



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20543

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THIS IS THE END OF MUR # 1724

Date Filmed 8/24/84 Camera No. --- 1

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FEDERAL ELECTION COMMISSION

Routing Cards

12-Day Report and Comments

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

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

Signed

Rene A. W. Krosenbaum

date

8/23/84

FEC 9-21-77

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8/23/84

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 22, 1984

Kevin T. Baine, Esquire
David E. Kendall, Esquire
Williams and Connelly
Hill Building
839 Seventeenth Street, N.W.
Washington, D.C. 20006

RE: MUR 1724
The Washington Post Company

Dear Mr. Baine and Mr. Kendall:

On June 13, 1984, the Commission notified your client of a complaint alleging a violation of the Federal Election Campaign Act of 1971, as amended.

The Commission, on August 17, 1984, determined that on the basis of the information in the complaint, and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

BY: 
Kenneth A. Gross
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Kevin T. Baine, Esquire
David E. Kendall, Esquire
Williams and Connolly
Hill Building
839 Seventeenth Street, N.W.
Washington, D.C. 20006

RE: MUR 1724
The Washington Post Company

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The Commission, on , 1984, determined that on the basis of the information in the complaint, and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
General Counsel's Report

AW 8/22/84

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 22, 1984

John T. Dolan, Chairman
National Conservative Political
Action Committee
1001 Prince Street
Alexandria, Virginia 22314

RE: MUR 1724

Dear Mr. Dolan:

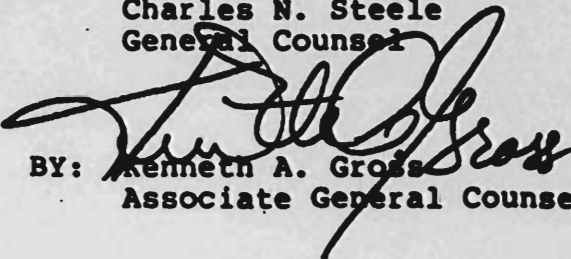
The Federal Election Commission has reviewed the allegations contained in your complaint dated June 5, 1984, against unknown members and/or employees of the Federal Election Commission and The Washington Post Company, and has determined that on the basis of the information in the complaint, and information provided by the Respondent, there is no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended, has been committed. Accordingly, the Commission has closed the file in this matter.

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

Should additional information come to your attention which you believe establishes a violation of the Act, you may file a complaint pursuant to the requirements set forth at 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

Sincerely,

Charles N. Steele
General Counsel

BY: 
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

John T. Dolan, Chairman
National Conservative Political
Action Committee
1001 Prince Street
Alexandria, Virginia 22314

RE: MUR 1724

Dear Mr. Dolan:

The Federal Election Commission has reviewed the allegations contained in your complaint dated June 5, 1984, against unknown members and/or employees of the Federal Election Commission and The Washington Post Company, and has determined that on the basis of the information in the complaint, and information provided by the Respondent, there is no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended, has been committed. Accordingly, the Commission has closed the file in this matter.

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

Should additional information come to your attention which you believe establishes a violation of the Act, you may file a complaint pursuant to the requirements set forth at 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
General Counsel's Report

AW 8/22/84

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Unknown Members and/or Employees
of the Federal Election Commission
The Washington Post Company

)
) MUR 1724
)
)
)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 17, 1984, the Commission decided by a vote of 5-0 to take the following actions in MUR 1724:

1. Find no reason to believe that the Washington Post Company has violated 2 U.S.C. § 437g(a)(12).
2. Find no reason to believe that unknown members and/or employees of the Federal Election Commission have violated 2 U.S.C. § 437g(a)(12).
3. Decline to refer this matter to the Department of Justice.
4. Close the file in this matter.
5. Approve the letters attached to the First General Counsel's Report dated August 15, 1984.

Commissioners Aikens, Elliott, Harris, McDonald and McGarry voted affirmatively in this matter; Commissioner Reiche did not cast a vote.

Attest:

8-20-84

Date

Marjorie W Emmons

Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *Land*
DATE: August 15, 1984
SUBJECT: MUR 1724 - 1st GC Rpt

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

Open Session _____

Closed Session _____

CIRCULATIONS

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

DISTRIBUTION

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

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SENSITIVE

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FIRST GENERAL COUNSEL'S REPORT

84 AUG 15 11:00

DATE AND TIME OF TRANSMITTAL BY
OGC TO THE COMMISSION 8/15/84 11:10 a.m.

MUR NO. 1724
DATE COMPLAINT RECEIVED
BY OGC June 6, 1984
DATE OF NOTIFICATION TO
RESPONDENT June 13, 1984
STAFF MEMBER
Anne A. Weissenborn

COMPLAINANT'S NAME: National Conservative Political
Action Committee

RESPONDENTS' NAMES: Unknown Members and/or Employees of
the Federal Election Commission
The Washington Post Company

RELEVANT STATUTES
AND REGULATIONS: 2 U.S.C. § 437g(a)(12)
11 C.F.R. § 111.21

SUMMARY OF ALLEGATIONS

In its complaint, the National Conservative Political Action Committee ("NCPAC") cites an article entitled "Election Law Violations Admitted in '82 Race" which appeared in The Washington Post on January 20, 1984, and which discussed the conciliation agreement signed in MUR 1424 by the Caputo for Senate Committee on November 14, 1983, and approved by the Commission on December 2, 1983. NCPAC notes that the article stated that the agreement had not been made public. It is alleged that "a copy of the conciliation agreement was provided to The Washington Post by a member or an employee of the Federal Election Commission, placing the Post and its source at the Commission in violation of 2 U.S.C. § 437g(a)(12)." NCPAC requests that the Commission

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disqualify itself and all staff members from investigating the facts in this complaint, refer the complaint to the Department of Justice for an FBI investigation, and request that the DOJ refer "findings . . . to the appropriate U.S. Attorney for action."

LEGAL AND FACTUAL ANALYSIS

A. The Washington Post Company

2 U.S.C. § 437g(a)(12) provides that "any . . . investigation made under this section shall not be made public by the Commission or by any person without the written consent of . . . the person with respect to whom such investigation is made." The complainant argues that The Washington Post Company is a "person" for purposes of this provision and that it violated this provision "by making public the results of MUR 1424 without the written consent of either National Conservative Political Action Committee or Caputo for Senate Committee."

In their response to the complaint (Attachment 1), counsel for The Washington Post Company argue that 2 U.S.C. § 437g(a)(4)(B)(ii) and 11 C.F.R. § 111.20(b) require the public disclosure of final conciliation agreements forthwith, and that even if conciliation agreements are subject to the confidentiality provisions of 2 U.S.C. § 437g(a)(12), these provisions do not apply to the press. In support of their second argument, counsel cite "a fundamental rule of statutory construction that statutes are to be construed to avoid constitutional questions" (Attachment 1, page 6), and argue that Section 437g(a)(12) should be interpreted as not placing

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restrictions on the press in order to avoid violations of the First Amendment's guarantee of freedom of the press. Counsel cite several decisions of the Supreme Court which have "made it unmistakably clear . . . that protection of accurate reporting of governmental affairs is a minimum command of the First Amendment." (Attachment 1, page 7). In particular counsel cite Landmark Communications v. Virginia, 435 U.S. 829 (1978), and Smith v. Daily Mail Publishing Co., 443 U.S. 97 (1979), in which state statutes barring, respectively, the divulgence of state judicial review commission proceedings and the publication of the names of juvenile offenders were found inapplicable to the press pursuant to the First Amendment.

Counsel also argues that there is nothing in the legislative history of Section 437g(a)(12) to indicate that Congress intended this provision to be applicable to the press. In addition, it is argued that the language of the provision prohibiting information to "be made public" can only be constitutional if deemed to cover the act of disclosing information to the press, not the subsequent publication of that information by the press. "(T)he press does not violate the statute by performing its constitutional role of passing information on to its readers, because the information was already 'made public' when it was given to the press." (Attachment 1, page 11). Counsel cite U.S. v. New York Times Co., 328 F. Supp. 324 (S.D.N.Y.), remanded, 444 F.2d 544 (2d Cir.), reversed, 403 U.S. 713 (1971), in support of this argument. They note that the literal language of the

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statute involved in New York Times, 18 U.S.C. § 793(e), was broad enough to cover the press by making it a crime for anyone in unauthorized possession of national defense information to "communicate" that information to another person lacking authority to receive it; however, the court concluded that the statute should not be construed to cover publication by newspapers. Counsel contrast the language of 18 U.S.C. § 793(e) which barred communications with that of 2 U.S.C. § 437g(a)(12) which prohibits the making public of information, and again assert that "information is 'made public' in a real sense when it is given to a newspaper, whose very function is to communicate news and information to the public." (Attachment 1, pages 12-13).

This Office finds the above constitutional argument persuasive. Furthermore, the Commission had voted to authorize suit against NCPAC as early as November 29, 1983. Therefore, as of that date the Commission considered its investigation and the conciliation process with regard to NCPAC to be ended. The Commission's determination to file suit did not alter the fact that MUR 1424 was closed on November 29 as to the involvement of NCPAC. Therefore, the provisions of 2 U.S.C. § 437g(a)(12) were no longer applicable as of that date, even though the Commission did not in fact file a complaint against NCPAC until February 6, 1984.

This Office recommends that the Commission find no reason to believe that the Washington Post Company has violated 2 U.S.C. §437g(a)(12).

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B. Employees of the Commission

The complainant notes that the article published in The Washington Post on January 20, 1984, concerning the conciliation agreement with the Caputo committee stated that the agreement had not been made public. The complainant then asserts that "(i)t appears that a copy of the conciliation agreement was provided to The Washington Post by a member or an employee of the Federal Election Commission," and argues that, because the Commission filed an action against the complainant "on or after January 25, 1984, as the result of the refusal of NCPAC to enter into a conciliation agreement, the alleged disclosure by a member or employee of the Commission was for the purpose of causing harm and embarrassment to National Conservative Political Action Committee and for the purpose of enhancing the publicity that would follow the filing of the complaint in Federal court." (Complaint, page 3).

The complaint provides no evidence whatsoever of the involvement of anyone connected with the Commission in the making public of the agreement at issue. The Post article discussing the agreement contains no indication of any Commission involvement, and the complaint simply quotes the reporter as saying that "it came under my door." Nor has the complainant provided any evidence of a connection between publication of the article and the filing of the Commission's complaint on February 6, 1984. Again, however, the fact that the agreement had not been made public at the time of the publication of the

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newspaper article does not mean that it could not have been made public as of December 2, 1983, the date the Commission approved the agreement and three days after it had voted to file suit against NCPAC, thereby closing the file in MUR 1424 with regard to the latter respondent.

