather than for the political purposes for which such funds were given.

R 5 0 4 0 5 1 4 5 7 9

**REPUBLICAN NATIONAL INDEPENDENT
EXPENDITURE COMMITTEE**

DISTRICT OF COLUMBIA)
) SS
CITY OF WASHINGTON)

C. Lynette Cannon
Notary Public

February 14, 1987

b/JFS5

EXHIBIT A

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WASHINGTON

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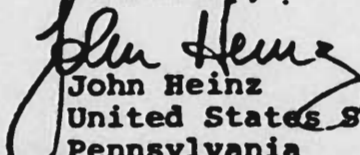
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Pennsylvania

Authorized and Paid for by the Republican National Independent Expenditure Committee, Rodney, A. Smith, President.
This piece prepared Independent of and without authorization of Dan Evans or his campaign committee.

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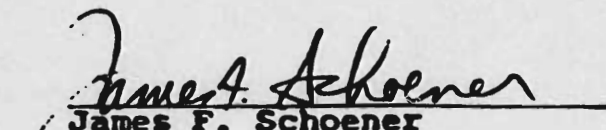
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Rodney A. Smith


Elizabeth Warren Smith


James F. Schoener

Dated: 19 Sept 1983

85040314582

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AND RAISING FUNDS FOR THE
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10. In short, this committee will use caution to follow the law in order to avoid injuring the very candidates we want to help.

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RECEIVED AT THE FED
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PI2: 23

LAW OFFICES

KELLER, ROHRBACK, WALDO, HISCOCK, BUTTERWORTH & FARDAL

14TH FLOOR, IBM BUILDING
SEATTLE, WASHINGTON 98101
(206) 823-1900

November 29, 1983

PINCKNEY M. ROHRBACK
BURTON C. WALDO
ROBERT H. KELLER
FRED R. BUTTERWORTH
HAROLD FARDAL
MELVIN F. BUOL
DAVID F. HISCOCK
J. ANTHONY HOARE
GLEN R. GARRISON
LAURENCE R. WEATHERLY
MARLIN L. VORTMAN
JOHN H. BRIGHT
WILLIAM C. SMART

CHLOETHIEL W. DEWEESE
IRENE M. HECHT
JAMES P. ROHRBACK
KURT LICHTENBERG
KIMBERLEE A. McDONALD
SCOTT M. DONALDSON
BENSON D. WONG
KURT H. OLSON

GEORGE KAHIN (1985)
JOHN D. CARMODY (1986)
ERLE W. HORSWILL (1978)

Kenneth A. Gross
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: FEC Reference MUR 1596
The Dan Evans Senate Committee
John James Gilmour, Treasurer

Dear Mr. Gross:

My law firm represents The Dan Evans Senate Committee, a Washington nonprofit corporation, along with its treasurer, John James Gilmour. As I believe you are aware, Senator Daniel J. Evans has designated The Dan Evans Senate Committee as his principal campaign committee.

Enclosed you will find the original and one copy of a Statement of Designation of Counsel signed by John James Gilmour. Please acknowledge your receipt on the enclosed copy and return it to me as soon as possible. A self-addressed envelope is also enclosed for your convenience.

Your November 15, 1983 letter was received by The Dan Evans Committee on Monday, November 21, 1983. We expect to have a reply in the mail to you by Friday, December 2, 1983. Meanwhile, please contact me if you have any questions or comments.

Very truly yours,

Marlin L. Vortman

MLV:can
enc.

cc: John James Gilmour

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CC 2
PI2: 34

RP

LAW OFFICES

KELLER, ROHRBACK, WALDO, HISCOCK, BUTTERWORTH & FARDAL

14TH FLOOR, IBM BUILDING

SEATTLE, WASHINGTON 98101

(206) 623-1900

November 29, 1983

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Washington, D.C. 20463

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Very truly yours,

Marlin L. Vortman

MLV:can
enc.

cc: John James Gilmour

I hereby acknowledge receipt of the original and one copy of the Statement of Designation of Counsel.

Dated: 12/2/83

Robert E. Dean for KAG
Kenneth A. Gross

85040314580

STATEMENT OF DESIGNATION OF COUNSEL

NAME OF COUNSEL: MARLIN L. VORTMAN, FRED R. BUTTERWORTH, AND
JOHN H. BRIGHT of KELLER, ROHRBACK, WALDO,
HISCOCK, BUTTERWORTH & FARDAL

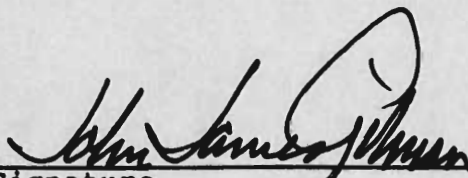
ADDRESS: 14th Floor, IBM Building
Seattle, Washington 98101

TELEPHONE: (206) 623-1900

The above-named individuals are hereby designated as my
counsel and are authorized to receive any notifications and
other communications from the Commission and act on my behalf
before the Commission.

11-28-83

Date



Signature

JOHN JAMES GILMOUR

NAME: JOHN JAMES GILMOUR

ADDRESS: 5026 Butterworth Road
Mercer Island, Washington 98040

HOME PHONE: 232-2907

BUSINESS PHONE: 442-0350

STATEMENT OF DESIGNATION OF COUNSEL

NAME OF COUNSEL: MARLIN L. VORTMAN, FRED R. BUTTERWORTH, AND
JOHN H. BRIGHT of KELLER, ROHRBACK, WALDO,
HISCOCK, BUTTERWORTH & FARDAL

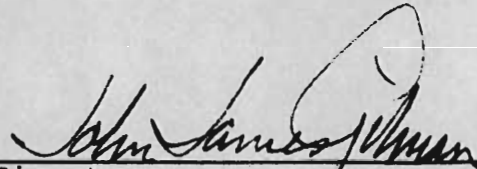
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Date



Signature

JOHN JAMES GILMOUR

NAME: JOHN JAMES GILMOUR

ADDRESS: 5026 Butterworth Road
Mercer Island, Washington 98040

HOME PHONE: 232-2907

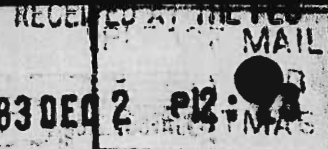
BUSINESS PHONE: 442-0350

LAW OFFICES

ALLER, ROHRBACK, WALDO, HISCOCK, BUTTERWORTH & FARDAL

14TH FLOOR, IBM BUILDING

SEATTLE, WASHINGTON 98101



Kenneth A. Gross
Associate General Counsel
Federal Election Commission
Washington, D.C. 20463

8504051458

6cc 47101
NOV 15 9:34

LAW OFFICES OF
MILLER, CANFIELD, PADDOCK AND STONE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

SUITE 300

2555 M STREET, N.W.

WASHINGTON, D.C. 20037

TELEPHONE (202) 822-9333
TELECOPIER (202) 463-8071

SIDNEY T. MILLER (1884-1940)
GEORGE L. CANFIELD (1886-1928)
LEWIS M. PADDOCK (1888-1938)
FERRIS D. STONE (1882-1948)

ROBERT P. GRIFFIN *
CLEVELAND THURBER
JAMES F. SCHOENER *
WILLIAM G. BUTLER
FITCH R. WILLIAMS
COUNSEL

EMMETT E. EAGAN
JOHN A. GILRAY, JR., P.C.
JAMES E. TOBIN
STRATTON S. BROWN
RICHARD S. GUSHÉE, P.C.
PETER P. THURBER
LAWRENCE A. KING, P.C.
ROBERT E. HARMELL
JOSEPH F. MAYCOCK, JR.
ALLEN SCHWARTZ
JOHN W. GELDER, P.C.*
GEORGE E. PARKER III *
RICHARD A. JONES, P.C.
STEVEN UZELAC, P.C.
GILBERT E. GOWE
WOLFGANG HOPPE
ROBERT S. KETCHUM, P.C.
SAMUEL J. MCURR III, P.C.
ROCOUE E. LUFFORD, P.C.
JOEL L. PIELL
ROBERT E. GILBERT
MICHAEL P. KNAPP
BRUCE D. BIRGBAUER
DAVID OLNSTEAD
GEORGE T. STEVENSON
JOHN A. THURBER, P.C.
ORIN D. BRUSTAD, P.C.

CARL H. VON ENDE
GORDON A. BECKER
DAVID D. JOSEWICK, P.C.*
CHARLES L. BURLINGH, JR.
JOHN A. HARKER, P.C.
GREGORY L. CURTNER, P.C.
DENNIS R. NEIMAN
KENNETH E. KONOP
LEONARD D. GIVEN
W. MACK FAISON
THOMAS J. HEIDEN
MICHAEL D. MULCAHY
JAMES W. WILLIAMS
THOMAS P. MUSTOLES
JOHN D. PRICH
WILLIAM J. DANHOFF
CLARENCE L. POZZA, JR.
JERRY T. RUPLEY
MICHAEL W. HARTMANN
KENT E. SHAFER
JOHN J. COLLINS, JR.
LAWRENCE D. OWEN
DENNIS K. LOY
THOMAS W. LINN
STEPHEN G. PALMS
GILLIAN STEINHAUER
JEROME R. WATSON

2500 COMERICA BUILDING
DETROIT, MICHIGAN 48226
(313) 963-6420

EXECUTIVE CENTRE
214 EAST ELM AVENUE
MONROE, MICHIGAN 48161
(313) 243 2000

110 BUSINESS & TRADE CENTER
200 WASHINGTON SQUARE NORTH
LANSING, MICHIGAN 48933
(517) 487-2070

WABEEK BUILDING
280 WEST MAPLE
BIRMINGHAM, MICHIGAN 48012
(313) 648-8000

13999 WEST BAY SHORE DRIVE
TRAVERSE CITY, MICHIGAN 49684
(616) 946-1000

901 MUTUAL HOME BUILDING
171 MONROE AVENUE, N.W.
GRAND RAPIDS, MICHIGAN 49503
(616) 454-8656

FRANK L. ANDREWS
DONNA J. DONATI
DONALD W. KEIM
LARRY J. SAYLOR *
CHARLES E. SCHOLL
RICHARD J. BERYAK
MICHAEL R. ATKINS
MAUREEN P. AUGHTON
LELAND D. BARRINGER
EDW. D. BROWSKI
TIMOTHY D. SOCHOCKI
THOMAS C. PHILLIPS
MUSH M. SMITH
MAURORY G. BASILE
TERRENCE M. CRAWFORD
RYAN H. MAYWOOD
GEORGE G. MARTIN
CHARLES M. MCCUEN
GERALD E. ROSEN
J. KEVIN TRIMMER
STEVEN D. WEYHING
BRANT A. FREER
JOHN D. STOUT
RICHARD A. GAFFIN
AMANDA VAN DUSEN
BRIAN A. KASER
GARY A. BRUDER

DAVID F. DIXON **
SALLY L. SEIS
DOUGLAS S. GEORGE
RAY I. JOHNSON
E. ELIZABETH PERLMAN
FREDERICK STICHNOTH
J. SCOTT TIMMER
JOHN D. RAYIS
STEPHEN J. OTT
LINDA G. GOLDBERG
THOMAS S. APPLEMAN
KAREN A. PULLIAM
NANCY RUTKA
NANCY REPELMAAN
TIMOTHY S. KNOWLTON
CYNTHIA S. FAULHABER
RICK A. PACYNISKI
NOAH YANICH
LISA S. ARCHER
MICHAEL P. COAKLEY
STEFAN S. HERPEL
MICHAEL L. LENCIONE
KIRK D. MESSNER
SUSAN E. PALETZ
PATRICIA T. QUINN
KEVIN L. SMITH

* ADMITTED IN MICHIGAN & DISTRICT OF COLUMBIA
* ALSO ADMITTED IN VIRGINIA

November 10, 1983

Robert Pease, Esquire
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, DC 20463

Re: Republican National Independent
Expenditure Committee ("R.N.I.E.C.")

