



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4195

DATE FILMED 11-24-95 CAMERA NO. 2

CAMERAMAN J.E.G.

95043695356



WILLEAM A. CHOBY, D.M.D., M.P.A.

March 20, 1995

Retha Dixon
Docket Chief
Federal Election Commission
Washington, D. C. 20463

MUR 4/95

Dear Retha,

I have yet another printed article that I believe could represent in-kind contributions by candidate-friendly newspaper. Again it is my understanding that a "contribution is anything of value given to influence a federal election, 100.7 (a)(1)." Given the continual nature of Mr. Murtha's campaign methods, I believe that the following material deserves a FEC review. Thank-you.

Sincerely,

Willeam A Choby DMD
1905 Bates Drive
Johnstown, Pa 15905
814-255-3866

95043695357

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COMMISSION
OFFICE OF GENERAL
COUNSEL

MAR 22 11 45 AM '95



WILLEAM A. CHOBY, D.M.D., M.P.A.

A request for review of Congressman John P. Murtha's use of a private newspaper to promote his personal views on a very political subject.

This complaint involves a specialized newspaper, 22 Plus, of 714 Rowena Drive, Ebensburg, Pa. 15931 (page 3 of Exhibit 1) and the private personal use of an incumbent congressman to advertise his political views (page 6, exhibit 1). The paper is a monthly publication which is paid for by private advertisers and distributed for free in five local counties, three of which are in Murtha's district.

In light of the fact that Murtha has also been actively campaigning within the district (see enclosed paid advertisement, exhibit 2, and news article, exhibit 3) the appearance of this self-written article under the guise of "news" appears to be intended to favorably influence a specific audience. Knowing that the actual space in which the article resides had to be paid for by somebody while also being aware that the article was written by the congressman instead of a bonafide news reporter, shouldn't this be considered a form of campaign advertising?

Could the donation of this media space before a well-known and specific audience by an actively campaigning incumbent congressman qualify as an "in-kind" contribution under the terms of prohibited business contribution regulations? Or perhaps if the article had been paid for by the congressman shouldn't the article have include a disclaimer?

I submit this complaint along with the enclosed supporting documentation that represents, to the best of my knowledge, a true and accurate account of the incident in question.

Willeam A Choby DMD MPA
1905 Bates Drive
Johnstown, Pennsylvania 15905
814-255-3866

3-20-1995

Sworn to and subscribed before me

on this 20 day

of MARCH 1995

William Clark
Notary Public

My commission expires: 10-17-97

Congressman JOHN MURTHA, Pennsylvania — 12th C.D.

Dear Residents of the 12th Congressional District:
Our area can be proud of the progress we've made in creating, saving and attracting jobs. It's been a long, slow process, but in 11 years, we've created or brought back 11,000 jobs. While unemployment and underemployment are still too high, we have made great strides.

I attribute our progress to several factors. We created a vision of the future that looked at infrastructure and targeted growth industries. We committed ourselves to working on economic development over the long term. And we recognized that our people are one of our greatest assets because of their willingness to learn and their strong work ethic.

As a result, several major sewage projects are planned and the Johnstown-Cambria County Airport received federal funding for expansion.

As a result, the Route 219 Ebensburg bypass was completed, Route 22 is being widened to four lanes the whole way to Pittsburgh, the Haws Pike section of Route 86 was reconstructed, the Meyersdale bypass has completed the complex environmental review and has a tentative construction-start date, and studies are under way for more work on Routes 219 and 86.

As a result, we targeted high-tech defense contracting for growth and we now have over 5,000 people working in Cambria and Somerset Counties for companies that do at least some of their work for the government. As a result, we targeted tourism as a growth industry, and nearly 5,000 people owe their paychecks to tourism in the two-county area.

As a result, we succeeded in attracting a federal prize with 245 jobs, the National Drug Intelligence Center with 150 jobs, and Defense Department centers of excellence in metalworking, environment and software, which collectively employ 600 people.

At the same time, we've succeeded in saving a substantial portion of our basic industry as the major steelmakers pulled out. And in recognizing the role that quality of life plays in job development, we're aggressively working to improve educational opportunities, clean up our streams and rivers, and develop bike trails and other recreation.

With our vision, our dedication, and our solid work force, I believe we've turned the corner and we're headed toward a more prosperous future.

Sincerely,
John Murtha

Paid for by the Murtha for Congress Committee, Michael Slovich, Chairman; Robert C. Gault, Treasurer.

Johnstown Tribune

3-7-95



Exhibit 2

Murtha targets lunches

Concerned about school programs

By DAVE HURST

THE TRIBUNE-DEMOCRAT

3-18-95

It was your basic hot dog and pony show.

U.S. Rep. John P. Murtha, D-Johnstown, sat down to lunch Friday with students at the Greater Johnstown Middle School while photographers circled the table. A freelance photographer hired by the Murtha for Re-election Committee was taking pictures that likely will end up in future newsletters or campaign material.

Students, initially reluctant to join the congressman, soon started to swarm around, answering questions and asking for Murtha's autograph.

Similar scenes are probably occurring within the districts of Democratic members of Congress around the country.

Democrats are jumping on certain Republican Contract With America initiatives,

claiming they will hurt children in particular and low-income Americans in general.

"The reason I'm here today is the concern I





American Cancer Society's 1995 Diner's Club Book \$30 (Blair County Only) 1995 Golf Pass \$30 (All Counties)

Available at Logan Valley Mall (Customer Service Desk)
8 American Cancer Society
1004 E. Juniper St., Hollidaysburg, PA 16848
Telephone 814-695-9511
Please note these are not discounted prices.
(Compliments of a Friend)

2nd Hand Rose Resale Shop

301 Allegheny St., Hollidaysburg, PA 16848
814-696-1231

Consignment by Appointment Only
10% Off Women's Clothing with this coupon

Penny's Good Samaritan Services Call 814-632-2756

Seniors of Blair County... Are you moving to any apartment from your home?
I can help you clean out the attic & basement. Will do light cleaning, run errands, transportation. I am 53 years old. Experienced painter - 17 years. References available. Seniors' Flexible Rates.

Tom's Plank Road

Mobil Service Tom Knouse, owner
101 West Plank Road, Altoona, PA 16601
814-943-9264
Senior Citizen's 10% Discount On Parts

W.H. Kelly & Son Monuments

2113 Union Avenue Altoona, PA
1-800-542-5136
10% Senior Discount With This Ad

814-472-4600

LISTING \$25 PER ISSUE

Senior Citizens Column

BY CONGRESSMAN JOHN P. MURTHA

Among the most frequent questions I've received in the mail and through phone calls early in 1995 are ones about the solvency of the Social Security System. Depending on who's analysis you read, we either have no trouble or deep trouble. Which is right?

Since it's helpful to think about the Government budget as parallel to our own household budget, let's address the solvency of the Social Security System by turning this idea around just a bit and asking this question: If we look at the Social Security Trust Fund as we would our checking account, how long does it look like we'll be able to keep writing checks before we bounce one?

Social Security works like your individual account. The bank takes in a depositor's money, credits the amount to the depositor's account, and then covers checks written on it. After checking with the independent experts at the Library of Congress, the current answers to the question of how long we can keep writing these checks are:

- The Social Security Disability Payment System - until 2015
- The Social Security Retirement and Survivors Fund - until 2030

Thus your checking account at the Social Security Trust Fund is very secure. You needn't worry about your check not being there any month soon.

In the long-term we need some changes, because I want to make sure those young people paying in taxes today still have a Social Security System when they're ready to retire. But in the short-term the retirement system is very sound.

Many other calls and letters have expressed concern about our Cambria County Transit Authority, and whether federal budget cut-backs are going to cause reductions in service. Many budget-cutters have targeted the Transportation Department, and support for mass transit as items for possible reductions. There are still many months to go before a budget is final, however, and much support remains for these programs.

I've worked with the Transit Authority on a number of improvements to our transit system, and I'll continue to support the highest federal funding level we can achieve. We'll

still be working to reduce the deficit, but I think there are many other programs we can cut before this one that makes transportation possible for so many older Americans.

Washington Senior Class Notes

Our area has a delegate and alternate to the upcoming White House Conference on Older Americans, a conference that hopefully will lay out the long-range goals in America for retired citizens, and recommend policy changes. One of my proudest efforts has been the work I've done with the area American Lung Association in our flu vaccination program. This year, 2,500 senior citizens and others at high risk of suffering complications from influenza were served at 14 different sites in Cambria County. My thanks to the American Lung Association, Good Samaritan Hospital, and the Cambria County Senior Citizen Center for their help. The flu can be a killer, and our local program, coupled with our legislation on Medicare reimbursement for flu shots, is saving lives and helping people avoid the



flu and its complications.

I talked earlier about the solvency of the Social Security Trust Fund, but one concern I didn't mention was the impact of the proposed Balanced Budget Amendment. The current version of the Balanced Budget Amendment does not exempt Social Security. Therefore, it could threaten the level of benefits because under this Amendment, many of us believe, the budget could not be balanced without major cuts in Social Security benefits and health care reimbursements. I voted against the Balanced Budget Amendment for this very reason, and I think we need to watch developments on this issue very closely. I'll be re-introducing my bill to change the way Cost-of-Living Adjustments are figured. Right now the COLA is based on an "average" family and their expenditures, but I say let's base it on a retired family to more adequately reflect costs like prescription drugs or health care. Have questions or comments on this column, or have something you'd like to be covered? Either write to me at P.O. Box 780, Johnstown, PA 15907 or call toll-free 1-800-289-2642.