The Office of General Counsel recommends that the Commission find no reason to believe that unknown members and/or employees of the Commission have violated 2 U.S.C. § 437g(a)(12).

C. Referral to DOJ

As noted above, the complainant asks that the Commission disqualify itself from investigating the allegations contained in the complaint and refer the matter to the Department of Justice. In light of the statutory arguments presented above, there is no basis for a referral to the Department as there exists no indication of wrongdoing on the part of Commission employees. Certainly there is no evidence of the kind of knowing and willful violations which would be referable pursuant to 2 U.S.C. § 437g(a)(5)(C).

This Office recommends that the Commission decline to refer this matter to the Department of Justice.

RECOMMENDATIONS

1. Find no reason to believe that The Washington Post Company has violated 2 U.S.C. § 437g(a)(12).
2. Find no reason to believe that unknown members and/or members of the Federal Election Commission have violated 2 U.S.C. § 437g(a)(12).
3. Decline to refer this matter to the Department of Justice.

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4. Close the file in this matter.
5. Approve the attached letters.

Charles M. Steele
General Counsel

Date August 13, 1944 BY


Kenneth A. Gross
Associate General Counsel

Attachments

1. Response from The Washington Post Company
2. Letters (2)

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BEFORE THE
FEDERAL ELECTION COMMISSION

NATIONAL CONSERVATIVE POLITICAL
ACTION COMMITTEE,

Petitioner,

UNKNOWN MEMBERS AND/OR EMPLOYEES
OF THE FEDERAL ELECTION COMMISSION
AND THE WASHINGTON POST,

Respondents.

MUR NO. 1724

MOTION OF RESPONDENT THE WASHINGTON POST
COMPANY TO DISMISS THE COMPLAINT

INTRODUCTION

The National Conservative Political Action Committee ("NCPAC") has filed a complaint against The Washington Post Company (the "Post") alleging that the Post violated federal election law by publishing an article concerning a conciliation agreement between the Federal Election Commission and the Caputo for Senate Committee. The complaint against the Post should be dismissed for two reasons:

First, there is no legal prohibition on the public disclosure of conciliation agreements. To the contrary, the applicable statute and regulations expressly require that conciliation agreements must be made public. 2 U.S.C.

§ 437g(a)(4)(B)(ii); 11 C.F.R. § 111.20(b). The nondisclosure

Attachment 1 ①

requirement of 2 U.S.C. § 437g(a)(12), upon which NCPAC bases its complaint, simply does not apply to conciliation agreements.

Second, even if conciliation agreements were covered by § 437g(a)(12), the Post would have to be dismissed as a party respondent. Properly interpreted, that provision does not apply to the publication by the press of an article about an action of the Commission. Indeed, if the statute were construed to prohibit the press from publishing such an article, it would violate the First Amendment.

For both of these reasons, discussed more fully below, the complaint against the Post should be dismissed for failure to allege a violation of any law by the Post.^{1/}

ARGUMENT

I. THE LAW DOES NOT PROHIBIT, BUT REQUIRES, PUBLIC DISCLOSURE OF CONCILIATION AGREEMENTS

In alleging that the disclosure of the conciliation agreement between the FEC and the Caputo for Senate Committee, and the Post's publication of an article concerning that agreement, violated 2 U.S.C. § 437g(a)(12), NCPAC completely overlooks the provision of § 437g expressly requiring the Commission to disclose all conciliation agreements to the public. Subsection (a)(4)(B)(ii) of § 437g provides that "the Commission shall make

^{1/} The first of the two grounds stated--that public disclosure of conciliation agreements is not prohibited, but rather required by law--would require dismissal of the complaint against the unknown members and/or employees of the Federal Election Commission as well.

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public any conciliation agreement signed by both the Commission and the respondent." (Emphasis supplied.)

The Commission's regulations implement the statutory requirement that conciliation agreements be made a part of the public record. The regulations provide that "[i]f a conciliation agreement is finalized, the Commission shall make public such conciliation agreement forthwith." 11 C.F.R. § 111.20(b) (emphasis supplied).

The requirement that conciliation agreements be disclosed forthwith is in accord with the legislative history of the Federal Election Campaign Act. That history demonstrates Congress' intent that any conciliation agreement "be made available to the public immediately." House Conf. Rept. No. 94-1057, 94th Cong., 2d Sess. at 50 (1976), [1976] U.S. Code Cong. & Ad. News 946, 965 (emphasis supplied).^{2/} As one court has pointed out, "[t]he legislative history of the [confidentiality] provision clearly establishes that it was not meant to conceal the results or the contents of an investigation, but rather that it was meant to avoid adverse speculative publicity during the pendency of an investigation." FEC v. Illinois Medical Political Action Committee, 503 F. Supp. 45, 46 (N.D. Ill. 1980). Accord, Reagan Bush Committee v. FEC, 525 F. Supp. 1330, 1339 (D.D.C. 1981). Where,

^{2/} Although the enforcement provisions of the Act were amended in 1980, the amendments did not change either the requirement that notifications and investigations be kept confidential or the requirement that conciliation agreements be made public.

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as here, an investigation results in an admission that campaign financing requirements have been violated, Congress intended that the results of the investigation be made public.

By its own terms § 437g(a)(12) applies only to the disclosure of a "notification or investigation." See Reagan Bush Committee v. FEC, supra, 525 F. Supp. at 1339 (§ 437g(a)(12) does

not forbid disclosure of an audit report, because "the audit process is not a 'notification or investigation'"). That provision is clearly inapplicable to the disclosure of conciliation agreements, which are expressly governed by § 437g(a)(4)(B)(ii).

Indeed, the regulations implementing § 437g(a)(12) expressly confirm that the nondisclosure requirement imposed by that provision does not encompass conciliation agreements:

"Except as provided in 11 CFR 111.20(b), no action by the Commission or by any person, and no information derived in connection with conciliation efforts pursuant to 11 CFR 111.18, may be made public by the Commission except upon a written request by respondent and approval thereof by the Commission." 11 C.F.R. § 111.21(b) (emphasis supplied).

As noted above, 11 C.F.R. § 111.20(b) is the provision that requires conciliation agreements to be made public "forthwith."

In sum, the statute, the regulations, and the legislative history unequivocally demonstrate that conciliation agreements must be made public. The requirement that certain preliminary actions of the Commission be kept confidential does not apply to such agreements. Not only are conciliation agreements outside the scope of the nondisclosure requirement of

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§ 437g(a)(12); the statute and the regulations expressly require that such agreements be made public immediately.

Assuming for purposes of this Motion that all the allegations of the Complaint are true, then, NCPAC has not alleged a violation of any law by anyone. The FEC was required by law to make public the conciliation agreement described in the Post article of January 20, 1984. That agreement had been signed by the Caputo for Senate Committee on November 14, 1983, and by Charles N. Steele, General Counsel of the FEC, on December 2, 1983. See Exhibit A, at 6. It was required to be made public "forthwith," 11 C.F.R. § 111.20(b) -- that is, "immediately." House Conf. Rep., supra. There was certainly nothing unlawful in the Post's publishing an article in late January 1984 about an official document that was required by law to have been made public in early December 1983.^{3/} The Complaint should therefore be dismissed for failure to allege a violation of any law.

II. SECTION § 437g(a)(12) DOES NOT LIMIT THE RIGHT OF THE PRESS TO REPORT ON THE COMMISSION'S ACTIONS

Even if conciliation agreements were subject generally to the confidentiality requirement of 2 U.S.C. § 437g(a)(12), which they clearly are not, the Post would have to be dismissed as a party respondent because § 437g(a)(12) cannot be read to

3/ Apart from the public disclosure of the conciliation agreement itself, NCPAC's alleged wrongdoing was disclosed in the Complaint filed by the FEC in federal district court in New York on February 6, 1984. See Exhibit B.

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limit the right of the press to report on the Commission's actions.

It is a fundamental rule of statutory construction that statutes are to be construed to avoid constitutional questions.

As the Supreme Court has stated, "constitutional issues affecting legislation will not be determined . . . if a construction of the statute is fairly possible by which the question may be avoided."

Rescue Army v. Municipal Court of Los Angeles, 331 U.S. 549, 569 (1947) (footnote omitted). See Ashwander v. Tennessee Valley Authority 298 U.S. 288, 348 (1936) (Brandeis, J., concurring).

This rule is pertinent here, because §437g(a)(12) would undoubtedly violate the First Amendment if it were interpreted to restrict the press's ability to publish information about the actions of the Commission. It has long been recognized that "a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs." Mills v. Alabama, 384 U.S. 214, 218 (1966). And "since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern". Grosjean v. American Press Co., 297 U.S. 233, 250 (1936).

NCPAC's effort to impose sanctions on the Post in this case strikes at the heart of the First Amendment. For assuming that all of the allegations of the complaint are true, the Post did nothing more than publish accurate information about the actions of a governmental body. There is no precedent whatsoever

for imposing sanctions, civil or criminal, in such a case. To the contrary, the Supreme Court has made it unmistakably clear on repeated occasions that protection of accurate reporting of governmental affairs is a minimum command of the First Amendment.

In Thornhill v. Alabama, 310 U.S. 88 (1940), for example, the Court stated that "[t]he freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment." Id. at 101-02 (footnote omitted). Similarly, in Garrison v. Louisiana, 379 U.S. 64 (1964), the Court declared that "[t]ruth may not be the subject of either civil or criminal sanctions where discussion of public affairs is concerned." Id. at 74. More recently, in Smith v. Daily Mail Publishing Co., 443 U.S. 97 (1979), the Court emphasized that "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order." Id. at 103.

Under these principles, the Post's accurate reporting of the Commission's action in this case "may not be the subject of either civil or criminal sanctions." Garrison, supra. The Supreme Court made that clear in a case virtually identical to this one, Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1978). In that case a Virginia statute made it a crime to divulge information regarding proceedings before a state judicial

review commission authorized to hear complaints about judges' disability and misconduct. A publisher had been convicted under the statute for printing an article accurately reporting on a pending inquiry by the Commission concerning a particular judge. The Supreme Court set aside the publisher's conviction, holding that the First Amendment did not allow "the criminal punishment of third persons who are strangers to the inquiry, including the news media, for divulging or publishing truthful information regarding confidential proceedings of the Judicial Inquiry and Review Commission." Id. at 837 (footnote omitted). While acknowledging that "some risk of injury to the judge under inquiry, to the system of justice, or to the operation of the Judicial Inquiry and Review Commission may be posed by premature disclosure," id. at 845, the Court concluded that this risk could not justify prohibiting non-participants in the proceedings from publishing truthful information about those proceedings. As Justice Stewart explained in his concurring opinion, "[t]hough government may deny access to information and punish its theft, government may not prohibit or punish the publication of that information once it falls into the hands of the press, unless the need for secrecy is manifestly overwhelming." Id. at 849 (Stewart, J., concurring in the judgment) (footnote omitted).