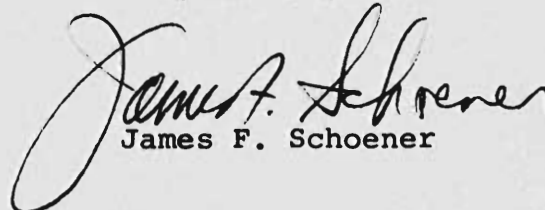
Dear Mr. Pease:

Please take notice that I am the counsel for the R.N.I.E.C.
and Mr. Rodney A. Smith, individually, and as President of the
said committee.

A copy of the designation of counsel signed by Mr. Smith for
the R.N.I.E.C. is enclosed. I thank you for the offer of a
courtesy copy of the recently filed Complaint, but, Mr. Bauer,
the attorney for the Complainant, has already furnished me with a
copy.

This appearance is made without waiver of any of the
deficiencies in the aforesaid Complaint.

Very truly yours,


James F. Schoener

JFS/cb

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MUR 1596

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TO: Federal Election Commission

FROM: Rodney A. Smith, Chairman
Republican National Independent
Expenditure Committee ("R.N.I.E.C.")

DATE: November 10, 1983

RE: Designation of General Counsel

Take notice that pursuant to action of the Board of Directors of the R.N.I.E.C., Mr. James F. Schoener of the law offices of Miller, Canfield, Paddock and Stone, Suite 300, 2555 M Street, N.W., Washington, D.C., 20037, telephone 202/822-9333, has been designated our general counsel to act for the R.N.I.E.C. and its officers and directors in any and all matters which may come before the Federal Election Commission. This notice is continuous and will only be cancelled by a notice similar to this one filed with the Commission.

Republican National Independent
Expenditure Committee


Rodney A. Smith, President

85040514592
LAW OFFICES OF
MILLER, CANFIELD, PADDOCK AND STONE
SUITE 800
2556 M STREET, N.W.
WASHINGTON, D.C. 20037



Robert Pease, Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, DC 20463



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 28, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rodney A. Smith
Treasurer of Republican National
Independent Expenditure Committee
and Finance Director for National
Republican Senatorial Committee
5085 Lowell Street, N.W.
Washington, D.C. 20016

Dear Mr. Smith:

This letter is to notify you that on November 22, 1983, the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1602. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

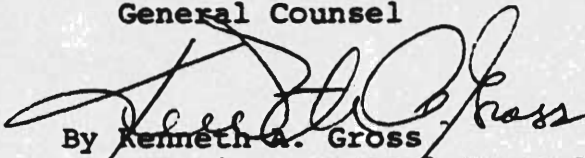
If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

85040514593

If you have any questions, please contact Robert Pease, the staff member assigned to this matter, at (202) 523-4529. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel


By Kenneth A. Gross
Associate General Counsel

Enclosures:

1. Complaint
2. Procedures
3. Designation of Counsel Statement

85040514594

PS Form 3811, July 1982

● **GENERAL:** Complete items 1, 2, 3, and 4. Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one):

☒ Show to whom and date delivered

☐ Show to whom, date, and address of delivery

2. ☐ **RESTRICTED DELIVERY**
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO Rodney A. Republican Nat'l Indep Ex 5085 Lowell Street, N.W. Washington, D.C. 20016

4. TYPE OF SERVICE:

☐ REGISTERED ☐ INSURED

☒ CERTIFIED ☐ COO

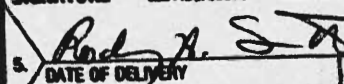
☐ EXPRESS MAIL

ARTICLE NUMBER 943859

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

5. 
DATE OF DELIVERY

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

RETURN RECEIPT

Pease - MUR 1602



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 28, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Senator John Heinz
Chairman of Republican National
Independent Expenditure Committee
and Member of the National
Republican Senatorial Committee
5085 Lowell Street, N.W.
Washington, D.C. 20016

Dear Senator Heinz:

This letter is to notify you that on November 22, 1983, the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1602. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

If you have any questions, please contact Robert Pease, the staff member assigned to this matter, at (202) 523-4529. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

[Signature]
By Kenneth A. Gross
Associate General Counsel

Enclosures:

1. Complaint
2. Procedures
3. Designation of Counsel Statement

85040514590

PS Form 3811, July 1982

● **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one):
☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery ..
☐ **RESTRICTED DELIVERY**
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. **ARTICLE ADDRESSED TO:** Senator John Heinz
 Repub National Independ Expend Cmte.
 5085 Lowell Street, N.W.
 Washington, D.C. 20016

4. **TYPE OF SERVICE:**
☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER
 943858

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
[Signature]

5. **DATE OF DELIVERY**

6. **ADDRESSEE'S ADDRESS** (Only if requested)

7. **UNABLE TO DELIVER BECAUSE:**

7. **REMARKS**

RETURN RECEIPT

NOV 1983

Pease - MUR 1602 (11/28)



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 28, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Republican National Independent
Expenditure Committee
Rodney A. Smith, Treasurer
5085 Lowell Street, N.W.
Washington, D.C. 20016

Dear Mr. Smith:

This letter is to notify you that on November 22, 1983, the Federal Election Commission received a complaint which alleges that your committee may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1602. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against your committee in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

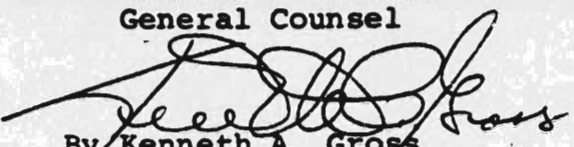
If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

85040514597

If you have any questions, please contact Robert Pease, the staff member assigned to this matter, at (202) 523-4529. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel


By Kenneth A. Gross
Associate General Counsel

Enclosures:

1. Complaint
2. Procedures
3. Designation of Counsel Statement

85040514598

PS Form 3811, July 1982

• **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery

2. ☐ RESTRICTED DELIVERY
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO Rodney A. Smith
Republican Nat'l Indep Expend. Cmte.
5085 Lowell Street, N.W.
Washington, D.C. 20016

4. TYPE OF SERVICE:
☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER
943856

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
Rodney A. Smith

5. DATE OF DELIVERY

POSTMARK
(may be on reverse side)

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

RETURN RECEIPT



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 23, 1983

Roger M. Witten, Esquire
Wilmer, Cutler & Pickering
1666 K Street, N.W.
Washington, D.C. 20006

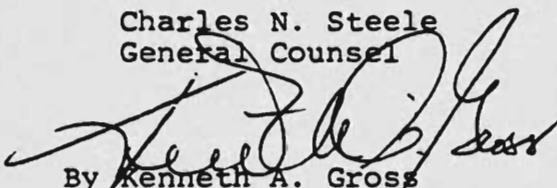
Dear Mr. Witten:

This letter is to acknowledge receipt of your complaint, filed by you as counsel for Common Cause, which we received on November 22, 1983, against the Republican National Independent Expenditure Committee which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. We suggest that this information be sworn to in the same manner as your original complaint. For your information, we have attached a brief description of the Commission's procedure for handling complaints. If you have any questions, please contact Cheryl Thomas at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel


By Kenneth A. Gross
Associate General Counsel

Enclosure

85040514599

6cc# 1135

NOV 22 P 5: 04

BEFORE THE
FEDERAL ELECTION COMMISSION

COMMON CAUSE
2030 M Street, N.W.
Washington, D.C. 20036
(202) 833-1200,

Complainant,

-v-

REPUBLICAN NATIONAL
INDEPENDENT EXPENDITURE
COMMITTEE,

Respondent.

MUR 1602

COMPLAINT

COMPLAINT OF COMMON CAUSE

1. This complaint charges that the Republican National Independent Expenditure Committee ("RNIEC") has violated and is violating the Federal Election Campaign Act, 2 U.S.C. § 431 et seq., as amended ("FECA").

PARTIES

2. Complainant Common Cause is a nonprofit membership organization organized under the laws of the

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District of Columbia. It has approximately 250,000 dues-paying members in the fifty states and the District of Columbia. Common Cause is organized to promote, on a nonpartisan basis, its members' interest in social welfare, civic betterment, and social improvement. Common Cause seeks to achieve these objectives by making government more responsive to the needs and demands of the citizens through reform of the electoral process.

3. Respondent RNIEC registered with the Federal Election Commission ("FEC") as a multicandidate political committee on March 16, 1983. The Wall Street Journal (Nov. 7, 1983, p. 27) (Attachment 1) reported that RNIEC was organized by Senator John Heinz.

APPLICABLE STATUTES AND REGULATIONS

4. The FECA provides that political committees established and maintained by a national political party may spend up to two cents per voter in each Senate race. 2 U.S.C. § 441a(d)(3)(A)(i).

5. The FECA provides that a nonparty multicandidate committee may contribute up to \$5,000 per election to a candidate, 2 U.S.C. § 441a(a)(2)(A), and up to

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\$15,000 per calendar year to committees established and maintained by a national political party, 2 U.S.C. § 441a (a) (2) (B). Nonparty multicandidate committees may make unlimited expenditures expressly advocating the election or defeat of a clearly identified candidate (except a publicly funded candidate for President in the general election), as long as those expenditures are "independent." See 2 U.S.C. §§ 431(17) and 441a(a)(7)(B).

6. The FEC's regulations provide that:

"All committees . . . established, financed, maintained, or controlled by the same . . . person, or group of persons . . . are affiliated." 11 C.F.R. § 100.5(g)(2).

GROUND FOR COMPLAINT

7. The National Republican Senatorial Committee ("NRSC") operates as a political committee established and maintained by a national political party, the Republican Party. NRSC makes expenditures on behalf of Republican Senatorial candidates and coordinates the official Republican Party campaign efforts in that regard. NRSC is permitted to spend up to two cents per voter in each Senate race. 2 U.S.C. § 441a(d)(3)(A)(i).

8. Until recently, thirteen Republican Senators, including Senator Heinz, were members of NRSC. Senator Heinz

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had once been NRSC's chairman. According to the Washington Post (Nov. 16, 1983, p. A2) (Attachment 2), Senator Heinz resigned from NRSC on November 15, 1983.

9. During 1983 -- before Senator Heinz resigned, NRSC spent \$260,000, the maximum amount allowed under the FECA, to support the election campaign of Senator Evans, the Republican Senatorial candidate in Washington.

10. According to the Wall Street Journal, Senator Heinz organized RNIEC while he was serving as a member of NRSC. RNIEC's objective is to increase the amount of organized Republican financial support for Republican candidates. The Wall Street Journal reports that RNIEC intends to raise \$1,000,000 - \$2,000,000 to further that goal.

11. RNIEC and NRSC have key personnel in common. Until November 15, Senator Heinz was both the leader of RNIEC and a key member of NRSC. Rodney A. Smith is Treasurer of RNIEC, and according to the Wall Street Journal, its "principal strategist." Until December 1982,

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Mr. Smith was the Treasurer and Finance Director of NRSC. According to the Washington Post, Lawrence C. McCarthy is now on RNIEC's board and was NRSC's "communications director."

12. RNIEC and NRSC have used the same vendors. RNIEC's October 25, 1983 report discloses disbursements to Miller, Canfield, Paddock & Stone for legal services; AAA-American Public Issues Lists for list rentals; and Lynda E. Clancy for consulting services. All three performed services for NRSC over the past few months. Clancy a former employee of NRSC, is listed on NRSC's April, May and June reports. AAA-American Public Issues Lists and Miller, Canfield appear on NRSC's July report.

13. According to the Washington Post, there is a significant overlap among the donors to RNIEC and NRSC, which gives rise to the possibility that RNIEC used an NRSC contributor list or other information derived from NRSC. Of the first 42 contributors to RNIEC, 32 had given to NRSC. The Washington Post reports that "sources in the GOP Senate leadership said that in a longer period, the overlap reaches 90 percent."

14. RNIEC and NRSC both made expenditures during 1983 to support the candidacy of Senator Daniel Evans, the Republican Senatorial candidate in Washington.

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NRSC spent its limit under the FECA of \$260,000.