March Word Find

Listed below are words and phrases associated with March.
How many can you find and circle in the scrambled letter puzzle?
The words go horizontally and vertically, backwards and forwards.

SPRING
ST. PATRICK
PARTIES
FUN
CHANGE
FESTIVALS
FLOWERS

IRISH
THAW
GREEN
PARADES
COLORFUL
WARMTH
SPORTS



S	O	C	S	L	A	V	I	T	S	B	F	B
P	L	B	H	M	B	N	A	V	P	A	L	D
R	L	X	J	V	Z	N	S	B	O	F	O	B
I	U	S	G	M	D	B	F	Z	R	B	W	N
N	F	V	D	F	H	B	X	B	T	X	E	S
G	R	E	E	N	D	C	K	M	S	B	R	Z
F	O	B	T	S	G	Z	C	K	D	C	S	B
G	L	N	H	S	I	R	I	D	Z	N	D	S
B	O	X	J	D	C	D	R	D	B	S	N	E
Z	C	H	A	N	G	E	T	H	A	W	B	D
S	F	D	T	M	N	V	A	X	F	F	X	A
P	A	R	T	I	E	S	P	B	A	U	E	R
H	O	B	S	W	A	O	T	G	F	N	B	A
H	T	M	R	A	W	P	S	Z	V	N	X	P



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714 Rowena Drive
Ebensburg, PA 16801
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stories, poetry, recipes and
letters to the editor.

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95043695361



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 24, 1995

Willeam A. Choby, DMD
1905 Bates Drive
Johnstown, PA 15905

RE: MUR 4195

Dear Dr. Choby:

This letter acknowledges receipt on March 22, 1995, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 4195. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure
Procedures

95043695362



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 24, 1995

**Robert C. Ondick, Treasurer
Murtha for Congress Committee
551 Main Street
Johnstown, PA 15901**

RE: MUR 4195

Dear Mr. Ondick:

The Federal Election Commission received a complaint which indicates that the Murtha for Congress Committee ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4195. 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 the Committee and you, as treasurer, in this matter. 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. Your response, which should be addressed to the General Counsel's Office, 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.

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 authorizing such counsel to receive any notifications and other communications from the Commission.

95043695363

If you have any questions, please contact me at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

95043695364



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 24, 1995

**Representative John P. Murtha
2423 Rayburn House Office Building
Washington, DC 20515-3812**

RE: MUR 4195

Dear Representative Murtha:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4195. 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 this matter. 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. Your response, which should be addressed to the General Counsel's Office, 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.

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 authorizing such counsel to receive any notifications and other communications from the Commission.

95043695365

If you have any questions, please contact me at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

95043695366



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 24, 1995

John P. Murtha
109 Colgate Avenue
Johnstown, PA 15905

RE: MUR 4195

Dear Mr. Murtha:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4195. 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 this matter. 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. Your response, which should be addressed to the General Counsel's Office, 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.

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 authorizing such counsel to receive any notifications and other communications from the Commission.

95043695367

If you have any questions, please contact me at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

95043695308



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 24, 1995

55 Plus
714 Rowena Drive
Ebensburg, PA 15931

RE: MUR 4195

Dear Sir or Madam:

The Federal Election Commission received a complaint which indicates that 55 Plus may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4195. 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 55 Plus in this matter. 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. Your response, which should be addressed to the General Counsel's Office, 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.

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 authorizing such counsel to receive any notifications and other communications from the Commission.

95043695369

If you have any questions, please contact me at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

95043695310

PHILADELPHIA
NEW YORK
MIAMI
PRINCETON
BRUSSELS

MORGAN, LEWIS & BOCKIUS

COUNSELORS AT LAW
2000 ONE LOGAN SQUARE
PHILADELPHIA, PENNSYLVANIA 19103-6223
TELEPHONE: (215) 963-5000
FAX: (215) 963-5299

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TOKYO

GREGORY M. HARVEY
DIAL DIRECT (215) 963-5427

April 7, 1995

VIA FEDERAL EXPRESS

Federal Election Commission
Washington, D.C. 20463

Attention: Mary L. Taksar, Attorney
Central Enforcement Docket

Re: MUR 4195
Murtha for Congress Committee
and Robert C. Ondick, Treasurer

Greetings:

This will respond to the documents which have been docketed as a complaint made by Willeam A. Choby, D.M.D., against Murtha for Congress Committee ("the Committee") and Robert C. Ondick, C.P.A., as Treasurer ("Respondents") of that Committee.

Enclosed is the original affidavit of Robert C. Ondick responding to the only allegation against Respondents which might be inferred from the papers submitted by Dr. Choby, to wit, that the publication in a monthly periodical known as 55 Plus of a "Senior Citizens Column" under a by-line of Congressman John P. Murtha was paid for by the Committee and accordingly that Respondents committed a violation of the Act by failing to cause a disclaimer (attribution to the Committee) to be published in 55 Plus. The Committee made no such payment and accordingly no disclaimer was required.

In addition to the factual defense stated in the affidavit, Respondents raise two substantive defenses.

1. Submission for publication of the text published as a "Senior Citizens Column" under the by-line of Congressman John P. Murtha was manifestly a non-political activity and part of the Congressman's official duties.

Comparison of the texts reproduced in the purported "complaint," both from 55 Plus and from a paid political advertisement in the Johnstown Tribune-Democrat, published with a

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COUNSEL

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Federal Election Commission
April 7, 1995
Page 2

proper attribution, demonstrates that Congressman Murtha has scrupulously complied with the requirements of the Act differentiating between non-political activity (the 55 Plus column) and political activity. An event such as a picnic is "non-political if (1) there is an absence of any communication expressly advocating the nomination or election of the congressman appearing or the defeat of any other candidate, and (2) there is no solicitation, making or acceptance of a campaign contribution for the congressman in connection with the event." Orloski v. Federal Election Commission, 795 F. 2d 156, 160 (D.C. Cir. 1986) (in kind corporate donations in respect of a picnic 38 days before the election, sponsored by a senior citizens' advisory committee organized by incumbent congressman seeking reelection, held, correctly determined by the Commission to be donations in support of a non-political event). Under the long-standing Commission interpretation expressly approved by the United States Court of Appeals for the District of Columbia circuit in the Orloski case, publication of the instant "Senior Citizens Column" shortly before an election would be non-political and not subject to the limitations on in-kind contributions established by the Act. Considering the time sequence in the instant situation (the election in November 1994 having occurred months prior to March 1995), it approaches the frivolous to contend that publication of the column constitutes an in-kind contribution.

2. **Federal Constitutional principles under the First Amendment would be violated by any Commission activity to regulate the publication by a Congressman of a text which does not advocate the election or defeat of an individual and does not solicit contributions.**

Although not necessary to the decision in this matter, federal Constitutional principles declared by the Supreme Court in the case striking down the Florida "equal access" statute, Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974), would be violated by an effort on the part of the Commission to regulate the publication by any individual, including an incumbent congressman, of a text which did not include either of the indicia of political activity as approved by the Court of Appeals in the Orloski case.

95043695372

MORGAN, LEWIS & BOCKIUS

Federal Election Commission
April 7, 1995
Page 3

Also enclosed is the executed Statement of Designation
of Counsel.

Respectfully submitted,


Gregory M. Harvey

enclosures:

Affidavit of Robert C. Ondick, C.P.A.
Statement of Designation of Counsel
First General Counsel's Report at MUR 3713

cc: Robert C. Ondick, C.P.A.

95743695373

COMMONWEALTH OF PENNSYLVANIA:

ss.:

COUNTY OF CAMBERIA :

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AFFIDAVIT OF ROBERT C. ONDICK, C.P.A.

Robert C. Ondick, being first duly sworn according to law, deposes and says, to the best of his personal knowledge or on information and belief, as follows:

1. Murtha for Congress Committee has been the authorized campaign committee of Congressman John P. Murtha since the campaign year 1974; I have served as Treasurer of Murtha for Congress Committee since June 24, 1974; I am by profession a Certified Public Accountant.

2. This affidavit is submitted in respect of the purported "complaint" which has been docketed by the Federal Election Commission as MUR 4195.

3. If the "complaint" docketed at MUR 4195 is intended as an accusation that the Murtha for Congress Committee has covertly made a payment to a monthly periodical, described by the purported "complainant" as 55 Plus, of 714 Rowena Drive, Evansburg, PA 15931, I represent that no payment was made by Murtha for Congress Committee to 55 Plus in connection with the publication in its issue datelined March 1995 at page 6 of the "Senior Citizens' Column" published with the by-line of Congressman John P. Murtha; accordingly, no disclaimer was required to be published in respect thereto.

4. Concerning the propriety of Congressman Murtha's submitting for publication the text which appears in the "Senior

950436953/4

Citizen's Column" referred to in paragraph 3, I refer the Commission to the letter response of my counsel, Gregory M. Harvey, submitted with this affidavit.


Robert C. Ondick

Sworn and subscribed to
before me this 6TH day
of April, 1995:


Notary Public

NOTARIAL SEAL
PATRICIA ANN STUPI, Notary Public
Johnstown, Cambria County, PA
My Commission Expires Dec. 7, 1997

95043695375

STATEMENT OF DESIGNATION OF COUNSEL

APR 10 10 07 AM '95

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COUNSEL

NR 4195

NAME OF COUNSEL: GREGORY M. HARVEY

ADDRESS: MORGAN, LEWIS & BOCKIUS

2000 ONE LOGAN SQUARE

PHILADELPHIA, PA 19103-6993

TELEPHONE: 215-963-5427

FAX: 215-963-5299

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.