The Supreme Court's decision in Landmark Communications is directly applicable to this case. Here, as in that case, an effort is being made to impose sanctions against the press for

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the truthful reporting of an investigation by a government commission. And here, as in Landmark, the First Amendment squarely protects the press' right to report on the commission's proceedings.

Smith v. Daily Mail Publishing Co., supra, reinforces the principle applicable here. There a state statute barred newspapers from publishing the name of any youth charged as a juvenile offender without the written approval of the juvenile court. By interviewing witnesses, the police, and a prosecutor, two newspapers obtained the name of a juvenile charged with shooting another youth. Without the approval of the juvenile court, and therefore in violation of the statute, the newspapers published the name of the alleged assailant. The newspapers were then prosecuted and convicted for violating the statute.

The Supreme Court held that the publication of the youth's name was protected by the First Amendment. The Court stressed that "state action to punish the publication of truthful information seldom can satisfy constitutional standards." 443 U.S. at 102. Although the Court recognized the state's interest in protecting the anonymity of juveniles charged with crimes, id. at 104, it concluded that the state could not, consistently with the First Amendment, "punish the truthful publication of an alleged juvenile delinquent's name lawfully obtained by a newspaper." Id. at 106 (footnote omitted). See also Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1977) (per curiam).

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The principle applied in these cases completely fore-
closes NCPAC's attempt to impose sanctions on the Post for
reporting the action of the Commission in this case. Even if
§437g(a)(12) covered conciliation agreements, the rule that
statutes are to be construed to avoid constitutional questions
would require that the provision be construed as having no
application to the press.

In order to justify a contrary construction, there would
have to be an "affirmative intention of the Congress clearly
expressed" to restrict the press. NLRB v. Catholic Bishop of
Chicago, 440 U.S. 490, 501 (1979) (citation omitted) (construing
National Labor Relations Act so as to avoid First Amendment
issues). And that "clearly expressed," "affirmative intention"
to restrict the press is clearly lacking. There is nothing in
the legislative history of the provision to indicate that it was
intended to apply to the press, and the language of the provision
is readily susceptible to the interpretation that the
Constitution requires.

Section 437(a)(12) provides that a notification or
investigation "shall not be made public by the Commission or by
any person without the written consent" of the person involved
(emphasis added). To avoid bringing this provision into direct
conflict with the First Amendment, a notification or investiga-
tion must be considered as having been "made public" as soon as
it is disclosed to a representative of the press. Indeed, that
was certainly Congress' intention: if information is not "made

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public" when given to the press, then a Commission member or employee who discloses a notification or investigation to the press has not violated the statute. Under the proper interpretation of the provision, a person may violate the statute--that is, "make public" a notification or investigation--by disclosing information to the press, a representative of the public whose function is to communicate information to the public at large. But the press does not violate the statute by performing its constitutional role of passing information on to its readers, because the information was already "made public" when it was given to the press.

Judge Gurfein followed this basic approach of construing a statute restricting speech to exclude the press in the well-known Pentagon Papers case. United States v. New York Times Co., 328 F. Supp. 324 (S.D.N.Y.), remanded, 444 F.2d 544 (2d Cir.), reversed, 403 U.S. 713 (1971). In support of its effort to enjoin the New York Times from publishing the Pentagon Papers, the government argued that by publishing those documents the Times would violate 18 U.S.C. § 793(e), which makes it a crime for anyone having unauthorized possession of information relating to the national defense to "communicate" that information to another person without authority to receive it. Although the literal language of the statute was certainly broad enough to encompass the press, Judge Gurfein ruled that the statute should not be construed to restrict what newspapers can print. Judge Gurfein concluded that "newspapers were not intended by Congress

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to come within the purview of Section 793. 328 F. Supp. at 329. 4/

Just as Judge Gurfein rejected the government's attempt to bring the press within the literal language of a statute restricting communication in the face of severe First Amendment difficulties, the Commission here should reject NCPAC's effort to apply § 437g(a)(12) to the press. 5/ Indeed, the case for excluding the press from § 437g(a)(12) is even stronger than the case for excluding the press from the statute at issue in the Pentagon Papers case. The language of the Pentagon Papers statute, which prohibited anyone having unauthorized possession of national security information to "communicate" that information to another without authority to receive it, on its face appeared to cover all such communications, including those by the press. By contrast, as noted above, the statute at issue here by its own terms would not apply once information is "made public," and information is "made public" in a real sense when it is given to

- 4/ Judge Gurfein proceeded to reject the government's request for an injunction against the Times, holding that such an injunction would violate the First Amendment. The Supreme Court later reached the same conclusion. 403 U.S. 713 (1971).
- 5/ Like the government in the Pentagon Papers case, NCPAC apparently seeks to impose a prior restraint on the press. See Complaint at 4 (requesting that the Commission "[e]nsure that no further violations of 2 U.S.C. § 437g(a)(12) occur"). In requesting such relief, NCPAC ignores the settled doctrine that "prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." Nebraska Press Assn. v. Stuart, 427 U.S. 539, 559 (1976).

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a newspaper, whose very function it is to communicate news and information to the public, warranted. For even accepting as

Even more importantly, the statute at issue in the

Pentagon Papers case was intended to protect national security

secrets, and national security is perhaps the one area in which

it might be possible to demonstrate that the "need for secrecy is

manifestly overwhelming." Landmark Communications Inc. v.

Virginia, 435 U.S. at 849 (Stewart J., concurring in the judg-

ment). One need not question the legitimacy of the Commission's

interest in preserving the confidentiality of its investigations,

an interest identical to the one considered by the Supreme Court

in Landmark Communications, to conclude, as the Court did in

Landmark Communications, that the interest cannot justify

restricting the press' rights to report what it learns of the

Commission's actions.

In sum, the precedent establishing the Post's right to publish articles such as the one at issue here is overwhelming. To save §437g(a)(12) from constitutional infirmity, it must be construed as inapplicable to the press.

CONCLUSION

The Complaint in this case flies in the face of the Federal Election Campaign Act of 1971, as amended, which requires that conciliation agreements be made public, and the First Amendment, which prohibits the imposition of sanctions against the press for accurately reporting on the affairs of government.

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and no investigation of the facts alleged in the complaint is warranted. For even accepting all of the factual allegations as true for purposes of this motion, the Complaint must be dismissed in its entirety for failure to allege any violation of law by anyone.^{6/} Alternatively, the Complaint should be dismissed against the Post for failure to allege any violation of law by the Post.

Respectfully submitted,

WILLIAMS & CONNOLLY

By Kevin T. Baine
David E. Kendall
Kevin T. Baine

839 - 17th Street, N.W.
Washington, D.C. 20006
(202) 331-5000

Attorneys for Respondent
The Washington Post Company

Dated: July 3, 1984

CONCLUSION

6/ If the Complaint is dismissed in its entirety, NCPAC's demand that the Commission disqualify itself from conducting an investigation of the facts will be rendered moot.

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BEFORE THE FEDERAL ELECTION COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 1984, I caused a true copy of the foregoing Motion of Respondent The Washington Post Company To Dismiss the Complaint to be mailed, first class, postage prepaid, to John T. Dolan, 1001 Prince Street, Alexandria, Virginia 22314, Chairman of petitioner National Conservative Political Action Committee.

Kevin T. Baine
Kevin T. Baine

34040472935

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WASHINGTON, D.C. 20006

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August 31, 1984

BEFORE THE FEDERAL ELECTION COMMISSION
CERTIFICATE OF SERVICE

In the Matter of the

I hereby certify that on this 31st day of July, 1984,
Caputo for Senate Committee.

MJR 1424

caused a true copy of the foregoing Motion of Respondent to be

Washington Post-Courier, to be mailed.

CONCILIATION AGREEMENT

This matter was initiated through a signed, sworn, and notarized complaint filed by Dominic J. Earnello, Chairman of the New York State Democratic Committee. An investigation has been conducted, and reason to believe has been found that the Caputo for Senate Committee ("Respondent") violated 2 U.S.C. § 434 of the Federal Election and Campaign Act of 1971, as amended (the "Act") by failing to report in-kind contributions to the Caputo for Senate Committee and 2 U.S.C. § 441a(f) of the Act by accepting contributions in excess of \$5,000 from the National Conservative Political Action Committee.

NOW THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a) (4) (A) (i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

(16)

Respondent entered voluntarily into this agreement
with the Commission.
independent expenditure campaign against Senator Moynihan.

IV. The pertinent facts in this matter are as follows:

Mr. Martin attended some of the staff

1. Respondent Caputo for Senate Committee is an

authorized Committee.

Political Action Committee is independent expenditure campaign

2. During calendar years 1981 and 1982, the

National Conservative Political Action Committee reported the

expenditures of \$73,775 for an independent expenditure campaign

in opposition to the election of incumbent Senator Patrick D.

Moynihan.

3. In 1962 Respondent employed Arthur J. Finkelstein

Finkelstein paying him \$28,000 for surveys and strategic

political advice connected with an unsuccessful Campaign for the

Republican nomination for Senator from New York.

4. During the same time period that Respondent

employed Mr. Finkelstein for services described in paragraph No.

3, the National Conservative Political Action Committee employed

Mr. Finkelstein paying him \$20,000 for surveys and strategic

political advice connected with its campaign against Senator

Moynihan.

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Mr. Martin was chairman of the New York office of the National Conservative Political Action Committee's independent expenditure campaign against Senator Moynihan.

IV. The pertinent facts in this matter are as follows:

6. Mr. Martin attended some of the staff meetings of the Caputo for Senate Committee while he was chairman of the New York office of the National Conservative Political Action Committee's independent expenditure campaign against Senator Moynihan and communicated with Finkelstein about the progress of this campaign.

WHEREFORE, Respondent agrees:

V. The National Conservative Political Action Committee's independent expenditure campaign against Senator Moynihan was compromised by its employment and compensation of Mr. Finkelstein after Respondent had employed Mr. Finkelstein and while Mr. Finkelstein was still employed by Respondent.

VI. The National Conservative Political Action Committee's independent expenditure campaign against Senator Moynihan was further compromised by Mr. Martin's attendance at Respondent's meetings.

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VII. Seventy-three thousand seven hundred and seventy-five dollars (\$73,775) in expenditures made by the National Conservative Political Action Committee for express advocacy communications in opposition to Senator Moynihan were made by the National Conservative Political Action Committee while the latter was in a position to obtain the views of Mr. Finkelstein and Mr. Martin, who were at the time involved in Respondent's campaign.