According to the Wall Street Journal, RNIEC then spent an additional \$185,000 to support Senator Evans. According to the Wall Street Journal, Senator Heinz was a member of both NRSC and RNIEC during this time period, although Senator Heinz is said to have temporarily "suspended" his NRSC activities. On information and belief, Senator Heinz had actual knowledge of NRSC's campaign plans for and activities on behalf of Senator Evans. On information and belief, RNIEC, through NRSC or other channels, may also have had actual knowledge of Senator Evans' campaign plans and activities and those of Senator Evans' authorized committees and/or agents.

15. RNIEC's activities represent an effort to undermine the FECA's contribution and spending limits, particularly those established in 2 U.S.C. §§ 441a(a)(2)(a), 441a(a)(2)(b), and 441a(d)(3)(A)(i). If party officials who are members or staffers of official party committees such as NRSC can form so-called "independent" committees like RNIEC and cause them to make unlimited expenditures to support the party's candidate in a Senate race, then these FECA limits will effectively be nullified. Accordingly, the FEC should conclude that:

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(a) RNIEC, like NRSC, is itself a political committee established and maintained by a national political party. RNIEC was organized by key Republican Party officials. RNIEC's goal is to elect Republican candidates. RNIEC uses the words "Republican National" in its name. RNIEC uses vendors that the official Republican Party committees use. RNIEC raises money from the same donors as the official Republican Party committees, perhaps using the same fundraising list. And RNIEC has made and will make campaign expenditures in the same way and for the same purpose as NRSC. Because RNIEC is, therefore, a political committee established and maintained by the national Republican Party, RNIEC's expenditures during the recent election in Washington violated the spending limits imposed by 2 U.S.C. §441a(d)(3)(A)(i), because the total amount spent by NRSC and RNIEC together exceeded that limit.

(b) Even if RNIEC is not itself a political committee established and maintained by the national Republican Party, RNIEC is an affiliate of NRSC. See 11 C.F.R. § 100.5(g)(2). Accordingly, RNIEC's expenditures during the recent election in Washington violated 2 U.S.C. § 441a(d)(3)(A)(i).

(c) Even if RNIEC is not itself a political committee established and maintained by the national Republican Party, RNIEC has impermissibly coordinated and does coordinate its activities with, and has acted in concert with and

does act in concert with, NRSC. RNIEC and NRSC are so inseparably intertwined that their campaigns for the same Republican Senatorial candidates simply cannot be deemed independent of each other. Because RNIEC's campaign expenditures in Washington were not totally independent of NRSC's, RNIEC's expenditures should be treated as:

- (i) expenditures by NRSC, in which event the limit in 2 U.S.C. § 441a(d)(3)(A)(i) was violated; and/or
- (ii) contributions to NRSC, in which event 2 U.S.C. § 441a(a)(2)(b) was violated.

(d) RNIEC's expenditures on behalf of Senator Evans were not totally independent of Senator Evans' campaign. RNIEC obtained information from or about the Evans campaign through NRSC or elsewhere and thereby coordinated its expenditures with Senator Evans' campaign efforts. Therefore, RNIEC's expenditures in Washington were contributions to Senator Evans' campaign which violated the FECA because they exceeded the \$5,000 limit imposed by 2 U.S.C § 441a(a)(2)(A).

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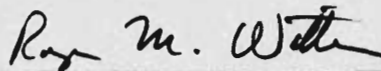
RELIEF

16. Common Cause respectfully urges the FEC to conduct a prompt and thorough investigation into the allegations in this Complaint. The limited information publicly available today raises a sufficient likelihood of FECA violations that the FEC should conclude that it has reason to believe that violations of the FECA have occurred or are occurring. We urge the FEC to issue subpoenas, take depositions, and pursue by other appropriate means the discovery needed to inquire into the facts surrounding the respondent's operations and activities. If the FEC is to fulfill its mission to ensure compliance with the FEC, it must expeditiously resolve the issues raised by RNIEC's activities, before the 1984 election campaign begins in earnest.

Of Counsel:
Ellen G. Block
Common Cause
2030 M Street, N.W.
Washington, D.C. 20036
(202) 833-1200

November 22, 1983

Respectfully submitted,



Roger M. Witten

Wilmer, Cutler & Pickering
1666 K Street, N.W.
Washington, D.C. 20006
(202) 872-6000

Counsel for Common Cause

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VERIFICATION

The undersigned counsel for complainant Common Cause swears that the statements in this complaint are based on the sources indicated, and, as such, are true and correct to the best of his information and belief.

R. M. Witten
Roger M. Witten

Subscribed and sworn before
me this 22 day of November,
1983.

Barbara Kordon
Notary Public

My Commission Expires: 8/15/88

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Foodarama Stake R By Interstate Proper

WASHINGTON — Interstate Inc. said it raised its stake in Supermarkets Inc. to 7.8% of outstanding from 6.7%.

In a filing with the Securities and Exchange Commission, Interstate Clifton, N.J.-based general partner, said it holds 104,100 Foodarama shares, 14,300 purchased Sept. 20 through \$8.25 to \$10 each on the open market.

Attorneys for Interstate Foodarama said the investment in the 31-store supermarket chain in New Jersey, Joseph Troilo, vice president, said he sees "nothing" in the purchase.

Mr. Smith. "We didn't want to interfere out there," he said.

Mr. Tulley, on the other hand, blamed "scheduling difficulties" for the delay.

Counting the \$185,000 Heinz money, the roughly \$1.7 million in campaign spending for Sen. Evans so far is double the \$845,000 for Rep. Lowry. Still, it is unclear whether the Heinz group's spending will have much effect on tomorrow's balloting. The Lowry spokesman said that both candidates already had received ample publicity, and that "we're spending all we can spend" on advertising.

Organizers said that the Heinz group expects to raise at least \$1 million to \$2 million during the 1984 campaigns, and will try for even more. Eventually it will try to tap GOP donors through mass-mail solicitations, but initial funds were raised from a few oilmen, executives, lawyers, doctors, bankers and others.

tor of the GOP senatorial committee.

Sen. Heinz's aide said the senator temporarily has suspended his activities as a member of the GOP senatorial committee. But he said Sen. Heinz hasn't resigned and intends to resume active participation sometime after tomorrow's special election in Washington state.

Meanwhile, Sen. Heinz has mailed hundreds of thousands of "electiongrams" urging registered Republicans in the state of Washington to vote tomorrow for Sen. Dan Evans, who is seeking to hold onto the seat to which he was appointed after the death of Sen. Henry Jackson, a Democrat.

A spokesman for Democratic Rep. Mike Lowry, who also is seeking the Senate seat, said he had seen mailings from the Heinz group, but didn't know much about it.

That isn't surprising. Sen. Heinz deliberately delayed public announcement of the organization, according to the treasurer,

campaign committee, and by Sen. Paul Laxalt of Nevada, general chairman of the Republican Party, according to Cecil Cole, spokeswoman for Sen. Lugar's panel.

Sen. Heinz's administrative assistant, Kevin Talley, said Sens. Lugar and Laxalt had "given the go-ahead" to the new panel, but the spokeswoman for the GOP senatorial campaign committee said the opposite was so. "Lugar and Laxalt strongly disagreed," she said. Another GOP official concurred. "Heinz is off the reservation," he said, asking not to be named.

Party leaders fear the Heinz panel isn't legally independent of the limits on spending by the regular GOP senatorial committee. For one thing, Sen. Heinz is a member of the senatorial panel, and a former chairman. Also, Mr. Smith, the Heinz panel's treasurer and principal strategist, was until December the treasurer and finance direc-

tor of the GOP senatorial committee. "Such extra spending, he said, is legal because the new fund operates independently of the party or the candidate's own campaign organization.

But some GOP leaders fear that Sen. Heinz is on shaky legal ground. "If John Heinz were not a U.S. Senator, we in Republican Party politics would probably file a complaint with the Federal Election Commission," said one GOP official, who asked not to be named.

Sen. Heinz went ahead with the committee despite objections by Sen. Richard Lugar of Indiana, head of the GOP senatorial

Group Formed by Sen. Heinz Aims to Pour Money Into GOP Races, Exceeding Limit.

By Brooks Jackson

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — Despite objections by GOP leaders, Sen. John Heinz has quietly set up a group that aims to pour millions of dollars more into House and Senate races than the party is legally allowed.

The Pennsylvania senator hasn't made any public announcement about his new Republican National Independent Expenditure Committee. But the organization already has flooded Washington state with "electiongrams," at a cost of \$185,000, urging party faithful to turn out for tomorrow's special election. That spending is in addition to the legal maximum of \$260,000 spent by the National Republican Senatorial Committee, a regular party organization.

The new committee's treasurer, Rodney Smith, said the organization was formed because "the law puts caps on what parties can spend. In certain races we feel addi-

II. Focused Funds:

Heinz Quits GOP Panel Amidst Dispute

Sen. John Heinz (R-Pa.) abruptly resigned from the National Republican Senatorial Committee (NRSC) yesterday amid an increasingly bitter conflict over the activities of a separate fund-raising committee, the Republican National Independent Expenditure Committee.

The dispute has boiled over into threats of lawsuits within normally unified GOP ranks.

Heinz hand-delivered his resignation hours before an anticipated move by the Senate Republican Caucus to force him off the NRSC.

"I have elected to separate myself from the National Republican Senatorial Committee by resigning from its membership," Heinz said in the letter to Sen. James A. McClure (R-Idaho), chairman of the GOP caucus.

The NRSC is the principal Republican fund-raising arm for GOP Senate candidates, permitted under federal law to channel from \$97,000 to \$1.4 million in direct contributions and other forms of support into Senate races, depending on the size of the state. It is chaired by Sen. Richard G. Lugar (R-Ind.).

At the beginning of this month, Heinz, who had been chairman of the NRSC in 1979 and 1980, emerged as advisory committee chairman of the hybrid Republican National Independent Expenditure Committee. In a report to the Federal Election Commission, the "independent" committee claimed to have financed \$185,000 in mailings and telegrams in support of Daniel J. Evans, a Washington Republican who has just won an open Senate seat that he had filled temporarily by appointment.

The disclosure provoked protests not only among Democrats, who filed a complaint with the Federal Election Commission, but also from officials of the NRSC, who see the new Heinz committee as a threat on two fronts.

On the first count, NRSC officials essentially agree with the Democratic complaint that the Heinz committee is subject to charges that it is not independent of the NRSC. Republican sources pointed out that the director of the Heinz committee, Rodney A. Smith, is the former finance director of the NRSC, that Lawrence C. McCarthy, former communications director of the NRSC, is on the Heinz committee board, and that legal counsel to the Heinz

committee is provided by James Schoener, who performed a similar function for the NRSC.

An independent committee must have no connections with other committees, such as the NRSC, under Federal Election Commission regulations, or the legitimacy of contributions from the Heinz committee and from the NRSC legally are jeopardized.

The second count involves suggestions that the Heinz committee used NRSC lists of major donors. Of the first 42 contributors—the first six pages—to the Heinz committee with 1981-82 donors to the NRSC, 32 gave \$500 or more to the NRSC, or an overlap of just over 75 percent. Sources in the GOP Senate leadership

POLITICAL NOTES

said that in a longer period, the overlap reaches 90 percent.

Smith, in a brief interview, denied using NRSC lists for the Heinz committee. "Whenever you are in fund-raising, me or anybody will tell you that the people who support one committee support a lot of committees," he said.

Sources said the NRSC is considering filing suit against Smith on the claim that NRSC lists were used by the Heinz committee, but there is strong pressure to avoid a legal conflict between Republicans.