3-31-95
Date


Signature

RESPONDENT'S NAME: ROBERT C. ONDICK, TREASURER

ADDRESS: BT FINANCIAL PLAZA, SUITE 220

551 MAIN STREET

JOHNSTOWN, PA 15901

HOME PHONE: _____

BUSINESS PHONE: 814-536-7579

FAX: 814-539-2474

95043695376

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

92 JN -2 11 9:15

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR # 3713
DATE COMPLAINT RECEIVED
BY OGC 11/23/92
DATE OF NOTIFICATION TO
RESPONDENTS 11/30/92
STAFF MEMBER Craig D. Reffner

COMPLAINANT:

William D. White

RESPONDENTS:

League of Women Voters
of Pennsylvania
Pittsburgh Post-Gazette
Lynn Hardy Yeakel
Lynn Yeakel for U.S. Senate and
Sidney Rosenblatt, as treasurer
The Honorable Arlen Specter
Citizens for Arlen Specter and
Stephen J. Harmelin, as treasurer

RELEVANT STATUTES:

2 U.S.C. § 441b(a)

INTERNAL REPORTS CHECKED:

Disclosure materials

FEDERAL AGENCIES CHECKED:

None

I. GENERATION OF MATTER

This matter arose from a complaint by William White challenging certain expenditures made by the League of Women Voters of Pennsylvania (the "League") and the Pittsburgh Post-Gazette (the "Post-Gazette"). Responses have been received. Attachments A-D.

II. FACTUAL AND LEGAL ANALYSIS

In this complaint, William White alleges that the League prepared and distributed a "16 page supplement to the Pittsburgh Post-Gazette newspaper purporting to be a comprehensive guide"

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to Pennsylvania's 1992 primary elections. Complaint at 1.¹ In addition, complainant alleges that the Post-Gazette also printed numerous articles concerning that year's Senate election. According to the complainant, these expenditures are actually contributions to Lynn Hardy Yeakel and Arlen Specter, two 1992 Senate candidates. In support of this allegation, Complainant maintains that he was an independent senatorial candidate in that election, yet Respondents failed to include him in the supplement and the news articles in question or "make any mention of the procedure to nominate an independent candidate" for that seat. Id. He alleges that they instead featured only

1. Mr. White has filed numerous other complainants challenging the activities of various persons in connection with Pennsylvania's 1991 and 1992 Senate elections. These include, MURs 3706, 3709 and 3710, all of which the Commission closed with no reason-to-believe findings on May 25, 1993. Mr. White is also the complainant in two other matters, MURs 3612 and 3714, which have not yet been addressed by the Commission. This Office is currently preparing a First General Counsel's Report in these matters.

In addition, Mr. White has filed several related civil actions in U.S. District Court. First, he filed suit challenging the constitutionality of the Act. His suit, in which this agency was a party, was dismissed for lack of jurisdiction. White v. United States, No. 92-1202, (W.D. Pa. Jan. 7, 1992). Second, he filed suit against some of the Respondents involved in MURs 3612 and 3714. This suit was similarly dismissed, inter alia, for lack of jurisdiction over the Act. White v. Pennsylvania Ass'n. of Broadcasters, No. 92-0979 (W.D. Pa. Sept. 15, 1992). Third, Mr. White filed several suits challenging Pennsylvania's method of conducting special and general elections. These suits were similarly dismissed, for lack of standing or failure to state a claim for which relief could be granted. White v. Commonwealth of Pennsylvania, No. 91-1059 (W.D. Pa. December 10, 1991); White v. Commonwealth of Pennsylvania, No. 91-1060 (W.D. Pa. Oct. 18, 1991) aff'd, 968 F.2d 15 (3d Cir. 1992); White v. Commonwealth of Pennsylvania, No. 92-0710 (W.D. Pa.) aff'd, 983 F.2d 1054 (3d Cir. 1992). Last and most recent, Mr. White has filed suit pursuant to 2 U.S.C. § 437g(a)(8)(A) with respect to the enforcement matters currently pending before the Commission.

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the Democratic and Republican party candidates.²

With regard to the League's supplement, complainant further alleges that Respondents prepared the supplement "in coordination" with the Yeakel and Specter campaigns, which purportedly furnished photographs of the candidates as well as other information in connection with the preparation of the supplement. Complainant characterizes the supplement as "a news event" and states that "there was no attempt . . . to provide the 'reasonably equal coverage to all opposing candidates in the circulation or listening area' required under § 100.7(b)(2)(ii) to exempt the publication from contribution reporting requirements." Id. at 1.³

Although neither the complainant nor the Respondents provided copies of either the League's publication or the Post-Gazette's news articles, Respondents acknowledge making the expenditures at issue in the complaint. In her response on behalf of the League, Diane Edmundson, the Chair of the League,

2. Ms. Yeakel and Mr. Specter were, respectively, the Democratic and Republican party candidates in the 1992 general election. The earlier primary election included a total of seven Democratic and Republican party candidates. The Democratic party candidates included: Robert Colville; Freddy Mann Friedman; Mark Stephen Single; Philip Valenti and Lynn Hardy Yeakel. The Republican party candidates included: Stephen F. Freind and Arlen Specter.

3. The complainant also alleges that the League is "a partisan organization which functions on behalf of the Republican and Democrat parties." Complaint at 2. Apparently, the complainant is challenging the League's status under Section 501(c)(3) of the Internal Revenue Code, which requires organizations qualifying for tax-exempt status to meet certain nonpartisan criteria. The determination of whether an organization like the League qualifies for Section 501(c)(3) status, however, is not within the Commission's jurisdiction.

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describes the supplement in question as a "Voters Guide" and explains that the complainant was not included because he was not a candidate on the primary election ballot. Attachment A. Ms. Edmundson asserts that the League's policy with respect to the publication of its voters guide is to include "[a]ll candidates who are certified to appear on the ballot" and, as a purported independent candidate, Mr. White was not certified to appear on the primary ballot. Id. She explains that in Pennsylvania, "political party candidates are nominated at primaries [while]. . . . [m]inor political parties do not conduct primaries but circulate and file minor political party nomination papers in order to nominate candidates directly to the November ballot." Id. at 1 (emphasis in original). She notes that "[a]s with minor political party candidates, the nomination of independent candidates must be made by nomination papers instead of primary elections." Id. at 2.

Counsel for the Post-Gazette similarly acknowledges that her client "printed newspaper articles and an election supplement regarding the primary election in Pennsylvania." Attachment B at 1. She maintains, however, that the Post-Gazette's "conduct is specifically exempt" under Section 431(9)(B)(i) of the Act, which exempts from the definition of expenditure the costs of any news articles.

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Id. at 1-3.⁴ Counsel further notes that she "is informed and believes that Mr. White was not a candidate in the April, 1992 primary election [and]. . . . [t]o the extent Mr. White planned to wage a 'write-in' campaign, he stood in a position no different from that of any of a potentially infinite number of such candidates [whom] the Post-Gazette was under no obligation to print a news story [about]."
Id. at 4.

The Act broadly prohibits corporations from making contributions or expenditures in connection with Federal elections. 2 U.S.C. § 441b(a).⁵ Broadcasting stations, newspapers, magazines or other periodical publications may, however, make expenditures toward news stories, commentaries, or editorials in connection with Federal elections. 2 U.S.C. § 431(9)(B); 11 C.F.R. 100.7(b)(2) and 100.8(b)(2). In addition, corporations may also make certain nonpartisan communications to the general public. Federal Election Comm'n. v. Massachusetts Citizens for Life, 479 U.S. 238 (1986). These permissible corporate communications include registration and get-out-the-vote efforts and the preparation and distribution of voting records of Members of Congress. 11 C.F.R. §§ 114.4(b).

4. Counsel for the Yeakel and Specter campaigns also raise the Act's press exemption in their respective responses. See Attachments C at 1 (Yeakel)(activities in question are "appropriate public affairs programming or news coverage") and D at 2 (Specter)(law explicitly provides that the expenditures in question are not contributions).

5. According to the Pennsylvania Secretary of State's Office, the Pennsylvania League is a non-profit corporation. Similarly, the Post-Gazette is published by the PG Publishing Company, a Pennsylvania corporation.

Corporations may also prepare and distribute voter guides to the general public.⁶ Such communications may, however, result in prohibited in-kind contributions if they are made in coordination with a candidate's campaign.

As an initial matter, Respondents' assertions concerning Mr. White's failure to qualify as a candidate on the primary and general election ballots appear accurate. Indeed, Mr. White has acknowledged that he was an independent candidate and under Pennsylvania law candidates in the primary election must be nominated by a political party to have their names placed on that election ballot. 25 P.S. § 2862 (1964). Although Pennsylvania law provides for independent candidates to have their names placed on the general election ballot, Mr. White, who challenged Pennsylvania's general election candidate nomination process, was unsuccessful in having his name placed on that election ballot. White v. Commonwealth of Pennsylvania, No. 92-0710 (W.D. Penn.), aff'd, 983 F.2d 1054 (3d Cir. 1992). Furthermore, Mr. White did not file a statement of candidacy with the Commission in connection with the 1992 Senate election

6. In Faucher v. Federal Election Comm'n., 928 F.2d 466 (1st Cir. 1991), cert. denied, 495 U.S. ____ (October 7, 1991), the court held that the Commission's regulations governing the preparation and distribution of voter guides by corporations exceeded the statutory authority of the Act. However, such communications may constitute prohibited expenditures if they expressly advocate the election or defeat of a candidate. Federal Election Comm'n. v. Massachusetts Citizens for Life, 479 U.S. 238 (1986). In the matter at hand, however, the complainant is challenging the expenditures in question as in-kind contributions and not as prohibited expenditures which contain express advocacy.