VIII. The express advocacy expenditures made by the National Conservative Political Action Committee in opposition to Senator Moynihan were made at a time when the National Conservative Political Action Committee could have learned to important information about the Caputo campaign and are considered to be in-kind contributions made in favor of the Respondent.

IX. Respondent has been found to have violated 2 U.S.C. § 434 by failing to report the acceptance of \$73,775 in in-kind contributions.

X. Respondent was permitted to accept \$5,000 in contributions from the National Conservative Political Action Committee pursuant to 2 U.S.C. § 441a(2)(A).

XI. Respondent has been found to have violated 2 U.S.C. § 441a(f) by accepting \$68,775 in excessive contributions from the National Conservative Political Action Committee.

(19)

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XIII. Respondent shall pay a civil penalty to the
Treasurer of the United States in the amount of three thousand
dollars (\$3,000) pursuant to 2 U.S.C. § 437g(a)(5)(A) for
advocacy communications in opposition to Senator McNamara were
made by the National Conservative Political Action Committee
while the latter was a candidate for the office of President of the
United States in the general election of 1972.
XIII. Respondent agrees that it shall not undertake
any activity that is in violation of the Federal Election
Campaign Act of 1971, as amended, 2 U.S.C. § 431, et seq.

XIV. The Commission, on request of anyone filing a
complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at
issue herein or on its own motion, may review compliance with
this agreement. If the Commission believes that this agreement
or any requirement thereof has been violated, it may institute a
civil action for relief in the United States District Court for
the District of Columbia.

XIV. This agreement shall become effective as of the
date that all parties hereto have executed same and the
Commission has approved the entire agreement.

XVI. Respondent shall have no more than thirty (30)
days from the date this agreement becomes effective to comply
with and implement the requirements contained in this agreement

and to so notify the Commission.

84 CIV. 8800

December 1983

Date

JUDGE LOVE



Charles N. Steels
General Counsel

November 14, 1983

Date

Lucia A. Tronto

Caputo for Senate
Committee
(Deputy CAMPAIGN MANAGER)

BY:

ITS:

2640g

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JUDGE LOWE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. District Court
FILED
FEB 6 1984
S.D. of N.Y.

FEDERAL ELECTION COMMISSION,

Index No.

Plaintiff,

NATIONAL CONSERVATIVE POLITICAL ACTION
COMMITTEE,

Defendant.

COMPLAINT

FEDERAL ELECTION COMMISSION (202) 523-5071

R. Lee Andersen

Attorney

1325 K Street, N.W.

Washington, D.C. 20463

Plaintiff

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

Venue resides in the United States District Court for

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

Plaintiff,

U.S.D. Civ. Action No. 83-47294

**NATIONAL CONSERVATIVE POLITICAL
ACTION COMMITTEE**
1500 Wilson Boulevard
Suite 513
Arlington, Virginia 22209

Defendant.

COMPLAINT

1. In this action, plaintiff Federal Election Commission (hereinafter the "Commission") petitions the court to find that defendant National Conservative Political Action Committee (hereinafter "NCPAC") violated 2 U.S.C. § 441a(a)(2)(A) of the Federal Election Campaign Act of 1971, as amended (hereinafter the "Act" or "FECA") by making \$68,755 in excessive contributions to the Caputo for Senate Committee (hereinafter the "Caputo Committee") and violated 2 U.S.C. § 434(b)(4)(H)(i) of the Act by failing to report to the Commission a total of \$73,755 in contributions to the Commission.

JURISDICTION AND VENUE

2. Jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1345 as an action commenced by an agency of the United States authorized to sue by an act of Congress. This action seeks declaratory and other appropriate relief pursuant to the express authority granted the Commission in 2 U.S.C.

§§ 437d(a)(6) and 437g(a)(6).

3. Venue resides in the United States District Court for Southern District of New York pursuant to 2 U.S.C. § 4379(a)(1) as defendant can be found, resides or transacts business in this judicial district.

4. Pursuant to 2 U.S.C. § 4379(a)(10), the FECA also provides that any action brought in the District Court shall be advanced on the docket of the court and put ahead of other actions.

PARTIES

5. Plaintiff Commission is the independent agency of the United States government vested with exclusive jurisdiction for civil enforcement of the FECA pursuant to 2 U.S.C. §§ 437c(b)(1), 437d(a)(6) and 437d(e).

6. Defendant NCPAC is a political committee registered as a not-for-profit corporation in the District of Columbia and lists its address as 1500 Wilson Boulevard, Suite 513, Arlington, Virginia 22209.

STATUTES AND REGULATIONS

9. 2 U.S.C. § 431(4) defines a political committee as any group of persons that receives contributions or makes expenditures (as defined by 2 U.S.C. § 431(8) and (9)) aggregating in excess of \$1,000 during a calendar year.

10. 2 U.S.C. § 431(17) defines independent expenditure as an expenditure expressly advocating the election or defeat of a candidate that is made without the cooperation or consultation of any candidate (or candidate's committee or agent).

11. 11 C.F.R. § 109.1(b)(4) of the Commission's regulations provides that cooperation and consultation means any arrangement or direction by a candidate or candidate's committee or agent to a person making an expenditure for a communication prior to the distribution of the communication. Further, the regulation provides that cooperation and consultation will be presumed when the expenditure is (A) based upon information provided to the expending person by the candidate (or candidate's committee or agent) with a view toward having the expenditure made, or (B) the expenditure is made by or through a person who is authorized to expend the candidate committee's funds or who has received any form of compensation or reimbursement from the candidate (or candidate's committee or agent).

12. 11 C.F.R. § 109.1(c) of the Commission's regulations provides that if an expenditure does not qualify as an independent expenditure under 11 C.F.R. § 109.1(b), it shall be considered to be an in-kind contribution to the candidate and an expenditure by the candidate, unless exempt under another provision of law.

13. 2 U.S.C. § 441a(a)(2)(A) provides that no multicandidate political committee (as defined by 2 U.S.C. § 441a(a)(4)) shall make contributions in excess of \$5,000 to any one candidate in any one election for federal office.

14. 2 U.S.C. § 434(b)(4)(B)(i) provides that political committees shall report to the Commission all contributions made to other political committees.

PROCEEDINGS BEFORE THE COMMISSION

15. On January 28, 1982, a complaint was filed with the Commission pursuant to 2 U.S.C. § 437g(a)(1). The complaint alleged that certain expenditures reported by the defendant to the Commission as independent expenditures urging the defeat of Senator Daniel P. Moynihan in the 1982 United States Senate election for the state of New York were actually in-kind contributions to the Caputo Committee. The Caputo Committee is a political committee that registered with the Commission pursuant to 2 U.S.C. § 433 and was authorized to support the candidacy of Mr. Bruce Caputo for the 1982 United States Senate election in the state of New York pursuant to 2 U.S.C. § 431(6).

16. On August 21, 1982, pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), the Commission found reason to believe that defendant violated 2 U.S.C. § 441a(a)(2)(A) by making excessive in-kind contributions to the Caputo Committee and violated 2 U.S.C. § 434(b)(4)(H)(i) by failing to report to the Commission those contributions. Pursuant to 2 U.S.C. § 437g(a)(2) the Commission then authorized an investigation of the complaint.

17. From February 23, 1983, until August 10, 1983, pursuant to Commission regulation 11 C.F.R. § 111.18(d), the Commission attempted without success to enter into a conciliation agreement with defendant prior to finding probable cause to believe violations had been committed.

18. On September 29, 1983, pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), the Commission found probable cause to believe that defendant violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b)(4)(H)(i).

(26)

From September 29, 1981 to November 29, 1981, the Commission attempted without success to correct the violations through informal means of conference, conciliation and persuasion pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

On November 29, 1981, unable to correct the violations by informal means, the Commission authorized the filing of this action pursuant to 2 U.S.C. § 437g(a)(6)(A).

The Commission has met all of the jurisdictional prerequisites to filing this suit.

COUNT I

22. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 21, inclusive.

23. From April of 1981 through August of 1982 defendant expended a total of \$73,755 to conduct a media campaign urging the defeat of incumbent United States Senator Moynihan in the 1982 New York Senate election.

24. Mr. Arthur J. Finkelstein is a pollster and political consultant and is the president of Arthur J. Finkelstein & Associates, a corporation that lists its address as 117 Smith Avenue, Mt. Kisco, New York 10549. The Caputo Committee contracted with Mr. Finkelstein in March of 1981 for Mr. Finkelstein to provide the Caputo Committee with consulting and other services concerning its campaign to elect Mr. Caputo. During the period April 1981 through August 1982, defendant compensated Mr. Finkelstein \$20,000 for consulting and other services provided in defendant's media campaign urging the defeat of Senator Moynihan.

29. From November 1981 through April of 1982, Mr. Robin B. Martin was the chairman of the New York office of defendant's media campaign urging the defeat of Senator Moynihan. Mr. Martin was recruited for this position by Mr. Finkelstein while Mr. Martin was serving as a volunteer for the Caputo Committee.

30. Because Mr. Finkelstein was employed by both the defendant and the Caputo Committee at the same time to develop strategy urging the defeat of Senator Moynihan, and Mr. Martin was attending meetings of the Caputo Committee campaign staff at

the same time he served as chairman of the New York office of defendant's campaign urging the defeat of Senator Moynihan, defendant's \$73,755 in expenditures were coordinated with the Caputo Committee.

31. As the \$73,755 in expenditures made by defendant in its campaign against Senator Moynihan were coordinated with the Caputo Committee, they were not independent expenditures; therefore, they were in-kind contributions by NCPAC to the Caputo Committee. 2 U.S.C. § 431(17) and 11 C.F.R. § 109.1. A multicandidate committee such as NCPAC is limited to making no more than \$5,000 in contributions to a candidate committee during a primary election, and NCPAC's contributions to the Caputo Committee exceeded this limit by \$68,755 in violation of 2 U.S.C. § 441a(a)(2)(A).

25. As consultant to defendant, Mr. Finkelstein developed and analyzed polling data concerning the 1982 United States Senate election for the state of New York, developed strategy on election issues and use of media, and wrote the original script of defendant's principal radio commercial urging the defeat of Senator Moynihan.

26. The Caputo Committee registered with the Commission March 10, 1981, pursuant to 2 U.S.C. § 433, and conducted a campaign urging the Republican nomination of candidate Bruce Caputo for United States Senate for the state of New York until March of 1982 when Mr. Caputo withdrew from the election. The Caputo Committee lists its address as P.O. Box 812, Yonkers, New York 10702.