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From:

WILMER, CUTLER & PICKERING

1608 K STREET, N.W.

WASHINGTON, D.C. 20006

Federal Election Commission
Office of General Counsel
7th Floor

1325 K Street, N.W.
Washington, D.C. 20463



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 15, 1983

Martin D. Franks
Executive Director
Democratic Congressional
Campaign Committee
400 No. Capitol Street, N.W.
Suite 319
Washington, D.C. 20001

Dear Mr. Franks:

This letter is to acknowledge receipt of your complaint which we received on November 8, 1983, against the Republican National Independent Expenditure Committee, which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. We suggest that this information be sworn to in the same manner as your original complaint. For your information, we have attached a brief description of the Commission's procedure for handling complaints. If you have any questions, please contact Cheryl Thomas at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

By Kenneth A. Gross
Associate General Counsel

Enclosure

cc: Mr. J. Brian Atwood

85040514613



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 15, 1983

J. Brian Atwood
Executive Director
Democratic Senatorial
Campaign Committee
400 No. Capitol Street, N.W.
Suite 319
Washington, D.C. 20001

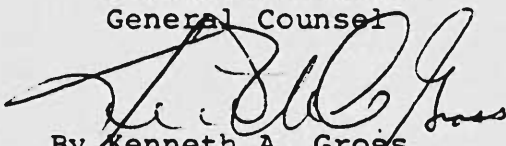
Dear Mr. Atwood:

This letter is to acknowledge receipt of your complaint which we received on November 8, 1983, against the Republican National Independent Expenditure Committee, which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. We suggest that this information be sworn to in the same manner as your original complaint. For your information, we have attached a brief description of the Commission's procedure for handling complaints. If you have any questions, please contact Cheryl Thomas at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel


By Kenneth A. Gross
Associate General Counsel

Enclosure

cc: Martin D. Franks

85040314614



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 15, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dan Evans Senate Committee
John Jones Gilmour, Treasurer
P. O. Box 520
Seattle, Washington 98111

Dear Mr. Gilmour:

This letter is to notify you that on November 8, 1983, the Federal Election Commission received a complaint which alleges that your committee may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1596. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against your committee in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

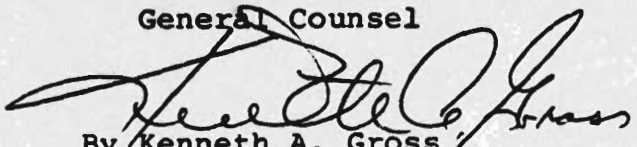
If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Robert Pease, the staff member assigned to this matter at (202) 523-4529. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel


By Kenneth A. Gross
Associate General Counsel

cc: Senator Dan Evans

Enclosures:

1. Complaint
2. Procedures
3. Designation of Counsel Statement

3504051
2001 Apr 11: 1003

RETURN RECEIPT

● **SENDER:** Complete Items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery ..
2. ☐ **RESTRICTED DELIVERY**
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. **ARTICLE ADDRESSED TO:**
J.J. Gilmour, Treasurer
Dan Evans Senate Committee
P O Box 520
Seattle, Washington 98111

4. **TYPE OF SERVICE:** **ARTICLE NUMBER**
☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD 943819
☐ EXPRESS MAIL

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
5. DATE OF DELIVERY

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

PEASE - MUR 1596
11/15/83

Pe Form 3811, July 1982

● **SENDER:** Complete Items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery ..
2. ☐ **RESTRICTED DELIVERY**
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. **ARTICLE ADDRESSED TO:**
Senator Dan Evans
4202 Lavelle Street, N.W.
Olympia, Wash. 98502

4. **TYPE OF SERVICE:** **ARTICLE NUMBER**
☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD 943816
☐ EXPRESS MAIL

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
5. DATE OF DELIVERY

6. ADDRESSEE'S ADDRESS (Only if requested)

7. UNABLE TO DELIVER BECAUSE:

PEASE - MUR 1596
11/15/83



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 15, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Republican National Independent
Expenditure Committee
Rodney A. Smith, Treasurer
5085 Lowell Street, N.W.
Washington, D.C. 20016

Dear Mr. Smith:

This letter is to notify you that on November 8, 1983, the Federal Election Commission received a complaint which alleges that your committee may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1596. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against your committee in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

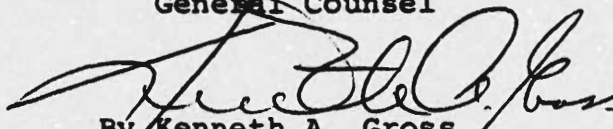
If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

85040514617

If you have any questions, please contact Robert Pease, the staff member assigned to this matter at (202) 523-4529. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel


By Kenneth A. Gross
Associate General Counsel

Enclosures:

1. Complaint
2. Procedures
3. Designation of Counsel Statement

95040514618

PS Form 3811, Use until July 1982

• SENDER: Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one):
☒ Show to whom and date delivered
☐ Show to whom, date, and address of delivery ..
2. ☐ RESTRICTED DELIVERY
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

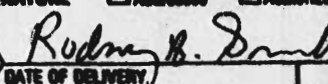
3. ARTICLE ADDRESSED TO: Rodney A. Smith, Free
Repub. Nat'l Independent Expan.
5085 Lowell Street, N.W.
Washington, DC 20016

4. TYPE OF SERVICE: ☐ REGISTERED ☐ INSURED
☐ CERTIFIED ☐ COO
☐ EXPRESS MAIL

ARTICLE NUMBER

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

5. 
DATE OF DELIVERY

6. ADDRESSEE'S ADDRESS (only if requested)

7. UNABLE TO DELIVER BECAUSE:

8. EMPLOYEE'S INITIALS

WASHINGTON, DC
POSTAGE
(pay to recipient)

11/15/83

PEASE - MUR 1596



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 15, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Senator John Heinz
Chairman of Republican National
Independent Expenditure Committee
and Member of the National
Republican Senatorial Committee
5085 Lowell Street, N.W.
Washington, D.C. 20016

Dear Senator Heinz:

This letter is to notify you that on November 8, 1983, the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1596. Please refer to this number in all future correspondence.

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Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

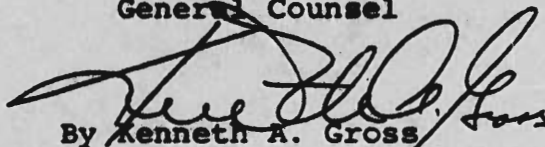
If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

85040514619

If you have any questions, please contact Robert Pease, the staff member assigned to this matter at (202) 523-4529. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel


By Kenneth A. Gross
Associate General Counsel

Enclosures:

1. Complaint
2. Procedures
3. Designation of Counsel Statement

85040314620

2001 Apr 1 1:02 PM

• **GENERAL:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one):

☒ Show to whom and date delivered

☐ Show to whom, date, and address of delivery

2. ☐ RESTRICTED DELIVERY
(The restricted delivery fee is required in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO: Sen. John Heinz
5085 Lowell Street, N.W.
Washington, D.C. 20016

4. TYPE OF SERVICE:

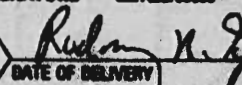
☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COO
☐ EXPRESS MAIL

ARTICLE NUMBER
943815

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent



5. DATE OF DELIVERY

6. ADDRESSEE'S ADDRESS (day)

7. UNABLE TO DELIVER BECAUSE:

7a. EMPLOYEE'S INITIALS

U.S. MAIL
EASTON, MD 20814
SHIP STA (U)
(97) VLS

PEASE MUR 1596

11/15/83



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 15, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rodney A. Smith
Treasurer of Republican National
Independent Expenditure Committee
and Finance Director for National
Republican Senatorial Committee
5085 Lowell Street, N.W.
Washington, D.C. 20016

Dear Mr. Smith:

This letter is to notify you that on November 8, 1983, the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1596. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 15, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Rodney A. Smith
Treasurer of Republican National
Independent Expenditure Committee
and Finance Director for National
Republican Senatorial Committee
5085 Lowell Street, N.W.
Washington, D.C. 20016

Dear Mr. Smith:

This letter is to notify you that on November 8, 1983, the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1596. Please refer to this number in all future correspondence.

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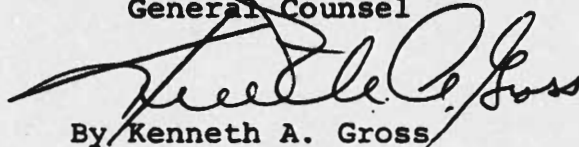
If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

85040514621

If you have any questions, please contact Robert Pease, the staff member assigned to this matter at (202) 523-4529. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel



By Kenneth A. Gross
Associate General Counsel

Enclosures:

1. Complaint
2. Procedures
3. Designation of Counsel Statement

85040514622

PS Form 3811, July 1982

• (REMI) Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(MINIMUM POSTAGE FOR FEES)

1. The following service is requested (check one):

☐ Show to whom and date delivered

☐ Show to whom, date, and address of delivery

2. ☐ RESTRICTED DELIVERY

(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. ARTICLE ADDRESSED TO: Rodney A. Smith
5085 Lowell Street, N.W.
Washington, D.C. 20016

4. TYPE OF SERVICE:

☐ REGISTERED ☐ INSURED

☐ CERTIFIED ☐ COO

☐ EXPRESS MAIL

ARTICLE NUMBER

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☐ Authorized agent

5. *Rodney A. Smith*

DATE OF DELIVERY

POSTMARK (may be on reverse side)

6. ADDRESSEE'S ADDRESS (only if requested)

7. UNABLE TO DELIVER BECAUSE:

8. EMPLOYEE'S INITIALS

SHIP STA. (16)

WASH. D.C. 20016

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

RETURN RECEIPT

PEASE - MUR 1596 11/15/83

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RECEIVED AT THE FEC
HAND DELIVERED
83 NOV 8 AIO: 07

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE
DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE
400 No. Capitol Street, N.W.
Suite 319
Washington, D.C. 20001

November 7, 1983

3 NOV 8 AIO: 54

Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Sirs/Madams:

The increasingly brazen violation of our election laws under the guise of "independent" spending has come to a head in Washington State in the current special election to the United States Senate. The Democratic Senatorial Campaign Committee ("DSCC") and the Democratic Congressional Campaign Committee ("DCCC") demand through this Complaint that the Commission turn its immediate and urgent attention to this most recent and outlandish violation.

Specifically, the Republican candidate in the Washington State special election, Mr. Dan Evans, has received support in the form of bogus "independent" spending from a new political committee self-styled the "Republican National Independent Expenditure Committee" (the "Committee"). To date, this Committee has lavished \$185,000 on "electiongrams" urging voter support for Mr. Evans. The independence of this Committee is, however, a sham.

The Commission is referred to an article appearing in the Wall Street Journal today, November 7, 1983, which calls attention to this travesty on the nation's campaign finance scheme. The headline makes its point simply:

GROUP FORMED BY SENATOR HEINZ AIMS TO POUR
MONEY INTO GOP RACES, EXCEEDING LIMIT

As the article points out, the Committee's chairman is Senator John Heinz, who is currently a member of the National

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Republican Senatorial Committee ("NRSC"), which is charged by the national Republican party with primary responsibility for financially supporting Republican candidates for the United States Senate. Senator Heinz, who has chaired the NRSC, has a significant and visible position in NRSC's membership. Moreover, the Committee's treasurer is Rodney A. Smith, who (in the words of the article) "was until December the treasurer and finance director of the GOP senatorial committee."

The independence claimed by Senator Heinz, Mr. Smith and their Committee, could hardly be less credible. The NRSC has operated, and will continue to operate, as the principal arm of the Republican party supporting its Republican Senate candidates, including Mr. Evans. Moreover, under the "coordinated spending" provisions of the FECA, 2 U.S.C. § 441a(d)(3), the NRSC has the authority to make expenditures, up to "two cents multiplied by the voting age population of this state" on behalf of its Republican candidates, in full coordination and consultation with those candidates. This coordinated spending has been made on behalf of Mr. Evans with his full cooperation and consent in Washington State, and it will be deployed to the benefit of other Republican candidates in 1984, as it was in 1982 and 1980.