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at issue here.⁷ In this regard, there appears to be no factual basis supporting Mr. White's assertion that he was a candidate in the 1992 Senate election, let alone a candidate who should have been included in the League's publication or the Post-Gazette's news articles.

With regard to the allegation of coordination, the Chair of the League explains that in preparing its "Voters Guide," the League obtained a list of the certified ballot candidates in the primary election and then used that list to solicit photographs and other information from the various candidates. Although the League was apparently in contact with various candidates, the contacts at issue here, in the context of preparing a publication featuring the candidates in the election, would not appear to rise to the level of coordination. Indeed, the Act permits corporations to make certain nonpartisan communications to the general public and in the case of voter guides, the Commission has recognized the need for such contact, noting that there is a distinction "between the limited contact with candidates that is necessary to produce voter guides . . . and the more extensive discussions resulting in arrangement, coordination or direction of [the] . . . activities by the candidate. See 57 Fed. Reg. 33548 at 33554 July 29, 1992 (notice of proposed rulemaking for "MCFL" regulations). Here,

7. Disclosure materials show that Mr. White filed a statement of candidacy in connection with an earlier Senate election in Pennsylvania. That election was a special election held in 1991 for the purpose of filling the vacancy that arose when the Honorable John Heinz died in a helicopter crash.

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the information shows that the League's contact with the various candidates did not extend beyond a request for information and photographs to include in the publication.

Likewise, the allegation that Respondents' expenditures were "news stories" which should have provided equal coverage of all candidates to qualify for the media exemption is misplaced here. Under the Commission's regulations, the requirement of equal coverage is only imposed when the media entity in question is owned or controlled by a political party, political committee or candidate. 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). In the case of the League, it does not appear that that organization was operating as a media entity, much less one that was owned or controlled by a political party or a candidate. In the case of the Post-Gazette, counsel submitted the affidavit of William Deibler, the managing editor of the newspaper, who states that the Post-Gazette is "a newspaper of general circulation serving the greater Pittsburgh area. . . . [and that it is not] ^xowned or controlled by any political party, political committee or candidate." Attachment B at 6-7. In this regard, it does not appear that the Post-Gazette would have been required to report on Mr. White's election efforts, even if Mr. White actually had been a candidate in the 1992 Senate election. In short, it appears that the news stories in question would clearly fall within the legitimate press function for the Post-Gazette and thus within the Act's media exemption. See Reader's Digest Ass'n. v. Federal Election Comm'n., 509 F. Supp. 1210 (S.D.N.Y. 1981).

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Based upon the above considerations, this Office recommends that the Commission find no reason to believe that any of the Respondents in this matter violated any provision of the Act based upon the complaint filed in MUR 3713.

III. RECOMMENDATIONS

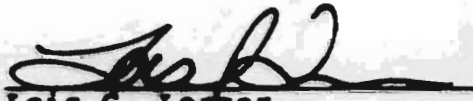
1. Find no reason to believe that the League of Women Voters of Pennsylvania, the Pittsburgh Post-Gazette, Lynn Hardy Yeakel, Lynn Yeakel for U.S. Senate and Sidney Rosenblatt, as treasurer, The Honorable Arlen Specter, and Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer, violated any provision of the Act based upon the complaint filed in MUR 3713.
2. Approve the appropriate letters.
3. Close the file.

Lawrence M. Noble
General Counsel

Date

7/1/93

BY:


Lois G. Leher
Associate General Counsel

Attachments

- A. Response of the League of Women Voters
- B. Response of the Pittsburgh Post-Gazette
- C. Response of the Honorable Arlen Specter and Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer
- D. Response of Lynn Hardy Yeakel and Lynn Yeakel for U.S. Senate and Sidney Rosenblatt, as treasurer

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**THE LEAGUE
OF WOMEN VOTERS
OF PENNSYLVANIA
CITIZEN EDUCATION FUND**

December 14, 1992

**Ms. Lisa E. Klein
Assistant General Council
Federal Election Commission
Washington D.C. 20463**

Re: MUR 3713

Dear Ms. Klein:

I am writing in regard to the complaint (MUR 3713) about the 1992 primary election Voters Guide filed against the Pittsburgh Post-Gazette and the League of Women Voters of Pennsylvania by William D. White. It is our contention that there is no basis for the complaint filed by Mr. White.

The main purpose of a League of Women Voters Voters Guide is to help voters make informed choices. All candidates who are certified to appear on the ballot are invited to respond to Voters Guide questionnaires. All candidates for an office are treated alike, major and minor party candidates as well as independents.

In Pennsylvania, political party candidates are nominated at primaries. A candidate's name is printed on the primary ballot upon the filing of a candidate's affidavit, filing fee, and nomination petitions signed by party electors in the district.

Minor political parties do not conduct primaries but circulate and file minor political party nomination papers in order to nominate candidates directly to the November ballot.

Attachment

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As with minor political party candidates, the nomination of independent candidates must be made by nomination papers instead of primary elections.

It is my understanding from conversations with the Pennsylvania Department of State that Mr. White filed a suit against the state prior to the 1992 primary election seeking to require the state to distribute his nomination petitions to all primary election polling places in the state. He also requested that the state be compelled to pay the notary fees and postage for the filing of these petitions with the state. He lost this suit.

At any rate, in accordance with the Pennsylvania electoral process, Mr. White's name would not have appeared on the primary election ballot. The League of Women Voters obtains a copy of the official ballot after the last day to file nomination petitions has passed. This list of certified ballot candidates is then used to solicit Voters Guide information from candidates. Since Mr. White's name did not appear on the certified ballot list he was not sent a request for Voters Guide information.

Mr. White did not contact me regarding the Voters Guide. To my knowledge, he did not contact the office of the League of Women Voters of Pennsylvania or the office of the League of Women Voters of Allegheny County, which is the League in the area of the Pittsburgh Post-Gazette, regarding the Voters Guide.

It is not clear to me from Mr. White's complaint if he intended to be a write-in candidate. In Pennsylvania there is no provision for a write-in candidate to declare candidacy. Write-in candidates cannot be officially identified. Since it is League of Women Voters of Pennsylvania policy to include only certified ballot candidates in the Voters Guide, write in candidates are never included.

We trust that you will agree with our contention that Mr. White's complaint against the League is without merit. He was not a qualified candidate in the 1992 primary election in Pennsylvania. A "mention of the procedure to nominate an independent candidate" in the Voters Guide is not an appropriate use for the Voters Guide since the purpose of the Voters Guide is to give the voters ballot information to enable them to make informed choices on election day.

For further information on this matter, contact:

Lynda Trowbridge
Voter Service Director
328 Tower Lane
Narberth, PA 19072
215-664-7796

Sincerely,

Diane Edmundson

Diane Edmundson, Chair

cc: Lynda Trowbridge

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FEDERAL ELECTION COMMISSION

William D. White

Petitioner,

v

Pittsburgh Post-Gazette
League of Women Voters

Respondents.

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Matter Under Review No. 3713

RESPONSE TO COMPLAINT

The Pittsburgh Post-Gazette responds to the
above-referenced Complaint as follows:

The Pittsburgh Post-Gazette is a general circulation
newspaper serving the greater Pittsburgh area. As stated in the
Complaint, the Pittsburgh Post-Gazette printed newspaper articles
and an election supplement regarding the primary election in
Pennsylvania in April of 1992.

This conduct is specifically exempt from the Federal
Election Campaign Act (the "Act") under 2 U.S.C. § 431(9)(B)(i)
and 11 CFR § 100.7(2) which provide that expenses incurred in

Attention: T B
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producing new stories are not expenditures or contributions under the Act.

Section 431(9)(B)(i) provides that:

"The term expenditure does not include any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication unless such facilities are owned or controlled by any political party, political committee or candidate."

2 U.S.C. § 431(9)(B)(i).

Similarly 11 CFR § 100.7(b)(2) provides:

"Any cost incurred in covering or carrying a news story, commentary or editorial by any broadcasting station, newspaper, magazine or other periodical publication is not a contribution unless the facility is owned or controlled by any political party, political committee or candidate in which case the cost for a news story (i) which represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcast facility and (ii) which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not a contribution."

11 CFR § 100.7(b)(2).

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The Pittsburgh Post-Gazette is not a facility "owned or controlled by any political party, political committee, or political candidate." See Declaration of William Deibler, Managing Editor, Pittsburgh Post-Gazette, attached as Exhibit A. Thus, the articles and election supplement cited in the Complaint are neither expenditures nor contributions within the meaning of the Act.

Additionally, the Complainant's claim that the 11 CFR § 100.7(B)(2)(ii) "requires reasonably equal coverage to all opposing candidates in the circulation or listening area" is patently incorrect. The regulation imposes this requirement only "when the facility is owned or controlled by any political party, political committee or candidate." There is no such requirement for an independent newspaper of general circulation such as the Post-Gazette.