27. During the period March 1981 through March 1982, the Caputo Committee compensated Mr. Finkelstein \$28,000 for consulting and other services he provided to the Caputo Committee in the campaign to elect Mr. Caputo.

28. As consultant to the Caputo Committee, Mr. Finkelstein developed and analyzed polling data concerning the 1982 United States Senate election for the state of New York, developed strategy on election issues and use of media, and assisted in the preparation of radio and television commercials urging the defeat of Senator Moynihan and the election of Mr. Caputo.

As consultant to defendant, Mr. Finkelshtein developed

COUNT II

32. The plaintiff incorporates by reference the allegations and analyses polling data concerning the 1982 United States Senate election for the state of New York, developed strategy on contained in paragraphs 1 through 31, inclusive.

33. Defendant violated 2 U.S.C. § 434(b)(4)(B)(i) by failing to report to the Commission its contributions of \$73,755 to the Caputo Committee.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, Federal Election Commission prays that this court:

(1) find the National Conservative Political Action Committee violated 2 U.S.C. § 441a(a)(2)(A) by contributing in excess of \$5,000 to the Caputo for Senate Committee;

(2) find the National Conservative Political Action Committee violated 2 U.S.C. § 434(b)(4)(B)(i) by failing to report \$73,755 in contributions to the Caputo for Senate Committee;

(3) order the National Conservative Political Action Committee to pay to the United States Treasury a civil penalty of \$5,000 or an amount equal to any contribution or expenditure involved in the violations committed;

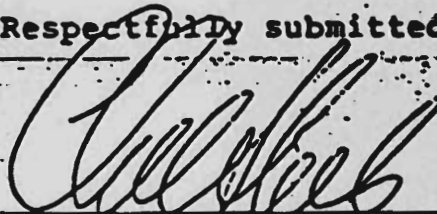
(4) order the National Conservative Political Action Committee to amend its reports to show contributions of \$73,755 to the Caputo for Senate Committee;

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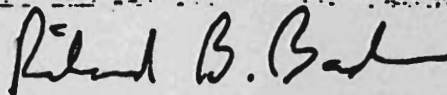
(5) enjoin the National Conservative Political Action Committee from violating any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq.; and

(6) order such other and further relief as the court deems appropriate.

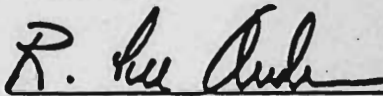
Respectfully submitted,



CHARLES N. STEELE
General Counsel



RICHARD B. BADER
Assistant General Counsel



R. LEE ANDERSEN
Attorney

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

(202) 523-5071

January 25, 1983

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

John T. Dolan, Chairman
National Conservative Political
Action Committee
1001 Prince Street
Alexandria, Virginia 22314

RE: MUR 1724

Dear Mr. Dolan:

The Federal Election Commission has reviewed the allegations contained in your complaint dated June 5, 1984, against unknown members and/or employees of the Federal Election Commission and The Washington Post Company, and has determined that on the basis of the information in the complaint, and information provided by the Respondent, there is no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended, has been committed. Accordingly, the Commission has closed the file in this matter.

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

Should additional information come to your attention which you believe establishes a violation of the Act, you may file a complaint pursuant to the requirements set forth at 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
General Counsel's Report

Attachment 2

37



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Kevin T. Baine, Esquire
David E. Kendall, Esquire
Williams and Connelly
Hill Building
839 Seventeenth Street, N.W.
Washington, D.C. 20006

RE: MUR 1724
The Washington Post Company

Dear Mr. Baine and Mr. Kendall:

On June 13, 1984, the Commission notified your client of a complaint alleging a violation of the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1984, determined that on the basis of the information in the complaint, and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure
General Counsel's Report

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600# 3913

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July 3, 1984

EDWARD BENNETT WILLIAMS
PAUL R. CONNOLLY (1922-1976)
ROBERT A. SCHULMAN
VINCENT J. FULLER
RAYMOND W. BERGAN
STUART E. BENDEL
JEREMIAH C. COLLINS
ROBERT L. WEINBERG
DAVID POVICH
STEVEN H. UHIN
JOHN W. WARDMAN, JR.
PAUL MARTIN WOLFF
J. ALAN GALBRAITH
CHARLES H. WILSON
JOHN G. RESTER
WILLIAM E. McDAIELS
BRENDAN V. SULLIVAN, JR.
AUBREY M. DANIEL, III

RICHARD H. COOPER
ROBERT P. WINKINS
JERRY L. SHULMAN
LAWRENCE L. MCCORMICK
LEWIS H. PERSUSON, III
ROBERT S. BARNETT
DAVID S. KENDALL
JOHN J. SICKLEY, JR.
BERNARD J. CARL
TERENCE O'DONNELL
DOUGLAS R. MARVIN
JOHN R. VILLA
BARRY S. SMITH
KEVIN T. BAINE
STEPHEN L. URBANCZYK
PHILIP J. WARD
ELLEN SEGAL MYELLE
FREDERICK WHITTEN PETERS

KENDRA E. MEYHANN
JAMES T. FULLER, III
PETER J. KAHN
JUDITH A. MILLER
STANLEY I. LANGBEIN
LON S. BABBY
SCOTT BLAKE HARRIS
MICHAEL S. SUNDERMEYER
DAVID S. AUFHAUSER
BRUCE R. GENDERSON
CAROLYN H. WILLIAMS
F. LAKE HEARD, III
STEVEN R. RUNY
PAULEA A. SHEEHY
GERSON A. ZWEIFACH
SARAH H. GUBBIN
SCOTT H. MATHESON, JR.

PAUL MOGIN
DANIELA WINKLER
HOWARD W. GUTMAN
G. DAVID FENSTERHEIM
NANCY F. PREISS
STUART L. GARNER
RICHARD S. HOFFMAN
STEVEN A. STEINBACH
TREVOR W. SMITH, III
ROBERT H. SANDERS
P. MICHAEL ELSEN
LINDA C. RAY
MARY C. CLARK
MICHAEL P. MADOW
LYNN A. STOUT
MARK S. LEVINSTEIN
DIANNE S. McGAHAN

COUNSEL
HAROLD UNGAR
LYMAN G. FRIEDMAN
DONALD E. SCHWARTZ
* MEMBER NY BAR ONLY

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: National Conservative Political Action Committee
v. Unknown Members and/or Employees of the Federal
Election Commission and The Washington Post, MUR No. 1724

Dear Mr. Steele:

I am enclosing an original and copy of the Motion of Respondent The Washington Post Company to Dismiss the Complaint in this matter.

On behalf of my client, The Washington Post Company, I request that the Complaint, the enclosed Motion and all other material pertaining to this matter be made public.

Very truly yours,

Kevin T. Baine

Kevin T. Baine

KTB/crt

Enclosures

cc: John T. Dolan

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BEFORE THE
FEDERAL ELECTION COMMISSION

NATIONAL CONSERVATIVE POLITICAL
ACTION COMMITTEE,

Petitioner,

v.

MUR NO. 1724

UNKNOWN MEMBERS AND/OR EMPLOYEES
OF THE FEDERAL ELECTION COMMISSION
and THE WASHINGTON POST,

Respondents.

MOTION OF RESPONDENT THE WASHINGTON POST
COMPANY TO DISMISS THE COMPLAINT

INTRODUCTION

The National Conservative Political Action Committee ("NCPAC") has filed a complaint against The Washington Post Company (the "Post") alleging that the Post violated federal election law by publishing an article concerning a conciliation agreement between the Federal Election Commission and the Caputo for Senate Committee. The complaint against the Post should be dismissed for two reasons:

First, there is no legal prohibition on the public disclosure of conciliation agreements. To the contrary, the applicable statute and regulations expressly require that conciliation agreements must be made public. 2 U.S.C. § 437g(a)(4)(B)(ii); 11 C.F.R. § 111.20(b). The nondisclosure

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requirement of 2 U.S.C. § 437g(a)(12), upon which NCPAC bases its complaint, simply does not apply to conciliation agreements.

Second, even if conciliation agreements were covered by § 437g(a)(12), the Post would have to be dismissed as a party respondent. Properly interpreted, that provision does not apply to the publication by the press of an article about an action of the Commission. Indeed, if the statute were construed to prohibit the press from publishing such an article, it would violate the First Amendment.

For both of these reasons, discussed more fully below, the complaint against the Post should be dismissed for failure to allege a violation of any law by the Post.^{1/}

ARGUMENT

I. THE LAW DOES NOT PROHIBIT, BUT REQUIRES, PUBLIC DISCLOSURE OF CONCILATION AGREEMENTS

In alleging that the disclosure of the conciliation agreement between the FEC and the Caputo for Senate Committee, and the Post's publication of an article concerning that agreement, violated 2 U.S.C. § 437g(a)(12), NCPAC completely overlooks the provision of § 437g expressly requiring the Commission to disclose all conciliation agreements to the public. Subsection (a)(4)(B)(ii) of § 437g provides that "the Commission shall make

^{1/} The first of the two grounds stated--that public disclosure of conciliation agreements is not prohibited, but rather required by law--would require dismissal of the complaint against the unknown members and/or employees of the Federal Election Commission as well.

public any conciliation agreement signed by both the Commission and the respondent." (Emphasis supplied.)

The Commission's regulations implement the statutory requirement that conciliation agreements be made a part of the public record. The regulations provide that "[i]f a conciliation agreement is finalized, the Commission shall make public such conciliation agreement forthwith." 11 C.F.R. § 111.20(b) (emphasis supplied).

The requirement that conciliation agreements be disclosed forthwith is in accord with the legislative history of the Federal Election Campaign Act. That history demonstrates Congress' intent that any conciliation agreement "be made available to the public immediately." House Conf. Rept. No. 94-1057, 94th Cong., 2d Sess. at 50 (1976), [1976] U.S. Code Cong. & Ad. News 946, 965 (emphasis supplied).^{2/} As one court has pointed out, "[t]he legislative history of the [confidentiality] provision clearly establishes that it was not meant to conceal the results or the contents of an investigation, but rather that it was meant to avoid adverse speculative publicity during the pendency of an investigation." FEC v. Illinois Medical Political Action Committee, 503 F. Supp. 45, 46 (N.D. Ill. 1980). Accord, Reagan Bush Committee v. FEC, 525 F. Supp. 1330, 1339 (D.D.C. 1981). Where,

^{2/} Although the enforcement provisions of the Act were amended in 1980, the amendments did not change either the requirement that notifications and investigations be kept confidential or the requirement that conciliation agreements be made public.

as here, an investigation results in an admission that campaign financing requirements have been violated, Congress intended that the results of the investigation be made public.