Senator Heinz, Mr. Smith and their Committee are plainly in a position to work through NRSC in close cooperation and coordination with Mr. Evans--on whose behalf they allegedly spend "independently." Without one additional shred of evidence, beyond what is reported in the Journal article, Commission regulations already operate to establish a legal presumption that the Committee's spending is not independent. 11 C.F.R. §§ 109.1(b)(4)(i)(A), (B). That presumption clearly operates here to defeat decisively any claimed "independence" by Mr. Heinz, Mr. Smith, and their Committee. The Commission is urged to note the following:

First, it appears obvious that, under Commission regulations, any spending by the Committee is "based on information about the candidate's (Mr. Evans) plans, projects or needs provided [to the Committee] . . . by the candidate's agents" 11 C.F.R. § 109.1(b)(4)(i)(A). The NRSC functions as an "agent" of Mr. Evans and his principal campaign committee, by operation of the "coordinated expenditure" provision of the FECA. 11 C.F.R. § 109.1(b)(5).

Second, any expenditure by the Committee appears most likely to have been made "by or through [a] person who is, or has been . . . receiving any form of compensation or

85040514624

reimbursement from . . . the candidate's . . . agent"
Senator Heinz is a member of NRSC, whose duties on behalf of
the Committee no doubt result in expenses which are reimbursed
by that committee.


Accordingly, the legal presumption of non-independence
under Commission regulations clearly applies here to contradict
the claims of "independence" made by this new committee and its
officers.

This is only the tip of the iceberg. A full investigation
is needed. The Journal's report of NRSC's "objections" to
Mr. Heinz's activities only fuels our concern: these
"objections" represent no more than a smokescreen, a classic
case of "thou protesteth too much".

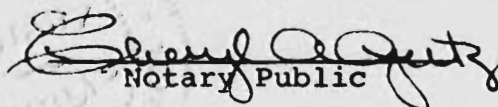
In evidence here is the same systematic disregard of our
election laws, through the device of independent spending,
which has been characteristic of organizations like the
National Conservative Political Action Committee and its
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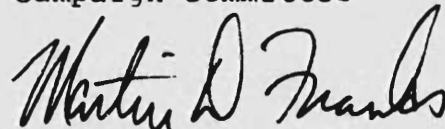

J. Brian Atwood
Executive Director
Democratic Senatorial
Campaign Committee

Subscribed and sworn
to before me this 7th
day of November, 1983.


Notary Public

My Commission Expires January 1, 1987

/peg


Martin D. Franks
Executive Director
Democratic Congressional
Campaign Committee

85040514625

Group Formed by Sen. Heinz Aims to Pour Money Into GOP Races, Exceeding Limit

By BRUCE JACKSON
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — Despite objections by GOP leaders, Sen. John Heinz has quietly set up a group that aims to pour millions of dollars more into House and Senate races than the party is legally allowed.

The Pennsylvania senator hasn't made any public announcement about his new "Republican National Independent Expenditure Committee." But the organization already has flooded Washington state with "electiongrams," at a cost of \$125,000, urging party faithful to turn out for tomorrow's special election. That spending is in addition to the legal maximum of \$200,000 spent by the National Republican Senatorial Committee, a regular party organization.

The new committee's treasurer, Rodney A. Smith, said the organization was formed because "the law puts caps on what parties can spend. In certain races we feel addi-

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But some GOP leaders fear that Sen. Heinz is on shaky legal ground. "If John Heinz were not a U.S. Senator, we in Republican Party politics would probably file a complaint with the Federal Election Commission," said one GOP official, who asked not to be named.

Sen. Heinz went ahead with the committee despite objections by Sen. Richard Lugar of Indiana, head of the GOP senatorial

campaign committee, and by Sen. Paul Laxalt of Nevada, general chairman of the Republican Party, according to Ceci Cole, spokeswoman for Sen. Lugar's panel.

Sen. Heinz's administrative assistant, Kevin Talley, said Sens. Lugar and Laxalt had "given the go-ahead" to the new panel, but the spokeswoman for the GOP senatorial campaign committee said the opposite was so. "Lugar and Laxalt strongly disagreed," she said. Another GOP official concurred. "Heinz is off the reservation," he said, asking not to be named.

Party leaders fear the Heinz panel isn't legally independent of the limits on spending by the regular GOP senatorial committee. For one thing, Sen. Heinz is a member of the senatorial panel, and a former chairman. Also, Mr. Smith, the Heinz panel's treasurer and principal strategist, was until December the treasurer and finance direc-

tor of the GOP senatorial committee.

Sen. Heinz's aide said the senator temporarily has suspended his activities as a member of the GOP senatorial committee. But he said Sen. Heinz hasn't resigned and intends to resume active participation sometime after tomorrow's special election in Washington state.

Meanwhile, Sen. Heinz has mailed hundreds of thousands of "electiongrams" urging registered Republicans in the state of Washington to vote tomorrow for Sen. Dan Evans, who is seeking to hold onto the seat to which he was appointed after the death of Sen. Henry Jackson, a Democrat.

A spokesman for Democratic Rep. Mike Lowry, who also is seeking the Senate seat, said he had seen mailings from the Heinz group, but didn't know much about it.

That isn't surprising. Sen. Heinz deliberately delayed public announcement of the organization, according to the treasurer,

Mr. Smith. "We didn't want to interfere out there," he said.

Mr. Talley, on the other hand, blamed "scheduling difficulties" for the delay.

Counting the \$125,000 Heinz money, the roughly \$1.7 million in campaign spending for Sen. Evans so far is double the \$200,000 for Rep. Lowry. Still, it is unclear whether the Heinz group's spending will have much effect on tomorrow's balloting. The Lowry spokesman said that both candidates already had received ample publicity, and that "we're spending all we can spend" on advertising.

Organizers said that the Heinz group expects to raise at least \$1 million to \$2 million during the 1984 campaign, and will try for even more. Eventually it will try to tap GOP donors through mass-mail solicitations, but initial funds were raised from a few oilmen, executives, lawyers, doctors, bankers and others.

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83 NOV 8 AIO: 08

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE
DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE
400 No. Capitol Street, N.W.
Suite 319
Washington, D.C. 20001

November 7, 1983

Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Sirs/Madams:

The increasingly brazen violation of our election laws under the guise of "independent" spending has come to a head in Washington State in the current special election to the United States Senate. The Democratic Senatorial Campaign Committee ("DSCC") and the Democratic Congressional Campaign Committee ("DCCC") demand through this Complaint that the Commission turn its immediate and urgent attention to this most recent and outlandish violation.

Specifically, the Republican candidate in the Washington State special election, Mr. Dan Evans, has received support in the form of bogus "independent" spending from a new political committee self-styled the "Republican National Independent Expenditure Committee" (the "Committee"). To date, this Committee has lavished \$185,000 on "electiongrams" urging voter support for Mr. Evans. The independence of this Committee is, however, a sham.

The Commission is referred to an article appearing in the Wall Street Journal today, November 7, 1983, which calls attention to this travesty on the nation's campaign finance scheme. The headline makes its point simply:

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The independence claimed by Senator Heinz, Mr. Smith and their Committee, could hardly be less credible. The NRSC has operated, and will continue to operate, as the principal arm of the Republican party supporting its Republican Senate candidates, including Mr. Evans. Moreover, under the "coordinated spending" provisions of the FECA, 2 U.S.C. § 441a(d)(3), the NRSC has the authority to make expenditures, up to "two cents multiplied by the voting age population of this state" on behalf of its Republican candidates, in full coordination and consultation with those candidates. This coordinated spending has been made on behalf of Mr. Evans with his full cooperation and consent in Washington State, and it will be deployed to the benefit of other Republican candidates in 1984, as it was in 1982 and 1980.

Senator Heinz, Mr. Smith and their Committee are plainly in a position to work through NRSC in close cooperation and coordination with Mr. Evans--on whose behalf they allegedly spend "independently." Without one additional shred of evidence, beyond what is reported in the Journal article, Commission regulations already operate to establish a legal presumption that the Committee's spending is not independent. 11 C.F.R. §§ 109.1(b)(4)(i)(A), (B). That presumption clearly operates here to defeat decisively any claimed "independence" by Mr. Heinz, Mr. Smith, and their Committee. The Commission is urged to note the following:

First, it appears obvious that, under Commission regulations, any spending by the Committee is "based on information about the candidate's (Mr. Evans) plans, projects or needs provided [to the Committee] . . . by the candidate's agents" 11 C.F.R. § 109.1(b)(4)(i)(A). The NRSC functions as an "agent" of Mr. Evans and his principal campaign committee, by operation of the "coordinated expenditure" provision of the FECA. 11 C.F.R. § 109.1(b)(5).

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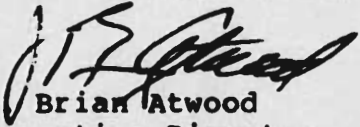
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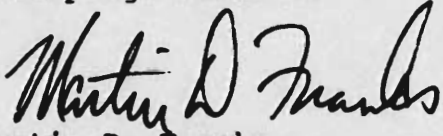
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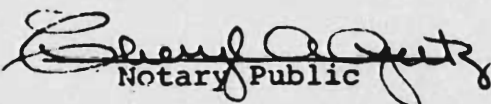
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Democratic Senatorial
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Martin D. Franks
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Notary Public

My Commission Expires January 1, 1987

/peg

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By Eugene JACKSON

Staff Reporter of THE WALL STREET JOURNAL

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The Pennsylvania senator hasn't made any public announcement about his new "Republican National Independent Expenditure Committee." But the organization already has flooded Washington state with "electiongroves," at a cost of \$185,000, urging party faithful to turn out for tomorrow's special election. That spending is in addition to the legal maximum of \$250,000 spent by the National Republican Senatorial Committee, a regular party organization.

The new committee's treasurer, Rodney A. Smith, said the organization was formed because "the law puts caps on what parties can spend. In certain races we feel addi-

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Sen. Heinz went ahead with the committee despite objections by Sen. Richard Lugar of Indiana, head of the GOP senatorial

campaign committee, and by all of Nevada, general chair of the Republican Party, according to spokeswoman for Sen. Lugar.

Sen. Heinz's administrative assistant Kevin Talley, said Sen. Lu had "given the go-ahead" to the committee but the spokeswoman for the campaign committee said it so. "Lugar and Laxalt stress she said. Another GOP official said "Heinz is off the reservation" and not to be named.

Party leaders fear the fund is legally independent of the party but by the regular GOP senatorial committee. For one thing, Sen. Heinz is on the senatorial panel, and also, Mr. Smith, the treasurer and principal spokesman, said the treasurer as

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DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE
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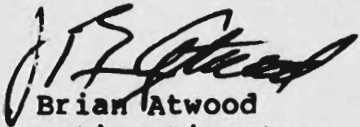
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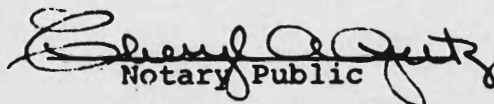
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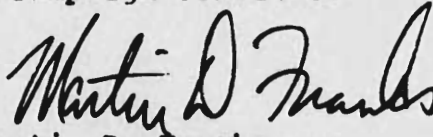

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Executive Director
Democratic Senatorial
Campaign Committee

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Notary Public

My Commission Expires January 1, 1987

/peg


Martin D. Franks
Executive Director
Democratic Congressional
Campaign Committee

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By Stephen Jackson

Staff Reporter of The Wall Street Journal

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Complaint

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

3 NOV 8 A10:54

PERKINS, COIE, STONE, OLSEN & WILLIAMS

1110 VERMONT AVENUE, N.W., SUITE 1200
WASHINGTON, D.C. 20005

HAND DELIVER

Federal Election Commission
1325 K Street, N.W.

~~Public Records Office~~

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Pat Den

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FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 1602

Date Filmed 3/11/85 Camera No. --- 4

Cameraman AS



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 1602.