Such a requirement of enforced equal access would violate the First Amendment guarantee of freedom of the press. See Miami Herald Publishing Company v. Tornillo, 418 U.S. 241 (1974). In Miami Herald the United States Supreme Court held that a statute imposing a right of "equal access" on a newspaper violated the newspaper's rights under the First Amendment. The

court expressly rejected the argument for equal access implicit in the Complaint in this matter, stating that:

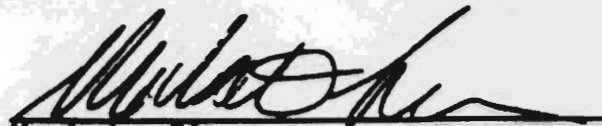
"A newspaper is more than a passive receptacle or conduit for news, comment and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper and treatment of public issues and public officials - whether fair or unfair - constitutes the exercise of editorial control and judgment."

Miami Herald Publishing Co. v. Tornillo, 418 U.S. at 258.

Moreover, even if a right of equal access existed, Mr. White would not be entitled to exercise this right because the Post-Gazette is informed and believes that Mr. White was not a candidate in the April, 1992 primary election. To the extent Mr. White planned to wage a "write-in" campaign, he stood in a position no different from that of any of a potentially infinite number of such candidates and the Post-Gazette was under no obligation to print a news story concerning his activities. See Miami Herald, 418 U.S. at 256-257 (noting the economic burden that would be imposed by a requirement that a newspaper afford all interested parties a "right to reply" to stories in the newspaper).

For the reasons set forth above and in the attached Declaration of William Deibler, the Post-Gazette urges the Commission to dismiss MUR 3713.

December 16, 1992


Marketa Sims

Reed Smith Shaw & McClay
435 Sixth Avenue
Pittsburgh, PA 15219
(412) 288-4292

Counsel for the Pittsburgh
Post-Gazette

95043695393

FEDERAL ELECTION COMMISSION

William D. White

Petitioner,

v

Pittsburgh Post-Gazette
League of Women Voters

Respondents.

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Matter Under Review No. 3713

DECLARATION OF WILLIAM DEIBLER

I, William Deibler, declare that I am the Managing Editor of the Pittsburgh Post-Gazette Newspaper. I make this declaration of my own personal knowledge and if called upon to do so would testify truthfully to the following:

The Pittsburgh Post-Gazette is a newspaper of general circulation serving the greater Pittsburgh area and is owned by Blade Communications. Neither the Pittsburgh Post-Gazette nor Blade Communications is owned or controlled by any political party, political committee or candidate.

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

Executed on December 15, 1992 at Pittsburgh,
Pennsylvania.

William Deibler
William Deibler

95043695395

MORGAN, LEWIS & BOCKI

COUNSELORS AT LAW

2000 ONE LOGAN SQUARE

PHILADELPHIA, PENNSYLVANIA 19103-6003

TELEPHONE: (215) 963-9000

FAX: (215) 963-9299

PHILADELPHIA

LOS ANGELES

MIAMI

LONDON

FRANKFURT

WASHINGTON

NEW YORK

HARRISBURG

SAN DIEGO

BRUSSELS

TOYO

GREGORY M. HARVEY

Dial DIRECT (215) 963-9427

December 11, 1992

VIA FEDERAL EXPRESS

Federal Election Commission
999 "E" Street, N.W.
Washington, DC 20463

Attention: Lisa E. Klein
Assistant General Counsel

Re: MUR 3713 and MUR 3714

Greetings:

This letter responds to the Complaints of William D. White, pursuant to Ms. Klein's two letters dated November 30, 1992 addressed to our client Lynn Hardy Yeakel.

We incorporate by reference our earlier response to the Complaint of William D. White docketed at MUR 3706, especially the portion of that response dealing with whether William D. White was a bona fide candidate for election to the office of United States Senator.

The activities challenged by Mr. White in the Complaints docketed at MUR 3713 and MUR 3714 constitute appropriate public affairs programming or news coverage in which the participation of the League of Women Voters was appropriate and proper.

On behalf of Lynn Yeakel, we respectfully request that the two additional Complaints of William D. White be dismissed.

Respectfully yours,

Gregory M. Harvey
Gregory M. Harvey

GMH:pg
enclosure

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12/12

MORGAN, LEWIS & BOCKIUS

COUNSELLORS AT LAW

2000 ONE LOGAN SQUARE

PHILADELPHIA, PENNSYLVANIA 19103-5800

Telephone: (215) 563-6000

Fax: (215) 563-6000

PHILADELPHIA

LOS ANGELES

MIAMI

LONDON

FRANKFURT

WASHINGTON

NEW YORK

HAMBURG

SAN DIEGO

BRUSSELS

TOYO

GREGORY M. HARVEY

Cell: GREGORY (215) 563-6427

December 4, 1992

VIA FEDERAL EXPRESS

Federal Election Commission
999 "E" Street, N.W.
Washington, DC 20463

Attention: Lisa E. Klein
Assistant General Counsel

Re: MUR 3706

Greetings:

This letter responds to the Complaint of William D. White, pursuant to Ms. Klein's letter dated November 20, 1992 addressed to our client Lynn Hardy Yeakel.

The Complaint purports to attribute a prohibited in-kind contribution to the campaign of Lynn Yeakel from a radio station described in the Complaint as WDUQ-FM 90.5 and Kevin Gavin, described in the Complaint as News Director of WDUQ.

The Complaint should be dismissed without further inquiry because the facts alleged in the Complaint constitute a description of conventional public affairs programming by a radio station.

To the extent that additional facts may be relevant concerning that public affairs programming, respondent Lynn Yeakel incorporates by reference the Affidavit of Judy Jankowski, General Manager of WDUQ-FM, a copy of which is attached hereto.

The complainant has either failed to understand or intentionally misquoted sub-section 100.7(b)(2)(ii) of the Commission's Regulations. The portion of the Regulation quoted by the complainant would be applicable only if the radio station were "owned or controlled by any political party, political committee or candidate." On information and belief, WDUQ-FM is licensed to Duquesne University, a degree-granting institution of higher education.

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Federal Election Commission
December 4, 1992
Page 2

Moreover, the implication of the Complaint that William D. White ("White"), the complainant, was a bona fide candidate for election to the office of United States Senator is misleading. Although White, on information and belief, commenced litigation in a Federal District Court seeking an Order to compel the office of the Secretary of the Commonwealth of Pennsylvania and each County Board of Elections to circulate nomination papers for him, the relief sought was denied by the Court. Thereafter, White failed to present to the Secretary of the Commonwealth any nomination papers to cause his name to be printed on the ballot as a candidate and failed to conduct any substantial campaign as a write-in candidate. Having failed to take reasonable steps to establish himself as a bona fide candidate for the office, White should not be given any relief based on his complaining that the respondent radio station and the League of Women Voters treated him differently than they treated those candidates who had demonstrated substantial support by performing the procedures needed to place their names on the general election ballot.

This response is supported by the verification of the undersigned, who made the inquiries deemed necessary to him to establish the background concerning complainant White's failure to establish himself as a bona fide candidate.

On behalf of Lynn Yeakel, we respectfully request that the Complaint be dismissed.

Respectfully yours,


Gregory M. Harvey

GMH:pg
enclosure

bcc: Ms. Lynn Hardy Yeakel
Ernest Sanchez, Esquire

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VERIFICATION TO RESPONDER

COMMONWEALTH OF PENNSYLVANIA:

ss.:

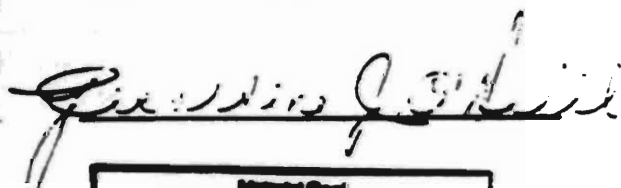
COUNTY OF PHILADELPHIA :

Gregory M. Harvey, being first duly sworn according to law, deposes and says that he is the attorney for Lynn Hardy Yeakel, the respondent named in the foregoing Letter Response in NUR 3706 ("the Letter Response"), that he has made inquiry concerning the facts set forth in the Letter Response and that the facts set forth in the foregoing Letter Response are true and correct to the best of his knowledge, information and belief.


Gregory M. Harvey

Dated: December 4, 1992

Sworn and subscribed to
before me this 4th day
of December, 1992:


Christine J. O'Neil, Notary Public
Philadelphia, Philadelphia County
My Commission Expires May 11, 1996

Member, Pennsylvania Association of Notaries

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AFFIDAVIT

My name is Judy Jankowski. I am the General Manager of WDUQ-FM, licensed to Duquesne University. I am providing information concerning Bill White's letter and complaint received by the Federal Election Commission on November 16, 1992.

In September 1992, WDUQ offered free and essentially unrestricted time to qualified candidates for the offices of U.S. House Districts 14 & 18 and the U.S. Senate for Pennsylvania. This offer was made in the spirit of Section 312 (a)(7) of the Federal Communications Act of 1934, which requires that Federal candidates be given "reasonable access" to broadcast stations during the sixty days before the general election. We felt an effort to permit political candidates to speak on our station without restriction was a risky but worthy undertaking.

One person requesting such free political time was Bill White, a self-described independent candidate for U.S. Senate. After a careful analysis of the legitimacy of his campaign (including reservations about the status of his required "public announcement" of candidacy and his required "substantial showing" of campaign legitimacy), it was decided to extend the offer to Mr. White. Our good-faith response to his request for airtime has been answered with the complaint filed by Mr. White with the Federal Election Commission in November.

What follows is a paragraph-by-paragraph response (where response is warranted) to Mr. White's FEC complaint.