By its own terms § 437g(a)(12) applies only to the disclosure of a "notification or investigation." See Reagan Bush Committee v. FEC, supra, 525 F. Supp. at 1339 (§ 437g(a)(12) does not forbid disclosure of an audit report, because "the audit process is not a 'notification or investigation'"). That provision is clearly inapplicable to the disclosure of conciliation agreements, which are expressly governed by § 437g(a)(4)(B)(ii). Indeed, the regulations implementing § 437g(a)(12) expressly confirm that the nondisclosure requirement imposed by that provision does not encompass conciliation agreements:

"Except as provided in 11 CFR 111.20(b), no action by the Commission or by any person, and no information derived in connection with conciliation efforts pursuant to 11 CFR 111.18, may be made public by the Commission except upon a written request by respondent and approval thereof by the Commission." 11 C.F.R. § 111.21(b) (emphasis supplied).

As noted above, 11 C.F.R. § 111.20(b) is the provision that requires conciliation agreements to be made public "forthwith."

In sum, the statute, the regulations, and the legislative history unequivocally demonstrate that conciliation agreements must be made public. The requirement that certain preliminary actions of the Commission be kept confidential does not apply to such agreements. Not only are conciliation agreements outside the scope of the nondisclosure requirement of

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§ 437g(a)(12); the statute and the regulations expressly require that such agreements be made public immediately.

Assuming for purposes of this Motion that all the allegations of the Complaint are true, then, NCPAC has not alleged a violation of any law by anyone. The FEC was required by law to make public the conciliation agreement described in the Post article of January 20, 1984. That agreement had been signed by the Caputo for Senate Committee on November 14, 1983, and by Charles N. Steele, General Counsel of the FEC, on December 2, 1983. See Exhibit A, at 6. It was required to be made public "forthwith," 11 C.F.R. § 111.20(b) -- that is, "immediately." House Conf. Rep., supra. There was certainly nothing unlawful in the Post's publishing an article in late January 1984 about an official document that was required by law to have been made public in early December 1983.^{3/} The Complaint should therefore be dismissed for failure to allege a violation of any law.

II. SECTION § 437g(a)(12) DOES NOT LIMIT THE RIGHT OF THE PRESS TO REPORT ON THE COMMISSION'S ACTIONS

Even if conciliation agreements were subject generally to the confidentiality requirement of 2 U.S.C. § 437g(a)(12), which they clearly are not, the Post would have to be dismissed as a party respondent because § 437g(a)(12) cannot be read to

3/ Apart from the public disclosure of the conciliation agreement itself, NCPAC's alleged wrongdoing was disclosed in the Complaint filed by the FEC in federal district court in New York on February 6, 1984. See Exhibit B.

limit the right of the press to report on the Commission's actions.

It is a fundamental rule of statutory construction that statutes are to be construed to avoid constitutional questions. As the Supreme Court has stated, "constitutional issues affecting legislation will not be determined . . . if a construction of the statute is fairly possible by which the question may be avoided." Rescue Army v. Municipal Court of Los Angeles, 331 U.S. 549, 569 (1947) (footnote omitted). See Ashwander v. Tennessee Valley Authority 298 U.S. 288, 348 (1936) (Brandeis, J., concurring).

This rule is pertinent here, because §437g(a)(12) would undoubtedly violate the First Amendment if it were interpreted to restrict the press's ability to publish information about the actions of the Commission. It has long been recognized that "a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs." Mills v. Alabama, 384 U.S. 214, 218 (1966). And "since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern". Grosjean v. American Press Co., 297 U.S. 233, 250 (1936).

NCPAC's effort to impose sanctions on the Post in this case strikes at the heart of the First Amendment. For assuming that all of the allegations of the complaint are true, the Post did nothing more than publish accurate information about the actions of a governmental body. There is no precedent whatsoever

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for imposing sanctions, civil or criminal, in such a case. To the contrary, the Supreme Court has made it unmistakably clear on repeated occasions that protection of accurate reporting of governmental affairs is a minimum command of the First Amendment.

In Thornhill v. Alabama, 310 U.S. 88 (1940), for example, the Court stated that "[t]he freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment." Id. at 101-02 (footnote omitted). Similarly, in Garrison v. Louisiana, 379 U.S. 64 (1964), the Court declared that "[t]ruth may not be the subject of either civil or criminal sanctions where discussion of public affairs is concerned." Id. at 74. More recently, in Smith v. Daily Mail Publishing Co., 443 U.S. 97 (1979), the Court emphasized that "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order." Id. at 103.

Under these principles, the Post's accurate reporting of the Commission's action in this case "may not be the subject of either civil or criminal sanctions." Garrison, supra. The Supreme Court made that clear in a case virtually identical to this one, Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1978). In that case a Virginia statute made it a crime to divulge information regarding proceedings before a state judicial

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review commission authorized to hear complaints about judges' disability and misconduct. A publisher had been convicted under the statute for printing an article accurately reporting on a pending inquiry by the Commission concerning a particular judge.

The Supreme Court set aside the publisher's conviction, holding that the First Amendment did not allow "the criminal punishment of third persons who are strangers to the inquiry, including the news media, for divulging or publishing truthful information regarding confidential proceedings of the Judicial Inquiry and Review Commission." Id. at 837 (footnote omitted). While acknowledging that "some risk of injury to the judge under inquiry, to the system of justice, or to the operation of the Judicial Inquiry and Review Commission may be posed by premature disclosure," id. at 845, the Court concluded that this risk could not justify prohibiting non-participants in the proceedings from publishing truthful information about those proceedings. As Justice Stewart explained in his concurring opinion, "[t]hough government may deny access to information and punish its theft, government may not prohibit or punish the publication of that information once it falls into the hands of the press, unless the need for secrecy is manifestly overwhelming." Id. at 849 (Stewart, J., concurring in the judgment) (footnote omitted).

The Supreme Court's decision in Landmark Communications is directly applicable to this case. Here, as in that case, an effort is being made to impose sanctions against the press for

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the truthful reporting of an investigation by a government commission. And here, as in Landmark, the First Amendment squarely protects the press' right to report on the commission's proceedings.

Smith v. Daily Mail Publishing Co., supra, reinforces the principle applicable here. There a state statute barred newspapers from publishing the name of any youth charged as a juvenile offender without the written approval of the juvenile court. By interviewing witnesses, the police, and a prosecutor, two newspapers obtained the name of a juvenile charged with shooting another youth. Without the approval of the juvenile court, and therefore in violation of the statute, the newspapers published the name of the alleged assailant. The newspapers were then prosecuted and convicted for violating the statute.

The Supreme Court held that the publication of the youth's name was protected by the First Amendment. The Court stressed that "state action to punish the publication of truthful information seldom can satisfy constitutional standards." 443 U.S. at 102. Although the Court recognized the state's interest in protecting the anonymity of juveniles charged with crimes, id. at 104, it concluded that the state could not, consistently with the First Amendment, "punish the truthful publication of an alleged juvenile delinquent's name lawfully obtained by a newspaper." Id. at 106 (footnote omitted). See also Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1977) (per curiam).

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The principle applied in these cases completely fore-
closes NCPAC's attempt to impose sanctions on the Post for
reporting the action of the Commission in this case. Even if
§437g(a)(12) covered conciliation agreements, the rule that
statutes are to be construed to avoid constitutional questions
would require that the provision be construed as having no
application to the press.

In order to justify a contrary construction, there would
have to be an "affirmative intention of the Congress clearly
expressed" to restrict the press. NLRB v. Catholic Bishop of
Chicago, 440 U.S. 490, 501 (1979) (citation omitted) (construing
National Labor Relations Act so as to avoid First Amendment
issues). And that "clearly expressed," "affirmative intention"
to restrict the press is clearly lacking. There is nothing in
the legislative history of the provision to indicate that it was
intended to apply to the press, and the language of the provision
is readily susceptible to the interpretation that the
Constitution requires.

Section 437(a)(12) provides that a notification or
investigation "shall not be made public by the Commission or by
any person without the written consent" of the person involved
(emphasis added). To avoid bringing this provision into direct
conflict with the First Amendment, a notification or investiga-
tion must be considered as having been "made public" as soon as
it is disclosed to a representative of the press. Indeed, that
was certainly Congress' intention: if information is not "made

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public" when given to the press, then a Commission member or employee who discloses a notification or investigation to the press has not violated the statute. Under the proper interpretation of the provision, a person may violate the statute--that is, "make public" a notification or investigation--by disclosing information to the press, a representative of the public whose function is to communicate information to the public at large. But the press does not violate the statute by performing its constitutional role of passing information on to its readers, because the information was already "made public" when it was given to the press.

Judge Gurfein followed this basic approach of construing a statute restricting speech to exclude the press in the well-known Pentagon Papers case. United States v. New York Times Co., 328 F. Supp. 324 (S.D.N.Y.), remanded, 444 F.2d 544 (2d Cir.), reversed, 403 U.S. 713 (1971). In support of its effort to enjoin the New York Times from publishing the Pentagon Papers, the government argued that by publishing those documents the Times would violate 18 U.S.C. § 793(e), which makes it a crime for anyone having unauthorized possession of information relating to the national defense to "communicate" that information to another person without authority to receive it. Although the literal language of the statute was certainly broad enough to encompass the press, Judge Gurfein ruled that the statute should not be construed to restrict what newspapers can print. Judge Gurfein concluded that "newspapers were not intended by Congress

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to come within the purview of Section 793." 328 F. Supp. at 329.^{4/}

Just as Judge Gurfein rejected the government's attempt to bring the press within the literal language of a statute restricting communication in the face of severe First Amendment difficulties, the Commission here should reject NCPAC's effort to apply § 437g(a)(12) to the press.^{5/} Indeed, the case for excluding the press from §437g(a)(12) is even stronger than the case for excluding the press from the statute at issue in the Pentagon Papers case. The language of the Pentagon Papers statute, which prohibited anyone having unauthorized possession of national security information to "communicate" that information to another without authority to receive it, on its face appeared to cover all such communications, including those by the press. By contrast, as noted above, the statute at issue here by its own terms would not apply once information is "made public," and information is "made public" in a real sense when it is given to

^{4/} Judge Gurfein proceeded to reject the government's request for an injunction against the Times, holding that such an injunction would violate the First Amendment. The Supreme Court later reached the same conclusion. 403 U.S. 713 (1971).

^{5/} Like the government in the Pentagon Papers case, NCPAC apparently seeks to impose a prior restraint on the press. See Complaint at 4 (requesting that the Commission "[e]nsure that no further violations of 2 U.S.C. § 437g(a)(12) occur"). In requesting such relief, NCPAC ignores the settled doctrine that "prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." Nebraska Press Assn. v. Stuart, 427 U.S. 539, 559 (1976).

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a newspaper, whose very function is to communicate news and information to the public.