8/6/92

92040923273

STATEMENT OF DESIGNATION OF COUNSELMUR 1602NAME OF COUNSEL: Raina H. Fishbane

ADDRESS:

Skadden, Arps, Slate,
Meagher & Flom1440 New York Avenue, N.W.Washington, D.C. 20005

TELEPHONE:

202/371-7407

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Date

5/13/92

Signature

Rodney H. Smith

RESPONDENT'S NAME:

Republican National Independent
Expenditure Committee

ADDRESS:

(No longer in existence)

HOME PHONE:

BUSINESS PHONE:



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 15, 1992

Raina H. Fishbane, Esq.
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005

RE: MUR 1602
Republican National Independent
Expenditure Committee

Dear Ms. Fishbane:

The Federal Election Commission dismissed the complaint filed by Common Cause against your client, the National Republican Independent Expenditures Committee, in MUR 1602 on February 12, 1985. Common Cause challenged the Commission's dismissal of this matter in U.S. District Court and continued its appeal in the United States Court of Appeals for the District of Columbia. The courts remanded the case to the Commission for further proceedings to consider two issues.

With regard to the first issue, the Office of the General Counsel is prepared to recommend that there is insufficient basis to find that the NRSC and RNIEC were affiliated. Accordingly, the Office is prepared to recommend that the Commission find no probable cause to believe that a violation of 2 U.S.C. § 441a(a) occurred. With regard to the second issue, this Office expects that the Commission will also soon consider whether the RNIEC was a political committee of the RNC.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding

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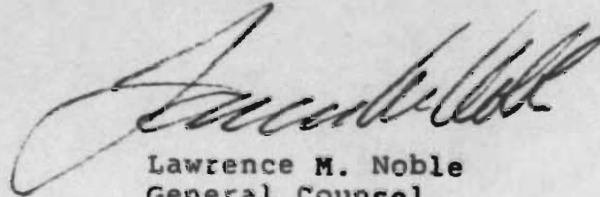
to a vote on whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Teresa A. Hennessy, Assistant General Counsel, at (202) 219-3690.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

92040923276



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 15, 1992

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Skadden, Arps, Slate, Meagher & Flom
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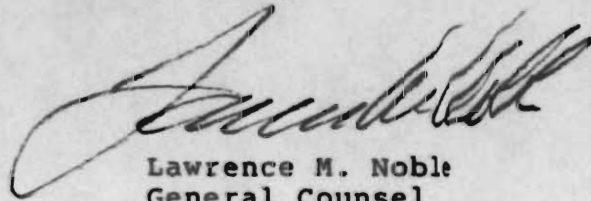
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Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 15, 1992

Jan W. Baran, Esq.
Wiley, Rein and Fielding
1776 K Street, N.W.
Washington, D.C. 20006

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National Republican
Senatorial Committee

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The Federal Election Commission dismissed the complaint filed by Common Cause against your client, the National Republican Senatorial Committee, in MUR 1602 on February 12, 1985. Common Cause challenged the Commission's dismissal of this matter in U.S. District Court and continued its appeal in the United States Court of Appeals for the District of Columbia. The courts remanded the case to the Commission for further proceedings to consider two issues.

With regard to the first issue, the Office of General Counsel is prepared to recommend that there is insufficient basis to find that the NRSC and RNIEC were affiliated. Accordingly, the Office is prepared to recommend that the Commission find no probable cause to believe that a violation of 2 U.S.C. § 441a(a) occurred. With regard to the second issue, this Office expects that the Commission will also soon consider whether there is reason to believe a violation occurred based on the allegation that the RNIEC was a political committee of the RNC.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should

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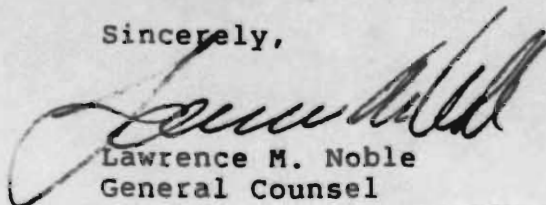
also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote on whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Teresa A. Hennessy, Assistant General Counsel, at (202) 219-3690.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The Republican National) MUR 1602
Independent Expenditure)
Committee, et al.)

SUPPLEMENTAL GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On November 8, 1983, the Commission received a complaint, designated as MUR 1596, from the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee. On November 22, 1983, Common Cause filed a complaint with the Commission that was designated as MUR 1602. Both complaints contained similar allegations against the following parties: the Republican National Independent Expenditure Committee ("RNIEC"); Rodney A. Smith, the president and treasurer of the RNIEC; Senator John Heinz, cofounder and chairman of the RNIEC's Advisory Panel; the National Republican Senatorial Committee ("NRSC"); and the Dan Evans Senate Committee ("Evans Committee"). Because both MURS involved similar allegations and respondents, the matters were merged as MUR 1602.

The allegations in the complaints concerned expenditures made by the RNIEC in connection with a special senatorial election held in Washington state after the death of Senator Henry Jackson. The RNIEC spent over \$185,000 on behalf of Senator Evans in that election. RNIEC claimed that the expenditures qualified as

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independent expenditures. The complainants contended that the expenditures were not independent but rather were excessive in-kind contributions. Specifically, the complainants alleged that the RNIEC was a committee established by a national political party, that the RNIEC and the NRSC were affiliated political committees subject to the same contribution limitations, that the NRSC provided the RNIEC with the plans of the Evans campaign, and that the RNIEC had direct contact with the Evans campaign concerning the plans and activities of the Evans Committee.

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Following an investigation, the Office of the General Counsel concluded that the RNIEC and the NRSC were not affiliated and did not coordinate their expenditures; thus no excessive contributions had occurred. The Office, therefore, recommended that the FEC find no probable cause to believe that the respondents had violated the Federal Election Campaign Act of 1971, as amended. The Commission, without opinion, adopted the General Counsel's recommendation on February 12, 1985 and dismissed Common Cause's administrative complaint.

Common Cause sought review of the Commission's dismissal of MUR 1602 in U.S. District Court. Common Cause v. Federal Election Commission, 715 F. Supp. 398 (D.D.C. 1989). The District Court upheld the Commission's specific findings that the RNIEC and NRSC were not affiliated and had not coordinated their expenditures. The District Court, however, remanded to the Commission the question of whether the RNIEC was a political committee of the

Republican National Committee.¹ Common Cause subsequently appealed the decision on the issue of affiliation.

On June 19, 1990, the U.S. Court of Appeals for the District of Columbia Circuit remanded the case to the Commission on the issue of whether the RNIEC was affiliated with the NRSC.

Common Cause v. Federal Election Commission, 906 F.2d 705

(D.C. Cir. 1990). The Circuit Court determined that, based upon the General Counsel's Brief, which the court assumed the Commission had relied on in making its finding of no probable cause, it was impossible to determine whether the Commission applied the relevant statutory and regulatory sections to the complainant's claim that the NRSC and RNIEC were affiliated. On September 27, 1990, the District Court signed an order remanding the case to the Commission.

II. ANALYSIS

On remand from the Court of Appeals, these complaints raise again the issue of whether the RNIEC and NRSC made excessive in-kind contributions in violation of 2 U.S.C. § 441a.

Specifically, the Commission must determine whether the two committees were affiliated and therefore subject to the same contribution limit imposed by 2 U.S.C. § 441a(a). This Office has determined that the available evidence fails to provide a sufficient basis for the conclusion that the RNIEC was affiliated

1. This Office will consider this question and submit recommendations in an upcoming General Counsel Report.

with the NRSC. Thus, the Office is prepared to recommend that the Commission find no probable cause to believe that a violation of the Act occurred in this matter based on the affiliation question.

The Act places limits on the amounts that different kinds of political committees may contribute to candidates.

See 2 U.S.C. § 441a(a). Political committees that are affiliated are subject to one contribution limit rather than separate limits for each such committee. Congress amended the Act in 1976 to provide that all committees established, financed, maintained or controlled by the same person or group of persons are affiliated and thereby subject to a single contribution limitation.

The Act provides:

for purposes of the [contribution] limitations..., all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee....

2 U.S.C. § 441a(a)(5)

The Commission adopted regulations setting out five "indicia" of affiliation. 11 C.F.R. § 110.3 (a)(1)(iii)(A-E)(1980). At the time of the alleged violations, the Commission's regulations provided that such indicia included:

- (A) Ownership of a controlling interest in voting shares or securities;
- (B) Provisions of by-laws, constitutions, or other documents by which one entity has the authority, power, or ability to direct another entity;

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(C) The authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of an entity;

(D) Similar patterns of contributions;

(E) The transfer of funds between committees which represent a substantial portion of the funds of either the transferor or transferee committee, other than the transfer of funds between the committees which jointly raised the funds so transferred.²

11 C.F.R. § 110.3(a)(1)(iii)(A-E)(1980).

Common Cause alleged only two indicia of affiliation in its complaint. Since there have been no allegations that there are any other indicia of affiliation involved, this Office addresses only these two factors. First, Common Cause contended that through close links to Senator Heinz or Rodney Smith the NRSC could have "influence[d] the decision[s]" of the RNIIEC, 11 C.F.R. § 110.3(a)(1)(iii)(C). Next, it claimed that the two committees showed "a similar pattern of contributions", 11 C.F.R. § 110.3(a)(1)(iii)(D), that resulted from the RNIIEC's unauthorized use of an NRSC contributor list.

A. Senator Heinz's Overlapping Membership With the NRSC and the RNIIEC and Rodney Smith's Prior Contacts With the NRSC

The RNIIEC registered with the Commission on March 30, 1983 as a non-party political committee which would make independent expenditures on behalf of candidates for federal office. The RNIIEC

2. The applicable regulation currently in force appears at 11 C.F.R. § 100.5(g)(4)(ii)(A-E).

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stated that it was established and operated by Rodney A. Smith. Senator Heinz was described on RNIEC fundraising material as a co-founder of the RNIEC. In his response to the complaint, Senator Heinz described himself as chairman of the RNIEC's "Advisory Panel", but reported that he never directed the operations of the RNIEC or made its decisions or controlled its staff. Senator Heinz remained a member through the special election of Senator Evans in Washington state in November 1983.

The NRSC was a political committee composed of a chairman, sixteen members and the Majority leader of the United States Senate. Senator Heinz, prior to the formation of the RNIEC, served as chairman of the NRSC and continued as a member of the committee until he resigned on November 14, 1983.

According to the affidavit of Senator Richard Lugar, NRSC's chairman at the time the RNIEC was formed, the committee became aware that Senator Heinz was involved with the RNIEC in August, 1983, when it saw an RNIEC fundraising letter signed by Senator Heinz. NRSC policy required its members and personnel to refrain from communicating with any person or committee that made, or stated an intention to make, independent expenditures on behalf of Republican senatorial candidates. Senator Lugar promptly requested a meeting with Senator Heinz to discuss his involvement with the RNIEC. On September 15, 1983, Senator Lugar met with Senator Heinz and told Senator Heinz he should cease his activity with the RNIEC or resign from the NRSC. Senator Heinz announced a

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leave of absence from the NRSC on October 6, 1983 and resigned on November 14, 1983. He participated in no meetings of the NRSC between August, when Senator Lugar first became aware of his involvement with the RNIEC, and his November 1983 resignation.

No rule exists that two entities are automatically deemed affiliated or connected when they have any members or personnel in common. See Advisory Opinion ("AO") 1975-35, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5120 (Sept. 18, 1975); AO 1984-12, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5765 (May 31, 1984). The question in such cases is whether the common personnel represent a medium through which one group can "influence the decision[s]" of the other. Thus, the question in this matter is whether Senator Heinz's concurrent membership in the NRSC and RNIEC permitted the NRSC to influence the decisions of the RNIEC.

Senator Heinz explained in his verified response to the complaint that, although sixteen Republican Senators were members of the NRSC, the NRSC's operations were controlled on a day to day basis by Senator Lugar. Senator Lugar was authorized to conduct the committee's campaign activities without obtaining the approval of the other members of the NRSC. In fact, no meetings of the NRSC members were held during the period between Senator Jackson's death on September 1, 1983 and Dan Evans' November 8 victory in the special election.