Mr. White's assertions in Paragraph 1 are inaccurate; there was no distribution of (nor was there any attempt to distribute) WDUQ's unedited interview with U.S. Senate candidate Lynn Yeakel. As with all uses, this use was limited to WDUQ's airwaves, and it was only one of sixty uses of free and unrestricted airtime of WDUQ by nine Federal candidates. In filing his complaint Mr. White chose to omit the fact that he too was scheduled to be interviewed by Mr. Gavin in a political use of WDUQ, scheduled for Monday, November 2, 1992 (to be broadcast in a fashion IDENTICAL to the use of Ms. Yeakel), and that he himself requested a change in that schedule.



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On Friday, October 30, he called WDOU's Program Director, David Becker, to inform Mr. Becker that he did not wish to be interviewed by Mr. Gavin; his use ultimately took the form of a call-in program engineered by Mr. Becker, which aired as scheduled on November 2. The refusal of Mr. Gavin's time was entirely the decision and the responsibility of Mr. White, and thoroughly discredits his claim of an in-kind contribution to the Yeakel campaign.

Paragraphs 3 and 4 further attempt to establish the political use of Ms. Yeakel, broadcast on Friday, October 30, 1992, as an in-kind provision of goods and services to the Yeakel campaign--again, an inaccurate assessment in light of the events described above. A letter sent to all qualified candidates (including Mr. White) listed a series of five options describing possible formats for political uses on WDOU. The broadcast in question featuring Ms. Yeakel followed the second of the five options, namely the broadcast of an unedited interview with a member of WDOU's News Department as a political use. Mr. Gavin's voice and talent, as an element of the station's facilities, were made available to all candidates as requested for their uses on an equal basis. All candidates chose options suiting their needs (including four candidates besides Ms. Yeakel who requested unedited interviews with Mr. Gavin). Only Mr. White, as detailed in the preceding paragraph, specifically declined the opportunity to be interviewed by Mr. Gavin.

In paragraph 5, Mr. White cites Mr. Gavin's vehement opposition to the extension of an offer of free time to Mr. White as a Federal candidate, incorrectly implying a connection between this opposition and the political use by Ms. Yeakel. While Mr. Gavin's initial opinion (actively sought by Mr. Becker as a part of the process of evaluating candidates) was that Mr. White was not a legally qualified candidate, Mr. Gavin was entirely cooperative in carrying out duties relating to all political uses of WDOU by qualified candidates once Mr. White was determined to be qualified. Mr. White's use of the term "vehement" in describing Mr. Gavin's opposition is pejorative and a matter of opinion, and as Mr. Gavin was not the final arbiter in determining qualified candidates it is entirely irrelevant to the point at hand.

Additionally, Mr. White inaccurately paraphrases the political disclaimer broadcast by WDOU before and following the political use by Ms. Yeakel. He erroneously claims we disavowed any responsibility for the program's content; it

EX-1005
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was in fact stated that the views expressed were those of Ms. Yeakel and that they did not necessarily represent those of anyone on the staff or management of WDUQ--the same standard disclaimer read before and after all political uses of WDUQ's airwaves by Mr. White and all other Federal candidates.

Mr. White's assertion of Mr. Gavin's refusal to make mention of him in news programming will be addressed shortly.

Paragraphs 6 & 7 refer to broadcasts of the Western Pennsylvania Citizens Jury, a project of the Jefferson Center of Minneapolis sponsored by the Pennsylvania League of Women Voters. Mr. White inaccurately describes as "a purely partisan activity" this project of a well-known nonpartisan organization. Mr. White was not invited to participate in these hearings; as a means of making the project manageable in scope and size, the Citizens Jury set as a minimum standard for candidates a 10% standing in any of numerous political polls--a level of which Mr. White fell well short. WDUQ's coverage did not alter these proceedings in any way, shape or form, and WDUQ had no say in determining how these proceedings were devised or carried out.

Mr. White acknowledges our position on these broadcasts--that we consider these hearings to have been spot news in the form of debate coverage, aired with the good faith intention of informing the public (and hence by Federal law exempt from equal time requirements). It is worth adding that two other Pittsburgh broadcast facilities, WTAE-TV and WTAE-AM, broadcast highlights of these hearings as spot news as well.

Paragraph 8 inaccurately cites what Mr. White describes as Mr. Gavin's "refusal" to make mention of the White campaign. Beyond a self-described public declaration of his write-in candidacy, the self-professed establishment of a campaign office at his home, and his forty-nine political broadcasts on WDUQ, Mr. White exhibited no traditional elements of newsworthiness in his campaign, such as scheduled campaign stops and tours, speeches, or press releases. Rather than reflecting Mr. Gavin's "refusal" of news coverage, Mr. White's lack of campaign coverage on WDUQ (and every other media outlet in Pennsylvania, for that matter) reflects his lack of effort, skill, and experience in this aspect of campaigning.

Mr. White, in this complaint, appears to demand personal coverage of an all-but-nonexistent campaign. Were such coverage to be enacted, it could easily be construed as favoritism. Mr. White's misunderstanding of the role news broadcasts play in keeping the public informed appears to lead him to assert that news coverage should somehow be subject to Federal law governing political broadcasts--an ill-reasoned and potentially dangerous notion.

During this offer of free access to Federal candidates, WDOU broadcast sixty political uses totalling ten hours and thirty-nine minutes of air time during the 1992 campaign. Forty-nine of those uses and three hours and thirty-one minutes of this time were taken by Bill White--time offered on the same terms to all other Federal candidates, including Mr. White's opponents. Mr. White clearly had the lion's share of political uses and air time during WDOU's political broadcast offer. The lion's share of distortions and inaccuracies and the wasting of valuable time, energy, and taxpayer dollars are his also. In filing this complaint against WDOU, Mr. White bites the one hand that fed him fairly, equally, and in good faith.

Signed

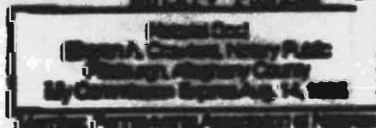
July D. Jankowski
General Manager, WDOU-FM

Date December 1, 1992

Subscribed and sworn to before me on this 1st day of

December, 1992

(SEAL)



OBERMAYER, REBMANN, MAXWELL & HIPPEL

PACARD BUILDING - 16TH FLOOR

S.E. CORNER 18TH AND CHESTNUT STREETS

PHILADELPHIA, PA. 19102-6000

215 592-2000

FAX (215) 592-4000

63 13 1 33 PM '92

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HARRISBURG, PA. 17101
(717) 631-0700

THE 2200 MARKET STREET
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H. GREG LOBE
THOMAS E. HALL, JR.
WILLIAM H. HINES
CHARLES H. GOLDEN
THOMAS A. LEONARD
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SCOTT E. SCHWAB
VICTOR ALAN YOUNG
CATHERINE S. HINES
CHARLES S. H. JENSEN
MICHAEL S. REBMANN
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RICHARD P. LAMARCA
WILLIAM J. LEONARD
J. ROBERT STULTZ
J. ERIC RATHBURN
BETH GOLDEN FRIEDER
JAMES R. THOMPSON
JONATHAN H. REBMANN
ELIZABETH A. LLOYD
ROBERT P. CAMERON
JOHN V. STARR
D. MADLAINE MILLER
JOHN S. SCHWAB
KRYSTEN WELTKE
KATHERINE V. WANN

PAUL S. HENNING
RICHARD E. SUTHERLAND
ROBERT A. MASONWELL
JEFFREY S. SATOFF
GREGORY S. SATOFF
RENEETH L. OLIVER JR.
JOHN J. SHANNON JR.
MARK A. LUBER
JAMES H. SHANNON
STEPHEN S. SCHWAB
JOSEPH J. HEDGECOCK
JALAN H. STUBBS
LAURENCE J. THOMAS
SCOTT A. CROCKETT
W. ATLEE BARR, II
PAUL H. ALLEN
ANASTASIOS SPETZAKIS
JEROME S. SATOFF
ALLEN HENNING
LARRY SCHWAB
MICHAEL P. HENNING
JOHN E. FRYAN
MARJORIE H. GORDON
ROSE L. ELSON
JACQUELINE T. SHULMAN
EDITH H. GORDON
ELIZABETH S. SHULMAN
MICHAEL F. SCHWAB
THOMAS P. WILSON
STEVEN A. HARRIS
DENISE H. CAMERON
JOEL R. SPINACH
SUSAN H. STUBBS
CATHERINE C. FRYAN
JANE A. WILLIAMS

December 15, 1992

- * ALSO MEMBER OF NEW JERSEY BAR
- ** ALSO MEMBER OF OHIO BAR
- *** ALSO MEMBER OF S.C. BAR
- **** ALSO MEMBER OF N.J. BAR AND S.C. BAR
- ***** ALSO MEMBER OF ALL S. FLORIDA BAR
- ***** ALSO MEMBER S.C. AND MASSACHUSETTS BAR

VIA FEDERAL EXPRESS

Craig D. Reffner, Esquire
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Matters Under Review 3706, 3713, and 3714

Dear Mr. Reffner:

As we have discussed, on behalf of Citizens for Arlen Specter ("CAS"), I am submitting this letter response to the "complaints" filed in the above-captioned Matters Under Review. I have also included designation of counsel forms for each matter.