Even more importantly, the statute at issue in the Pentagon Papers case was intended to protect national security secrets, and national security is perhaps the one area in which it might be possible to demonstrate that the "need for secrecy is manifestly overwhelming." Landmark Communications Inc. v. Virginia, 435 U.S. at 849 (Stewart J., concurring in the judgment). One need not question the legitimacy of the Commission's interest in preserving the confidentiality of its investigations, an interest identical to the one considered by the Supreme Court in Landmark Communications, to conclude, as the Court did in Landmark Communications, that the interest cannot justify restricting the press' rights to report what it learns of the Commission's actions.

In sum, the precedent establishing the Post's right to publish articles such as the one at issue here is overwhelming. To save §437g(a)(12) from constitutional infirmity, it must be construed as inapplicable to the press.

CONCLUSION

The Complaint in this case flies in the face of the Federal Election Campaign Act of 1971, as amended, which requires that conciliation agreements be made public, and the First Amendment, which prohibits the imposition of sanctions against the press for accurately reporting on the affairs of government.

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No investigation of the facts alleged in the complaint is warranted. For even accepting all of the factual allegations as true for purposes of this motion, the Complaint must be dismissed in its entirety for failure to allege any violation of law by anyone.^{6/} Alternatively, the Complaint should be dismissed against the Post for failure to allege any violation of law by the Post.

Respectfully submitted,

WILLIAMS & CONNOLLY

By Kevin T. Baine
David E. Kendall
Kevin T. Baine

839 - 17th Street, N.W.
Washington, D.C. 20006
(202) 331-5000

Attorneys for Respondent
The Washington Post Company

Dated: July 3, 1984

6/ If the Complaint is dismissed in its entirety, NCPAC's demand that the Commission disqualify itself from conducting an investigation of the facts will be rendered moot.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 1984, I caused a true copy of the foregoing Motion of Respondent The Washington Post Company To Dismiss the Complaint to be mailed, first class, postage prepaid, to John T. Dolan, 1001 Prince Street, Alexandria, Virginia 22314, Chairman of petitioner National Conservative Political Action Committee.

Kevin T. Baine
Kevin T. Baine

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DRAFT August 31, 1983

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of the

Caputo for Senate Committee .

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)
)

MUR 1424

CONCILIATION AGREEMENT

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This matter was initiated through a signed, sworn, and notarized complaint filed by Dominic J. Barnello, Chairman of the New York State Democratic Committee. An investigation has been conducted, and reason to believe has been found that the Caputo for Senate Committee ("Respondent") violated 2 U.S.C. § 434 of the Federal Election and Campaign Act of 1971, as amended (the "Act") by failing to report in-kind contributions to the Caputo for Senate Committee and 2 U.S.C. § 441a(f) of the Act by accepting contributions in excess of \$5,000 from the National Conservative Political Action Committee.

NOW THEREFORE, the Commission and Respondent, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a) (4) (A) (i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Respondent Caputo for Senate Committee is an authorized Committee.

2. During calendar years 1981 and 1982, the National Conservative Political Action Committee reported expenditures of \$73,775 for an independent expenditure campaign in opposition to the election of incumbent Senator Patrick D. Moynihan.

3. In 1982 Respondent employed Arthur J. Finkelstein paying him \$28,000 for surveys and strategic political advice connected with an unsuccessful Campaign for the Republican nomination for Senator from New York.

4. During the same time period that Respondent employed Mr. Finkelstein for services described in paragraph No. 3, the National Conservative Political Action Committee employed Mr. Finkelstein paying him \$20,000 for surveys and strategic political advice connected with its campaign against Senator Moynihan.

5. Robin E. Martin was chairman of the New York office of the National Conservative Political Action Committee's independent expenditure campaign against Senator Moynihan.

6. Mr. Martin attended some of the staff meetings of the Caputo for Senate Committee while he was chairman of the New York office of the National Conservative Political Action Committee's independent expenditure campaign against Senator Moynihan and communicated with Finkelstein about the progress of this campaign.

WHEREFORE, Respondent agrees:

V. The National Conservative Political Action Committee's independent expenditure campaign against Senator Moynihan was compromised by its employment and compensation of Mr. Finkelstein after Respondent had employed Mr. Finkelstein and while Mr. Finkelstein was still employed by Respondent.

VI. The National Conservative Political Action Committee's independent expenditure campaign against Senator Moynihan was further compromised by Mr. Martin's attendance at Respondent's meetings.

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VII. Seventy-three thousand seven hundred and seventy-five dollars (\$73,775) in expenditures made by the National Conservative Political Action Committee for express advocacy communications in opposition to Senator Moynihan were made by the National Conservative Political Action Committee while the latter was in a position to obtain the views of Mr. Finkelstein and Mr. Martin, who were at the time involved in Respondent's campaign.

VIII. The express advocacy expenditures made by the National Conservative Political Action Committee in opposition to Senator Moynihan were made at a time when the National Conservative Political Action Committee could have learned important information about the Caputo campaign and are considered to be in-kind contributions made in favor of the Respondent.

IX. Respondent has been found to have violated 2 U.S.C. § 434 by failing to report the acceptance of \$73,775 in in-kind contributions.

X. Respondent was permitted to accept \$5,000 in contributions from the National Conservative Political Action Committee pursuant to 2 U.S.C. § 441a(2)(A).

XI. Respondent has been found to have violated 2 U.S.C. § 441a(f) by accepting \$68,775 in excessive contributions from the National Conservative Political Action Committee.

XII. Respondent shall pay a civil penalty to the Treasurer of the United States in the amount of three thousand dollars (\$3,000) pursuant to 2 U.S.C. § 437g(a)(5)(A).

XIII. Respondent agrees that it shall not undertake any activity that is in violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, et seq.

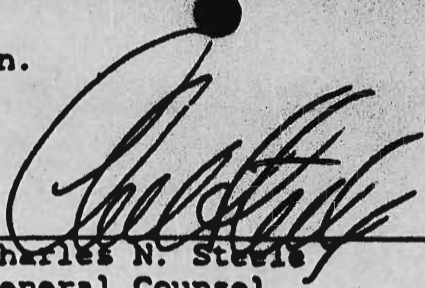
XIV. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

XIV. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

XVI. Respondent shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement

and to so notify the Commission.

2 December 1983
Date


Charles N. Steele
General Counsel

November 14, 1983
Date

Lucia A. Trovato
Caputo for Senate
Committee
(Deputy CAMPAIGN MANAGER)

BY: _____

ITS: _____

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JUDGE LOWE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. District Court
filed
FEB 6 1984
S.D. of N.Y.

FEDERAL ELECTION COMMISSION,

Index No.

Plaintiff,

NATIONAL CONSERVATIVE POLITICAL ACTION
COMMITTEE,

Defendant.

COMPLAINT

FEDERAL ELECTION COMMISSION (202) 523-5071

R. Lee Andersen

Attorney

1325 K Street, N.W.

Washington, D.C. 20463

Plaintiff

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463,

Plaintiff,

v.

Civ. Action No.:

NATIONAL CONSERVATIVE POLITICAL
ACTION COMMITTEE,
1500 Wilson Boulevard
Suite 513
Arlington, Virginia 22209,

Defendant.

COMPLAINT

1. In this action, plaintiff Federal Election Commission (hereinafter the "Commission") petitions the court to find that defendant National Conservative Political Action Committee (hereinafter "NCPAC") violated 2 U.S.C. § 441a(a)(2)(A) of the Federal Election Campaign Act of 1971, as amended (hereinafter the "Act" or "FECA") by making \$68,755 in excessive contributions to the Caputo for Senate Committee (hereinafter the "Caputo Committee") and violated 2 U.S.C. § 434(b)(4)(B)(i) of the Act by failing to report to the Commission a total of \$73,755 in contributions to the Commission.

JURISDICTION AND VENUE

2. Jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1345 as an action commenced by an agency of the United States authorized to sue by an act of Congress. This action seeks declaratory and other appropriate relief pursuant to the express authority granted the Commission in 2 U.S.C. §§ 437d(a)(6) and 437g(a)(6).

3. Venue resides in the United States District Court for Southern District of New York pursuant to 2 U.S.C. § 437g(a)(6) as defendant can be found, resides or transacts business in this judicial district.

4. Pursuant to 2 U.S.C. § 437g(a)(10), the FECA also provides that any action brought in the district court shall be advanced on the docket of the court and put ahead of other actions.

PARTIES

5. Plaintiff Commission is the independent agency of the United States government vested with exclusive jurisdiction for civil enforcement of the FECA pursuant to 2 U.S.C. §§ 437c(b)(1), 437d(a)(6) and 437d(e).

6. Defendant NCPAC is a political committee registered as a not-for-profit corporation in the District of Columbia and lists its address as 1500 Wilson Boulevard, Suite 513, Arlington, Virginia 22209.

STATUTES AND REGULATIONS

9. 2 U.S.C. § 431(4) defines a political committee as any group of persons that receives contributions or makes expenditures (as defined by 2 U.S.C. § 431(8) and (9)) aggregating in excess of \$1,000 during a calendar year.

10. 2 U.S.C. § 431(17) defines independent expenditure as an expenditure expressly advocating the election or defeat of a candidate that is made without the cooperation or consultation of any candidate (or candidate's committee or agent).

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11. 11 C.F.R. § 109.1(b)(4) of the Commission's regulations provides that cooperation and consultation means any arrangement or direction by a candidate or candidate's committee or agent to a person making an expenditure for a communication prior to the distribution of the communication. Further, the regulation provides that cooperation and consultation will be presumed when the expenditure is (A) based upon information provided to the expending person by the candidate (or candidate's committee or agent) with a view toward having the expenditure made, or (B) the expenditure is made by or through a person who is authorized to expend the candidate committee's funds or who has received any form of compensation or reimbursement from the candidate (or candidate's committee or agent).

12. 11 C.F.R. § 109.1(c) of the Commission's regulations provides that if an expenditure does not qualify as an independent expenditure under 11 C.F.R. § 109.1(b), it shall be considered to be an in-kind contribution to the candidate and an expenditure by the candidate, unless exempt under another provision of law.

13. 2 U.S.C. § 441a(a)(2)(A) provides that no multicandidate political committee (as defined by 2 U.S.C. § 441a(a)(4)) shall make contributions in excess of \$5,000 to any one candidate in any one election for federal office.

14. 2 U.S.C. § 434(b)(4)(H)(i) provides that political committees shall report to the Commission all contributions made to other political committees.