Given these circumstances, only one basis remains for the Commission to determine that Senator Heinz's overlapping membership in both committees gave rise to the affiliation of the

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two committees. The Commission may determine that Senator Heinz might have been able to acquire information from the NRSC concerning the NRSC's plans and activities. The transfer of such inside information about the NRSC's plans could "influence the decision[s]" of the RNIEC within the meaning of 11 C.F.R. § 110.3(a)(1)(C) by enabling the RNIEC to tailor its expenditures in support of the Evans campaign to complement the NRSC's strategies. See In re Mondale for President Committee, Inc., FEC Matter Under Review 1667, First General Counsel's Report (May 7, 1984) (Addendum C to Common Cause's Brief).

During the investigation of this matter, the Commission questioned both the NRSC and the RNIEC about whether Senator Heinz or the RNIEC might have obtained any information about the NRSC's plans or activities in connection with the Dan Evans Senate campaign. The Commission properly limited its investigation to the Evans campaign because it was the only election activity in which the RNIEC was alleged to have engaged while Senator Heinz was a member of both committees. Representatives of both organizations confirmed unequivocally that no discussion or exchange of information about the Evans campaign had occurred between personnel of the two committees.

In sum, Senator Heinz's brief membership in both committees, Senator Lugar's control of the NRSC's operations, Senator Lugar's efforts to separate the RNIEC and NRSC, and the lack of evidence that Senator Heinz participated in or acquired information

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regarding the NRSC's plans or activities fail to provide sufficient basis for the conclusion that the RNIEC was affiliated with the NRSC.³

In addition, Rodney Smith had founded and directed the operations of the RNIEC. Prior to forming the RNIEC, he served for several years as the treasurer and finance director of the NRSC. Smith terminated his involvement with the NRSC several months before the RNIEC was formed; thus, unlike Senator Heinz, he never held positions simultaneously with both committees.

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Apart from his involvement with the list of contributors, discussed below at page 10, Common Cause has alleged no facts indicating that the NRSC could have influenced the decisions of the RNIEC through Smith. Common Cause failed to allege any facts indicating that the NRSC assisted Smith in establishing the RNIEC or that Smith's contacts with the NRSC were used to influence or control the RNIEC's actions. Neither does it allege any facts showing that Smith had any contact at all with the NRSC during the period of the Evans campaign, the only election activity in which Rodney Smith could have used his ties with both the RNIEC and the NRSC. Common Cause has suggested no basis for inferring affiliation from Rodney Smith's former role with the NRSC beyond pure speculation that Smith could have used those contacts to

3. In light of Senator Heinz's death and the amount of time that has passed since the short period of Senator Heinz's dual membership, this Office believes that further investigation of this matter would likely be fruitless. Moreover, since the RNIEC terminated on June 29, 1987, further expenditure of agency resources to investigate the legal status of this long defunct organization would not be warranted.

obtain inside information about NRSC's activities. Since there is no evidence to support this speculation, there is insufficient basis to conclude that the RNIEC was affiliated with the NRSC.

B. The RNIEC's Use of an NRSC Contributor List

The Commission must consider, finally, whether the use of an NRSC contributor list by the RNIEC resulted in "similar patterns of contributions" that could be indicative of affiliation of the two committees pursuant to 11 C.F.R. § 110.3(a)(1)(iii)(D). The facts discovered in the investigation of this matter show that there is insufficient evidence to conclude that the NRSC and RNIEC were affiliated simply because Rodney Smith used an NRSC contributor list while working at RNIEC.⁴

In his response to the complaint, Smith reported that he took the list with him when he left the NRSC on the theory that the list was in fact his property. Smith admitted that he never discussed his claim to ownership of the list of contributors with anyone else at the NRSC. According to the NRSC, when it began to suspect that the RNIEC was using its contributor list, it met with the RNIEC and demanded that the RNIEC cease using any list containing NRSC contributors. Although the RNIEC refused to tell the NRSC what fundraising lists it was using, and a formal agreement was never reached between the parties, the RNIEC did

4. Since the similar pattern of contributions to the NRSC and the RNIEC was simply the result of the RNIEC's use of the NRSC's contributor list, it has no independent significance beyond that of the list itself.

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represent to the NRSC that it would not conduct further direct mail fundraising activities. The NRSC denied giving permission to the RNIEC to use the list and asserts that use of the list by the RNIEC was unauthorized.

The investigation in this case revealed that far from cooperating with or assisting the RNIEC, the NRSC was actively hostile to the RNIEC's use of its contributor list. The unauthorized use of the NRSC contributor list by the RNIEC cannot, therefore, be seen as an indicator of affiliation when the use of the list occurred under hostile and uncertain circumstances.

In light of the foregoing, there is insufficient basis to find that the NRSC and RNIEC are affiliated. Consequently, RNIEC's expenditures on behalf of candidates would not count toward the NRSC's contribution limit under 2 U.S.C. § 441a(a). Accordingly, this Office recommends that the Commission find no probable cause to believe that the respondents violated 2 U.S.C. § 441a(a).

III. GENERAL COUNSEL'S RECOMMENDATION

1. Find no probable cause to believe that the National Republican Senatorial Committee violated 2 U.S.C. § 441a(a).
2. Find no probable cause to believe that the RNIEC violated 2 U.S.C. § 441a(a).

Date

6/12/92

Lawrence M. Noble
General Counsel

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June 30, 1992

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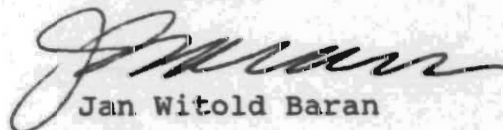
Attn: Teresa A. Hennessy

Re: MJR 1602 (National Republican Senatorial
Committee)

Dear Mr. Noble:

I am in receipt of your letter of June 15, 1992 enclosing a Supplemental General Counsel's Brief in Matter Under Review 1602. The National Republican Senatorial Committee ("NRSC") concurs with the recommendation in this Supplemental Brief that the Commission "[f]ind no probable cause to believe that the National Republican Senatorial Committee violated 2 U.S.C. § 441a(a)." Additionally, the NRSC requests that the Commission again dismiss this action as it did in February, 1985. This matter is more than seven years old and involves some entities and principals which are either defunct or deceased.

Sincerely,


Jan Witold Baran

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
The Republican National)
Independent Expenditure)
Committee, et al.)

MUR 1602

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On June 15, 1992 the Office of General Counsel circulated a Supplemental General Counsel's Brief in this matter to the Commission, counsel formerly representing the now defunct Republican National Independent Expenditure Committee ("RNIEC"), and counsel for the National Republican Senatorial Committee ("NRSC").¹ On July 7, 1992 this Office received a response from counsel for the NRSC in the form of a letter dated June 30, 1992.² (Attachment 1.) As set forth below, this Office recommends that there is an insufficient basis to find that the NRSC and RNIEC were affiliated. As a result, this Office recommends that the Commission find no probable cause to believe that the NRSC and the RNIEC violated 2 U.S.C. § 441a(a).

In addition, this Office stated in the Supplemental Brief that it would submit recommendations in a General Counsel's Report

1. The General Counsel's Brief that preceded the Supplemental Brief circulated in 1984. The procedural history of this matter is set out in the Supplemental Brief and is incorporated by reference in this Report.

2. The allegations of the original complaints that are at issue in this re-opened matter are limited to those that are directly related to the two issues remanded to the Commission and discussed in Section II.

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concerning a second issue in this matter. Because it does not appear that the record of this case provides sufficient basis to conclude that the RNIEC was a political committee of the Republican National Committee, this Office recommends that the Commission find no reason to believe that the NRSC and the RNIEC violated 2 U.S.C. § 441a(a).

II. ANALYSIS

A. There is an Insufficient Basis to Find That the NRSC and RNIEC Were Affiliated.

As discussed in the Supplemental Brief, the allegations in the original complaints that were remanded by the courts to the Commission concerned expenditures made by the RNIEC in connection with a special senatorial election held in Washington state after the death of Senator Henry Jackson. The first issue before the Commission is whether the RNIEC and NRSC were affiliated and therefore subject to the same contribution limit imposed by section 441a(a). Common Cause v. Federal Election Commission, 906 F. 2d 705 (D.C. Cir. 1990). In particular, the Commission must determine whether the two committees made excessive in-kind contributions in violation of 2 U.S.C § 441a. Id. at 706.

In 1976 Congress amended the Federal Election Campaign Act of 1971, as amended ("the Act"), to provide that all committees established, financed, maintained or controlled by the same person or group of persons are affiliated and thereby subject to a single

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contribution limitation. The Commission subsequently adopted regulations setting out five "indicia" of affiliation. 11 C.F.R. § 110.3 (a)(1)(iii)(A-E)(1980). Upon remand, only two of these are at issue in this matter.

(C) The authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of an entity;

(D) Similar patterns of contributions;...
11 C.F.R. § 110.3(a)(1)(iii)(C-D)(1980)

Specifically, the Commission must determine 1) whether the NRSC could have "influence[d] the decision[s]" of the RNIEC through close links to Senator Heinz or Rodney Smith and 2) whether "a similar pattern of contributions" resulted from the RNIEC's unauthorized use of an NRSC contributor list. 11 C.F.R. § 110.3.

1. Senator Heinz's Overlapping Membership with the NRSC and the RNIEC and Rodney Smith's Prior Contacts With the NRSC.

As discussed in the Supplemental Brief, no rule exists that two entities are automatically deemed affiliated or connected when they have members or personnel in common. See Advisory Opinion ("AO") 1975-35, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5120 (Sept. 18, 1975); AO 1984-12, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5765 (May 31, 1984). Instead, a question of fact arises as to whether the common personnel represent a medium through which one group could "influence the decision[s]" of the other. Thus, the

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question becomes in this instance whether Senator Heinz's concurrent membership in the NRSC and RNIEC permitted the NRSC to influence the decisions of the RNIEC.

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The Supplemental Brief points out, and Respondent NRSC's response does not controvert, that: 1) Senator Heniz's membership in both committees was brief; 2) Senator Lugar (chairman of the NRSC at the time the RNIEC was formed) attempted to separate the RNIEC and NRSC; and 3) no evidence exists that Senator Heinz participated in or acquired information regarding NRSC's plans or activities to the benefit of the RNIEC. In addition, no basis exists for concluding that the NRSC could have influenced the decisions of the RNIEC through Rodney Smith. Unlike Senator Heinz, Rodney Smith never held positions simultaneously with both committees. As detailed in the Supplemental Brief, the complaint remanded to the Commission in this matter has alleged no facts from which an inference could arise that Smith might have used contacts with the NRSC to obtain inside information about that committee's activities to the benefit of the RNIEC. Thus, an insufficient basis exists to support the conclusion that the RNIEC was affiliated with the NRSC through either Senator Heinz or Rodney Smith.

2. The RNIEC's Use of an NRSC Contributor List

The Commission must consider as well whether the use of an NRSC contributor list by the RNIEC resulted in "similar patterns

of contributions" that could indicate affiliation of the two committees pursuant to 11 C.F.R. § 110.3(a)(1)(iii)(D). The evidence in this case has revealed that, far from cooperating with or assisting the RNIEC, the NRSC was actively hostile to the RNIEC's use of its contributor list. The NRSC maintained that the RNIEC's use of the list was unauthorized. For this reason, the RNIEC's use of the list does not reflect affiliation between the two committees.

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In sum, an insufficient basis exists to support a determination that the NRSC and the RNIEC were affiliated. Therefore, one committee's expenditures on behalf of a senatorial candidate in the special election does not count toward the other committee's contribution limit in that race. As a consequence, the committees did not make contributions in that election in excess of legal limits. Accordingly, this Office recommends that the Commission find no probable cause to believe that the two committees violated 2 U.S.C. § 441a(a). Counsel for the NRSC has stated that the NRSC concurs in this recommendation. The NRSC also requested that the Commission dismiss this action. Counsel added that "[t]his matter is more than seven years old and involves some entities and principals which are either defunct or deceased." Attachment 1.