CAS believes that these complaints are frivolous and, indeed, abusive. In all three matters, William White -- apparently an unsuccessful senatorial candidate -- raises the same legal "issue": whether the coverage and participation of the media, the press, and citizens groups respecting Pennsylvania's 1992 Senatorial Election somehow constituted prohibited "in-kind" contributions under the

Attachment 1
102

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10/15/92

TO: Craig D. Reffner, Esquire
 December 1, 1992
 Page 2

Federal Election Code. The Federal Election Commission ("the Commission") must reject this plainly frivolous contention, as it would grossly impair constitutionally protected activity. To the extent that CAS is obligated to respond further to each MUR, it incorporates its response in MUR 3710, a copy of which I have included for your convenience. In sum, the Commission should dismiss each matter as to CAS for the following reasons:

MUR 3706. White directs this complaint against Lynn Yeakel, radio station WDUQ, and News Director Kevin Gavin, not CAS. Nonetheless, White gratuitously complains that WDUQ's coverage of Senator Specter's presentations to the League of Women Voters' Citizens Jury constituted a "prohibited" contribution. This is, of course, nonsense. The Commission's regulations explicitly provide that the costs incurred in such news coverage are neither "contributions" nor "expenditures" within the meaning of the Federal Election Campaign Act. 11 CFR §§100.7(b)(2), 100.8(b)(2). See U.S.C. §431(9)(B).

MUR 3713. Once again, White directs this complaint not against CAS, but against the Pittsburgh Post-Gazette and the League of Women Voters. Nonetheless, White gratuitously suggests that an election guide provided by both respondents and the Post-Gazette's coverage of the senatorial campaign constituted prohibited "in-kind" contributions to CAS. Once again, the law explicitly provides exactly the opposite. 11 CFR §§100.7(b)(2), 100.8(b)(2). See U.S.C. §431(a)(B).

MUR 3714. Finally, White alleges that the production, distribution, and coverage of the debate between Senator Specter and Ms. Yeakel constituted a prohibited "in-kind" contribution. Again, the law provides exactly the opposite. 11 CFR §§100.7(b)(2), 100.8(b)(2). See §431(a)(B).

In sum, CAS reiterates that these "complaints," insofar as they are directed against CAS, are frivolous and abusive. It is manifest that the actions complained of are constitutionally protected discussion and debate respecting the Senatorial Election. See generally Bemis Pentecostal Church v. State of Tennessee, 731 S.W.2d 897, 905 (Tenn. 1987). Accordingly, the Commission should dismiss all the complaints as to CAS.

Respectfully,

Paul S. Diamond

Paul S. Diamond

PSD:mem



714 E. William Penn Highway P.O. Box 254 Ebensburg, PA 15831
Telephone 814-472-4800
Fax: 814-472-8292

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

APR 11 11 38 AM '95

April 7, 1995

Ms. Mary Taksar and Ms. Elva Smith
Federal Election Commission
Washington, D. C. 20463

Dear Ms. Taksar and Ms. Smith:

REFERENCE: MUR 4195

I am in receipt of your letter dated March 24, 1995 referencing a complaint received by your office from Mr. Willeam A. Choby of 1905 Bates Drive, Johnstown, PA 15905, concerning an article appearing in 55 Plus, a newspaper of which I am the editor.

After a careful review of Chapter 14, Federal Election Campaigns, Disclosure of Federal Campaign Funds Act, 2 U.S.C.S. Section 431 et. seq. and the complaint filed with your office, 55 Plus avers as follows in Answer to said complaint.

The complaint fails to state the applicability of the Act to and violation of the Act by 55 Plus. The primary purpose of the Act is to limit actuality and appearance of corruption resulting from large individual financial contributions. The Act does this by placing limitations upon the giving and spending of money in political campaigns for federal offices. Buckley v. Valeo, 46 L.Ed. 2d 659 (1976).

The complaint fails to state that 55 Plus is a person, political committee, political campaign committee, authorized committee or connected organization within the purview of the Act. 2 U.S.C.S. 431. The complaint also fails to state that if the Act applies to 55 Plus, 55 Plus did make an expenditure, independent expenditure or contribution of such value as to trigger the reporting requirements of the Act, and that 55 Plus failed to report. 2 U.S.C.S. 431 et. seq.

It is the position of 55 Plus that there was no expenditure, independent expenditure or contribution made on its behalf for Congressman Murtha. Furthermore, 55 Plus denies that if it is determined that an expenditure, independent expenditure or contribution was made by it for Congressman Murtha, that the value of such was sufficient to trigger the reporting requirements of the Act.

By way of further answer, 55 Plus avers that Section 431 (f)(4)(A) expressly exempts any "expenditure" made by 55 Plus from coverage of the Act. This section expressly exempts from the definition of "expenditure"

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"any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate."

55 Plus is independently owned and operated and is not controlled or owned by any political party, political committee, or candidate.

In further defense of this action, Section 441d(b) states in particular that "no person who sells space in a newspaper or magazine to a candidate or to the agent of a candidate for use in connection with such candidate's campaign, may charge any amount for such space which exceeds the amount charged for comparable use of such space for other purposes."

55 Plus distributes its papers at no cost to the consumer. Although 55 Plus charges individuals for advertisement space in same, 55 Plus does not charge entities for articles which are printed in the paper. The paper prints a variety of articles as informational, entertainment, self-improvement and other for free. The value of this space to the office of Congressman Murtha would be zero, representing the cost charged for this space for comparable use of same.

Lastly, the article as printed did not expressly advocate the advancement or defeat of a clearly identified candidate. In order for speech to be considered as "expressed advocacy" for purposes of the Act, the speech must be susceptible of no other reasonable interpretation than exhortation to vote for or against a specific candidate. Speech is "express" for determining that they are independent expenditures that must be disclosed if the message is unmistakable, unambiguous and suggestive of only one plausible meaning. Speech is only advocacy when it presents a clear plea for action.

The article which is the subject of the complaint is susceptible to other reasonable interpretation and is not a clear plea for action.

Wherefore 55 Plus, the Respondent herein, respectfully requests that this office dismiss the complaint filed to MUR 4195.

Respectfully Submitted,

Date: 4/7/95


Nickolas Datsko
Editor 55 Plus

BEFORE THE FEDERAL ELECTION COMMISSION
OCT 2 10 52 AM '95

In the Matter of

)
) Enforcement Priority
)

GENERAL COUNSEL'S REPORT

SENSITIVE

I. INTRODUCTION

This report is the General Counsel's Report to recommend that the Commission no longer pursue the identified lower priority and stale cases under the Enforcement Priority System.

II. CASES RECOMMENDED FOR CLOSING

A. Cases Not Warranting Further Pursuit Relative to Other Cases Pending Before the Commission

A critical component of the Priority System is identifying those pending cases that do not warrant the further expenditure of resources. Each incoming matter is evaluated using Commission-approved criteria and cases that, based on their rating, do not warrant pursuit relative to other pending cases are placed in this category. By closing such cases, the Commission is able to use its limited resources to focus on more important cases.

Having evaluated incoming matters, this Office has identified 34 cases which do not warrant further pursuit relative to the other pending cases.¹ A short description of

1. These matters are: PM 309 (Attachment 1); RAD 95L-12 (Attachment 2); MUR 4118 (Attachment 3); MUR 4119 (Attachment 4); MUR 4120 (Attachment 5); MUR 4122 (Attachment 6); MUR 4123 (Attachment 7); MUR 4124 (Attachment 8); MUR 4125 (Attachment 9); MUR 4126 (Attachment 10); MUR 4130 (Attachment 11); MUR 4133 (Attachment 12); MUR 4134 (Attachment 13); MUR 4135 (Attachment 14); MUR 4136 (Attachment 15); MUR 4137

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each case and the factors leading to assignment of a relatively low priority and consequent recommendation not to pursue each case is attached to this report. See Attachments 1-34. As the Commission requested, this Office has attached the responses to the complaints for the externally-generated matters and the referral for the matter referred by the Reports Analysis Division because this information was not previously circulated to the Commission. See Attachments 1-34.

B. Stale Cases

Investigations are severely impeded and require relatively more resources when the activity and evidence are old. Consequently, the Office of General Counsel recommends that the Commission focus its efforts on cases involving more recent activity. Such efforts will also generate more impact on the current electoral process and are a more efficient allocation of our limited resources. To this end, this Office has identified 11 cases that

do not

(Footnote 1 continued from previous page)
(Attachment 16); MUR 4138 (Attachment 17); MUR 4140
(Attachment 18); MUR 4142 (Attachment 19); MUR 4143
(Attachment 20); MUR 4144 (Attachment 21); MUR 4145
(Attachment 22); MUR 4148 (Attachment 23); MUR 4149
(Attachment 24); MUR 4153 (Attachment 25); MUR 4155
(Attachment 26); MUR 4158 (Attachment 27); MUR 4163
(Attachment 28); MUR 4164 (Attachment 29); MUR 4169
(Attachment 30); MUR 4179 (Attachment 31); MUR 4195
(Attachment 32); MUR 4196 (Attachment 33); and MUR 4205
(Attachment 34).

warrant further investment of significant Commission resources.² Since the recommendation not to pursue the identified cases is based on staleness, this Office has not prepared separate narratives for these cases. As the Commission requested, in matters in which the Commission has made no findings, the responses to the complaints for the externally-generated matters and the referrals for the internally-generated matters are attached to the report because this information was not previously circulated to the Commission. See Attachments 35-45. For cases in which the Commission has already made findings and for which each Commissioner's office has an existing file, this Office has attached the most recent General Counsel's Report.

This Office recommends that the Commission exercise its prosecutorial discretion and no longer pursue the cases listed below effective October 16, 1995. By closing the cases effective October 16, 1995, CED and the Legal Review Team will respectively have the additional time necessary for preparing the closing letters and the case files for the public record.

2. These matters are: PM 250 (Attachment 35); PM 272 (Attachment 36); MUR 3188 (Attachment 37); MUR 3554 (Attachment 38); MUR 3623 (Attachment 39); MUR 3988 (Attachment 40); MUR 3996 (Attachment 41); MUR 4001 (Attachment 42); MUR 4007 (Attachment 43); MUR 4007 (Attachment 43); MUR 4008 (Attachment 44); and MUR 4018 (Attachment 45).

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III. RECOMMENDATIONS

A. Decline to open a MUR and close the file effective October 16, 1995 in the following matters:

- 1) PM 309
- 2) RAD 95L-12
- 3) PM 250
- 4) PM 272

B. Take no action, close the file effective October 16, 1995, and approve the appropriate letter in the following matters:

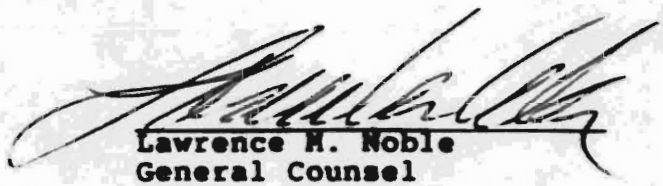
- 1) MUR 3554
- 2) MUR 3623
- 3) MUR 3988
- 4) MUR 3996
- 5) MUR 4001
- 6) MUR 4007
- 7) MUR 4008
- 8) MUR 4018
- 9) MUR 4118
- 10) MUR 4119
- 11) MUR 4120
- 12) MUR 4122
- 13) MUR 4123
- 14) MUR 4124
- 15) MUR 4125
- 16) MUR 4126
- 17) MUR 4130
- 18) MUR 4133
- 19) MUR 4134
- 20) MUR 4135
- 21) MUR 4136
- 22) MUR 4137
- 23) MUR 4138
- 24) MUR 4140
- 25) MUR 4142
- 26) MUR 4143
- 27) MUR 4144
- 28) MUR 4145
- 29) MUR 4148
- 30) MUR 4149

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- 31) MUR 4153
- 32) MUR 4155
- 33) MUR 4158
- 34) MUR 4163
- 35) MUR 4164
- 36) MUR 4169
- 37) MUR 4179
- 38) MUR 4195
- 39) MUR 4196
- 40) MUR 4205

C. Take no further action, close the file effective October 16, 1995 and approve the appropriate letter in MUR 3188.

9/29/95
Date


Lawrence H. Noble
General Counsel

25043695412

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Enforcement Priority)

Agenda Document #X95-85

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on October 17, 1995, do hereby certify that the Commission decided by votes of 5-0 to take the following actions:

A. Decline to open a MUR and close the file effective October 17, 1995 in the following matters:

- 1) PM 309
- 2) RAD 95L-12
- 3) PM 250
- 4) PM 272

B. Take no action, close the file effective October 17, 1995, and approve the appropriate letter in the following matters:

- 1) MUR 3554
- 2) MUR 3623
- 3) MUR 3988
- 4) MUR 3996
- 5) MUR 4001
- 6) MUR 4007
- 7) MUR 4008
- 8) MUR 4018
- 9) MUR 4118

(continued)

95043695413

**Federal Election Commission
Certification: Enforcement Priority
October 17, 1995**

Page 2

9 5 0 4 3 6 9 5 4 1 4

- 10) MUR 4119
- 11) MUR 4120
- 12) MUR 4122
- 13) MUR 4123
- 14) MUR 4124
- 15) MUR 4125
- 16) MUR 4126
- 17) MUR 4130
- 18) MUR 4133
- 19) MUR 4134
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- 32) MUR 4155
- 33) MUR 4158
- 34) MUR 4163
- 35) MUR 4164
- 36) MUR 4169
- 37) MUR 4179
- 38) MUR 4195
- 39) MUR 4196
- 40) MUR 4205

C. Take no further action, close the file effective October 17, 1995 and approve the appropriate letter in MUR 3188.

(continued)

Federal Election Commission
Certification: Enforcement Priority
October 17, 1995

Page 3

Commissioners Aikens, Elliott, McDonald, McGarry, and
Thomas voted affirmatively for each of the decisions;
Commissioner Potter was not present.

Attest:

10-20-95
Date

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

95043695415



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 23, 1995

Willeam A. Choby, DMD
1905 Bates Drive
Johnstown, PA 15905

RE: MUR 4195

Dear Dr. Choby:

On March 22, 1995, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondents. See attached narrative. Accordingly, the Commission closed its file in this matter on October 17, 1995. 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).

Sincerely,

Mary L. Saksar (HES)

Mary L. Saksar
Attorney

Attachment
Narrative

95043695416

MUR 4195
MURTHA FOR CONGRESS COMMITTEE

Willeam A. Choby filed a complaint alleging that the 55 Plus, a Pennsylvania newspaper, made an in-kind business contribution to the Murtha for Congress Committee by allowing Representative Murtha to contribute an article to the newspaper. The complainant contends that the article was a campaign advertisement and not a news article and therefore should have included a disclaimer.

In response to the complaint, the Murtha for Congress Committee states that the article published as a "Senior Citizens Column" under the by-line of Congressman Murtha was manifestly a non-political activity, part of Congressman Murtha's official duties, and did not expressly advocate the election of Congressman Murtha. The Committee notes that the article appeared in 55 Plus in March of 1995, months after the election. 55 Plus responded that no expenditure, independent expenditure, or contribution was made to or for Congressman Murtha in relation to the article published and that the article did not expressly advocate the election or defeat of a clearly identified candidate.

This matter is less significant relative to other matters pending before the Commission.

95043695417



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 23, 1995

Gregory M. Harvey, Esq.
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103-6993

RE: MUR 4195
Murtha for Congress Committee and Robert C.
Ondick, Treasurer

Dear Mr. Harvey:

On March 24, 1995, the Federal Election Commission notified your clients of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against your clients. See attached narrative. Accordingly, the Commission closed its file in this matter on October 17, 1995.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Alva E. Smith at (202) 219-3400.

Sincerely,

Mary L. Taksa (xss)

Mary L. Taksa
Attorney

Attachment
Narrative

95043695418

NUR 4195

MURTHA FOR CONGRESS COMMITTEE

Willeam A. Choby filed a complaint alleging that the 55 Plus, a Pennsylvania newspaper, made an in-kind business contribution to the Murtha for Congress Committee by allowing Representative Murtha to contribute an article to the newspaper. The complainant contends that the article was a campaign advertisement and not a news article and therefore should have included a disclaimer.

In response to the complaint, the Murtha for Congress Committee states that the article published as a "Senior Citizens Column" under the by-line of Congressman Murtha was manifestly a non-political activity, part of Congressman Murtha's official duties, and did not expressly advocate the election of Congressman Murtha. The Committee notes that the article appeared in 55 Plus in March of 1995, months after the election. 55 Plus responded that no expenditure, independent expenditure, or contribution was made to or for Congressman Murtha in relation to the article published and that the article did not expressly advocate the election or defeat of a clearly identified candidate.

This matter is less significant relative to other matters pending before the Commission.

95043695419



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 23, 1995

The Honorable John P. Murtha
U.S. House of Representatives
2423 Rayburn House Office Building
Washington, D.C. 20515

RE: MUR 4195

Dear Representative Murtha:

On March 24, 1995, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against you. See attached narrative. Accordingly, the Commission closed its file in this matter on October 17, 1995.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Alva E. Smith at (202) 219-3400.

Sincerely,

Mary L. Taksar (HES)
Mary L. Taksar
Attorney

Attachment
Narrative

95043695420

MUR 4195
MURTHA FOR CONGRESS COMMITTEE

Willeam A. Choby filed a complaint alleging that the 55 Plus, a Pennsylvania newspaper, made an in-kind business contribution to the Murtha for Congress Committee by allowing Representative Murtha to contribute an article to the newspaper. The complainant contends that the article was a campaign advertisement and not a news article and therefore should have included a disclaimer.

In response to the complaint, the Murtha for Congress Committee states that the article published as a "Senior Citizens Column" under the by-line of Congressman Murtha was manifestly a non-political activity, part of Congressman Murtha's official duties, and did not expressly advocate the election of Congressman Murtha. The Committee notes that the article appeared in 55 Plus in March of 1995, months after the election. 55 Plus responded that no expenditure, independent expenditure, or contribution was made to or for Congressman Murtha in relation to the article published and that the article did not expressly advocate the election or defeat of a clearly identified candidate.

This matter is less significant relative to other matters pending before the Commission.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 23, 1995

Nickolas Datsko, Editor
55 Plus
714 E. William Penn Highway
P.O. Box 254
Ebensburg, PA 15931

RE: MUR 4195

Dear Mr. Datsko:

On March 24, 1995, the Federal Election Commission notified 55 Plus of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against 55 Plus. See attached narrative. Accordingly, the Commission closed its file in this matter on October 17, 1995.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact Alva E. Smith at (202) 219-3400.

Sincerely,

Mary L. Taksar *(yes)*
Mary L. Taksar
Attorney

Attachment
Narrative

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MUR 4195
MURTHA FOR CONGRESS COMMITTEE

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4495

DATE FILMED 11-24-95 CAMERA NO. 2

CAMERAMAN G.E.G.

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