B. There is an Insufficient Basis to Find That the RNIEC Was a Political Committee of the National Republican Committee.

As stated in the Supplemental Brief, the other issue presented to the Commission upon remand is whether the RNIEC was a

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political committee of the National Republican Committee ("NRC") independent of its ties to the NRSC. Common Cause v. Federal Election Commission, 715 F. Supp. 398 (D.D.C. 1989). In Common Cause, the court referred to 11 C.F.R. § 100.5(e)(4) pursuant to which a party committee is a political committee which represents a political party and is part of the official party structure at the national, state or local level. 715 F. Supp. at 405. Common Cause maintained before the court that the Commission had failed to entertain this issue in its earlier consideration of this matter. The Commission responded that no separate consideration of this issue was necessary because this contention was but another way of alleging that the RNIEC and the NRSC were affiliated. The court agreed with the complainant, stating that this question was distinct from whether the RNIEC was affiliated with the NRSC.³ Id.

A review of the record assists in understanding the court's decision and order. At the initial stages in this matter, neither this Office nor the Commission addressed explicitly the issue of whether the RNIEC was a political committee of the RNC apart from its ties to the NRSC. In the First General Counsel's Report that

3. In its decision, the court appears to characterize this issue alternately as one of "political committee" status and one of "party committee" status. However, in its Order the court states that the issue is whether the RNIEC was a political committee of the RNC. Id.

addressed the merits of the allegations in this matter,⁴ this Office characterized the underlying complaints as alleging that:

because of the close ties between the RNIEC and the NRSC that the committees are affiliated or that the RNIEC was established and is maintained by a national political committee. The allegation that the RNIEC was established and is maintained by a national political party is simply another way of saying that the party and the RNIEC are affiliated entities. (Emphasis added.)

General Counsel's Report, June 21, 1984, at 9. Later in the Report, the Office recommended that the Commission find reason to believe that the NRSC and the RNIEC were affiliated political committees and therefore had violated 2 U.S.C. § 441a(a) by making excessive in-kind contributions on behalf of Senator Evans in the special senatorial election in Washington state. Id. at 19. Based on this recommendation, on July 12, 1984 the Commission found reason to believe that the two committees had violated section 441a(a) of the Act. As the reviewing court pointed out, however, Common Cause specifically averred that the RNIEC was a political committee of the RNC quite apart from its other allegations. 715 F. Supp. at 405, n.5.

In light of the foregoing, the Office turns now to this narrow question. This Office believes that in fact the complaints in this matter provide an insufficient basis for

4. The First General Counsel's Reports concerning the complaints that were merged into this matter only described the cases and made no substantive recommendations. Because this Office was awaiting information from the respondents, it postponed discussion of the merits of the complaints until the subsequent report.

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concluding that the RNIEC was a political committee of the RNC. Thus, this Office recommends that the Commission find no reason to believe that RNIEC and the NRSC were subject to the same contribution limit and hence violated section 441a(a) of the Act with regard to the special election of Senator Evans.

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In support of the allegation that the RNIEC was a political committee of the RNC, the complaints made several assertions. If true, these assertions would have described a relationship between the RNIEC and the RNC, and hence the NRSC, such that the RNIEC and the NRSC made excessive contributions to the Evans campaign in violation of 2 U.S.C § 441a(a). First, the complaints alleged that the RNIEC was organized by key Republican Party officials. Second, the complaints pointed out that the RNIEC's goal was to elect Republican candidates. Third, the complaints maintained that the RNIEC used "Republican National" in its name. Fourth, the complaints charged that the RNIEC raised money from the same donors as the official Republican Party committees. Finally, the complaints charged that the committee made campaign expenditures in the same way and for the same purpose as the NRSC, a political committee of the RNC.

This Office has concluded that the complaints have failed to support this allegation because they have failed to establish a nexus in fact between the RNC and the RNIEC in several respects. One, as Respondents earlier noted in this matter, the complaints did not attempt to show that governing documents -- such as the constitution or by-laws -- for either the RNC or the RNIEC

connected the committees or recognized the RNIEC as a part of the official RNC party structure at the national, state or local level. Although Rodney Smith, a founder of the RNIEC, had a prior connection with the RNC, the complaints failed to show that Mr. Smith consulted or collaborated with the RNC regarding the organization or operations of the RNIEC. Two, this Office agrees with the RNIEC's argument in its response to the complaints that the common goal of electing Republican officials, by itself, is far too general to suggest that the RNIEC was a political committee of the RNC. Three, RNIEC's use of the term "Republican National" in its name did not establish a link with the Republican National Committee without other evidence that the Committees were connected. Four, the complaints failed to identify a single vendor who served both the RNC and the RNIEC. Lastly, the committees' joint use of a contributor list alone failed to support the complaints' contention that the RNIEC was a political committee of the RNC. The RNIEC conceded that it raised money from the several of the same donors as the RNC. In addition, the record established earlier that the RNIEC raised a substantial amount of its funds from a contributor list that was also used by the NRSC, an official committee of the RNC. This Office previously had advised that a genuine dispute apparently existed between the NRSC and the RNIEC as to ownership of the contributor list. The NRSC claimed that the RNIEC's use of this list was

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unauthorized. See General Counsel's Brief, October 31, 1984, at 11-13. Furthermore, this Office believes that the RNIEC's response that the overlap can be attributed to party loyalty and to the use of "prospecting" lists readily available to anyone undertaking a fundraising effort is a reasonable explanation. This Office points out that, moreover, the complaints failed to cite any specific expenditures as evidence of the allegation that the RNIEC made and would make campaign expenditures in the same way and for the same purpose as the NRSC, a committee of the RNC, and therefore the RNIEC was another political committee of the RNC.

For the foregoing reasons, it does not appear that the RNIEC was a political committee of the RNC pursuant to 11 C.F.R. § 100.5(e)(4). Therefore, this Office recommends that the Commission find no reason to believe that the RNIEC and the NRSC violated 2 U.S.C. § 441a(a) with regard to Senator Evans' special election.

III. RECOMMENDATIONS

1. Find no probable cause to believe that, by virtue of being affiliated with the RNIEC, the National Republican Senatorial Committee violated 2 U.S.C. § 441a(a).

2. Find no probable cause to believe that, by virtue of being affiliated with NRSC, the Republican National Independent Expenditure Committee violated 2 U.S.C. § 441a(a).

3. Find no reason to believe that the Republican National Independent Expenditure Committee, by virtue of being a political committee of the Republican National Committee, violated 2 U.S.C. § 441a(a).

4. Find no reason to believe that the National Republican Senatorial Committee violated 2 U.S.C. § 441a(a).

5. Close the file.

6. Approve the appropriate letters.

Date

7/21/92


Lawrence M. Noble
General Counsel

Attachments

1. Response from NRSC
2. Letters to Respondents
3. Letter to Common Cause

Staff Assigned: Teresa A. Hennessy

92040923303

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
The Republican National Independent) MUR 1602
Expenditure Committee, et al.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 27, 1992, the Commission decided by a vote of 5-0 to take the following actions in MUR 1602:

1. Find no probable cause to believe that, by virtue of being affiliated with the RNIEC, the National Republican Senatorial Committee violated 2 U.S.C. § 441a(a).
2. Find no probable cause to believe that, by virtue of being affiliated with NRSC, the Republican National Independent Expenditure Committee violated 2 U.S.C. § 441a(a).
3. Find no reason to believe that the Republican National Independent Expenditure Committee, by virtue of being a political committee of the Republican National Committee, violated 2 U.S.C. § 441a(a).

(Continued)

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4. Find no reason to believe that the National Republican Senatorial Committee violated 2 U.S.C. § 441a(a).
5. Close the file.
6. Approve the appropriate letters, as recommended in the General Counsel's Report dated July 21, 1992.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Potter recused himself from this matter and did not vote.

Attest:

July 27, 1992
Date

Marjorie W. Emmons
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Tues, July 21, 1992 3:34 p.m.
Circulated to the Commission: Wed., July 22, 1992 11:00 a.m.
Deadline for vote: Mon., July 27, 1992 4:00 p.m.

dr

92040923305



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 4, 1992

Jan W. Baran, Esq.
Wiley, Rein and Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 1602
National Republican
Senatorial Committee

Dear Mr. Baran:

9 2 0 4 0 9 2 3 3 0 6
This is to advise you that on July 27, 1992, the Federal Election Commission found that there is no probable cause to believe that the National Republican Senatorial Committee ("NRSC"), by virtue of being affiliated with the Republican National Independent Expenditure Committee ("RNIEC"), violated 2 U.S.C. § 441a(a). In addition, on the same date the Commission found that, based on information in the complaints and information provided by the complainants in this matter, there is no reason to believe that the NRSC violated 2 U.S.C. § 441a(a). Accordingly, the Commission closed its file in this matter.

The file will be made part of the public record within 30 days of the certification of the Commission's vote. Should you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of General Counsel.

If you have any questions, please contact Teresa A. Hennessy, Assistant General Counsel, at 202/219-3690.

Sincerely,

Lawrence M. Noble
Lawrence M. Noble
General Counsel

Enclosure
GC Report



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 4, 1992

Raina H. Fishbane, Esq.
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005

RE: MUR 1602
Republican National
Independent Expenditure
Committee

Dear Ms. Fishbane:

This is to advise you that on July 27, 1992, the Federal Election Commission found that there is no probable cause to believe that the Republican National Independent Expenditure Committee ("RNIIEC"), by virtue of being affiliated with the National Republican Senatorial Committee ("NRSC"), violated 2 U.S.C. § 441a(a). In addition, on the same date the Commission found that, based on information in the complaints and information provided by the complainants in this matter, there is no reason to believe that the RNIIEC, by virtue of being a political committee of the Republican National Committee, violated 2 U.S.C. § 441a(a). Accordingly, the Commission closed its file in this matter.

The file will be made part of the public record within 30 days of the certification of the Commission's vote. Should you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of General Counsel.

If you have any questions, please contact Teresa A. Hennessy, Assistant General Counsel, at 202/219-3690.

Sincerely,

Lawrence M. Noble
Lawrence M. Noble
General Counsel

Enclosure
GC Report

92040923307



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 4, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Roger M. Witten, Esq.
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037

RE: MUR 1602

Dear Mr. Witten:

This is in reference to the complaint that Common Cause filed with the Federal Election Commission on November 22, 1983 concerning the National Republican Senatorial Committee ("NRSC") and the Republican National Independent Expenditure Committee ("RNIEC"). As you will recall, the Commission reopened this matter on July 17, 1989 for the limited purpose of considering the issues remanded to it in Common Cause v. Federal Election Commission, 906 F. 2d 705 (D.C. Cir. 1990), rev'g 715 F. Supp. 398 (D.D.C. 1989).

On July 10, 1984 the Commission found that there was reason to believe that the NRSC and the RNIEC violated 2 U.S.C. § 441a(a), a provision of the Federal Election Campaign Act of 1971, as amended (the "Act"), by virtue of being affiliated committees and conducted an investigation of this matter. Pursuant to the remand of the Circuit Court of Appeals for the District of Columbia, the Commission considered a Supplemental General Counsel's Brief and a responsive letter from the NRSC. On July 27, 1992 the Commission found that there was no probable cause to believe that the NRSC and the RNIEC violated 2 U.S.C. § 441a(a) by virtue of being affiliated committees. In addition, and pursuant to the remand of the U.S. District Court for the District of Columbia, on the same date the Commission found that there was no reason to believe that the NRSC and the RNIEC violated 2 U.S.C. § 441a(a) by virtue of the RNIEC being a political committee of the Republican National Committee. Accordingly, the Commission closed the file in this matter on July 27, 1992.

CLOSED

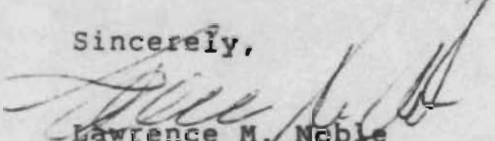
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Roger M. Witten, Esq.
Page 2

This matter will become part of the public record within 30 days. The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact Teresa A. Hennessy, Assistant General Counsel, at 202/219-3690.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
General Counsel's Report

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