PROCEEDINGS BEFORE THE COMMISSION

15. On January 28, 1982, a complaint was filed with the Commission pursuant to 2 U.S.C. § 437g(a)(1). The complaint alleged that certain expenditures reported by the defendant to the Commission as independent expenditures urging the defeat of Senator Daniel P. Moynihan in the 1982 United States Senate election for the state of New York were actually in-kind contributions to the Caputo Committee. The Caputo Committee is a political committee that registered with the Commission pursuant to 2 U.S.C. § 433 and was authorized to support the candidacy of Mr. Bruce Caputo for the 1982 United States Senate election in the state of New York pursuant to 2 U.S.C. § 431(6).

16. On August 21, 1982, pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), the Commission found reason to believe that defendant violated 2 U.S.C. § 441a(a)(2)(A) by making excessive in-kind contributions to the Caputo Committee and violated 2 U.S.C. § 434(b)(4)(H)(i) by failing to report to the Commission those contributions. Pursuant to 2 U.S.C. § 437g(a)(2) the Commission then authorized an investigation of the complaint.

17. From February 23, 1983, until August 10, 1983, pursuant to Commission regulation 11 C.F.R. § 111.18(d), the Commission attempted without success to enter into a conciliation agreement with defendant prior to finding probable cause to believe violations had been committed.

18. On September 29, 1983, pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), the Commission found probable cause to believe that defendant violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b)(4)(H)(i).

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19. From September 29, 1983 to November 29, 1983, the Commission attempted without success to correct the violations through informal means of conference, conciliation and persuasion pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

20. On November 29, 1983, unable to correct the violations by informal means, the Commission authorized the filing of this action pursuant to 2 U.S.C. § 437g(a)(6)(A).

21. The Commission has met all of the jurisdictional prerequisites to filing this suit.

COUNT I

22. Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 21, inclusive.

23. From April of 1981 through August of 1982 defendant expended a total of \$73,755 to conduct a media campaign urging the defeat of incumbent United States Senator Moynihan in the 1982 New York Senate election.

24. Mr. Arthur J. Finkelstein is a pollster and political consultant and is the president of Arthur J. Finkelstein & Associates, a corporation that lists its address as 117 Smith Avenue, Mt. Kisco, New York 10549. The Caputo Committee contracted with Mr. Finkelstein in March of 1981 for Mr. Finkelstein to provide the Caputo Committee with consulting and other services concerning its campaign to elect Mr. Caputo. During the period April 1981 through August 1982, defendant compensated Mr. Finkelstein \$20,000 for consulting and other services provided in defendant's media campaign urging the defeat of Senator Moynihan.

25. As consultant to defendant, Mr. Finkelstein developed and analyzed polling data concerning the 1982 United States Senate election for the state of New York, developed strategy on election issues and use of media, and wrote the original script of defendant's principal radio commercial urging the defeat of Senator Moynihan.

26. The Caputo Committee registered with the Commission March 10, 1981, pursuant to 2 U.S.C. § 433, and conducted a campaign urging the Republican nomination of candidate Bruce Caputo for United States Senate for the state of New York until March of 1982 when Mr. Caputo withdrew from the election. The Caputo Committee lists its address as P.O. Box 812, Yonkers, New York 10702.

27. During the period March 1981 through March 1982, the Caputo Committee compensated Mr. Finkelstein \$28,000 for consulting and other services he provided to the Caputo Committee in the campaign to elect Mr. Caputo.

28. As consultant to the Caputo Committee, Mr. Finkelstein developed and analyzed polling data concerning the 1982 United States Senate election for the state of New York, developed strategy on election issues and use of media, and assisted in the preparation of radio and television commercials urging the defeat of Senator Moynihan and the election of Mr. Caputo.

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29. From November 1981 through April of 1982, Mr. Robin B. Martin was the chairman of the New York office of defendant's media campaign urging the defeat of Senator Moynihan. Mr. Martin was recruited for this position by Mr. Finkelstein while Mr. Martin was serving as a volunteer for the Caputo Committee.

30. Because Mr. Finkelstein was employed by both the defendant and the Caputo Committee at the same time to develop strategy urging the defeat of Senator Moynihan, and Mr. Martin was attending meetings of the Caputo Committee campaign staff at the same time he served as chairman of the New York office of defendant's campaign urging the defeat of Senator Moynihan, defendant's \$73,755 in expenditures were coordinated with the Caputo Committee.

31. As the \$73,755 in expenditures made by defendant in its campaign against Senator Moynihan were coordinated with the Caputo Committee, they were not independent expenditures; therefore, they were in-kind contributions by NCPAC to the Caputo Committee. 2 U.S.C. § 431(17) and 11 C.F.R. § 109.1. A multicandidate committee such as NCPAC is limited to making no more than \$5,000 in contributions to a candidate committee during a primary election, and NCPAC's contributions to the Caputo Committee exceeded this limit by \$68,755 in violation of 2 U.S.C. § 441a(a)(2)(A).

COUNT II .

32. The plaintiff incorporates by reference the allegations contained in paragraphs 1 through 31, inclusive.

33. Defendant violated 2 U.S.C. § 434b(4)(H)(i) by failing to report to the Commission its contributions of \$73,755 to the Caputo Committee.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, Federal Election Commission prays that this court:

(1) find the National Conservative Political Action Committee violated 2 U.S.C. § 441a(a)(2)(A) by contributing in excess of \$5,000 to the Caputo for Senate Committee;

(2) find the National Conservative Political Action Committee violated 2 U.S.C. § 434(b)(4)(H)(i) by failing to report \$73,755 in contributions to the Caputo for Senate Committee;

(3) order the National Conservative Political Action Committee to pay to the United States Treasury a civil penalty of \$5,000 or an amount equal to any contribution or expenditure involved in the violations committed;

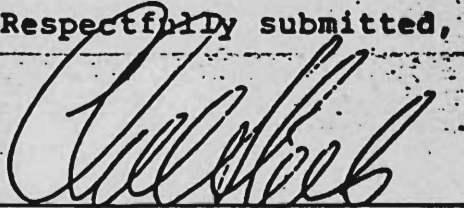
(4) order the National Conservative Political Action Committee to amend its reports to show contributions of \$73,755 to the Caputo for Senate Committee;

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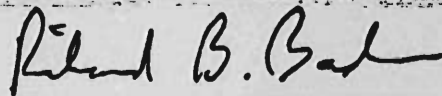
(5) enjoin the National Conservative Political Action Committee from violating any provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 et seq.; and

(6) order such other and further relief as the court deems appropriate.

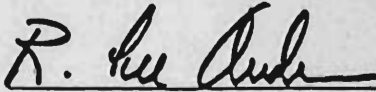
Respectfully submitted,



CHARLES N. STEELE
General Counsel



RICHARD B. BADER
Assistant General Counsel



R. LEE ANDERSEN
Attorney

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

(202) 523-5071

January 25, 1983

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LAW OFFICES

WILLIAMS & CONNOLLY

HILL BUILDING

839 SEVENTEENTH STREET, NW
WASHINGTON, DC 20006

84040472988

Delivered by Messenger

General Counsel's Office
Federal Election Commission
7th Floor
1325 K Street, N.W.
Washington, D.C.

600-43707
RECEIVED AT THE FED

84 JUN 21 10:47

The Washington Post

1150 15TH STREET, N.W.
WASHINGTON, D.C. 20071
(202) 334-6000

BOISFEUILLET JONES, JR.
VICE PRESIDENT AND COUNSEL
(202) 334-7141

June 18, 1984

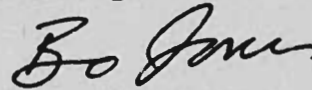
Anne Weissenborn, Esq.
Federal Election Commission
Washington, D.C. 20463

Re: MUR 1724

Dear Ms. Weissenborn:

I enclose the statement of designation of counsel
in this matter.

Sincerely,



Boisfeuillet Jones, Jr.

Enclosure

34040472987

4 JUN 21 10:17

STATEMENT OF DESIGNATION OF COUNSEL

MUR 1724

NAME OF COUNSEL: Kevin Baine, David Kendall, Williams & Connolly

ADDRESS: 839 - 17th Street, N.W.

Washington, D.C. 20006

TELEPHONE: 331-5517 or 331-3023

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.

June 18, 1984
Date

Banfill Juh
Signature
Vice President and Counsel

RESPONDENT'S NAME: The Washington Post

ADDRESS: 1150 15th Street, N.W.

Washington, D.C. 20006

HOME PHONE: -

BUSINESS PHONE: 334-7141

The Washington Post

1100 15TH STREET, N.W.

WASHINGTON, D. C. 20071

Anne Weissenborn, Esq.
Federal Election Commission
Washington, D.C. 20463

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 13, 1984

John T. Dolan, Chairman
National Conservative PAC
1001 Prince Street
Alexandria, Virginia 22314

Dear Mr. Dolan:

This letter is to acknowledge receipt of your complaint which we received on June 6, 1984, against The Washington Post and unknown employees of the Federal Elections Commission, which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondent will be notified of this complaint within five days.

You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. We suggest that this information be sworn to in the same manner as your original complaint. For your information, we have attached a brief description of the Commission's procedure for handling complaints. If you have any questions, please contact Barbara A. Johnson at (202) 523-4143.

Sincerely,

Charles N. Steele
General Counsel

By 
Kenneth A. Gross
Associate General Counsel

Enclosure

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6-13-84

PS Form 3811, Oct. 1980

● **SENDER:** Complete items 1, 2, 3, and 4.
Add your address in the "RETURN TO" space on reverse.

(CONSULT POSTMASTER FOR FEES)

1. The following service is requested (check one).
☐ Show to whom and date delivered
☒ Show to whom, date, and address of delivery
2. ☐ **RESTRICTED DELIVERY**
(The restricted delivery fee is charged in addition to the return receipt fee.)

TOTAL \$

3. **ARTICLE ADDRESSED TO:** John T. Dolan, Chairman
National Conservative Party
1001 Prince Street
Alexandria, VA 22304

4. **TYPE OF SERVICE:**
☐ REGISTERED ☐ INSURED
☒ CERTIFIED ☐ COD
☐ EXPRESS MAIL

ARTICLE NUMBER
943982

(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE ☐ Addressee ☒ Authorized agent
J. Hawk

5. **DATE OF DELIVERY**
6/18

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7a. **EMPLOYEE'S SIGNATURE**
FAB

U.S. POSTAL SERVICE
JUN 13 1984

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

MUR 1724 WEISSEN BORN



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 13, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Boisfeuillet Jones, Jr.
Counsel
The Washington Post
1150 15th Street, N.W.
Washington, D.C. 20071

Re: MUR 1724

Dear Mr. Jones:

This letter is to notify you that on June 6, 1984 the Federal Election Commission received a complaint which alleges that your client, The Washington Post, may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1724. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against your client, The Washington Post, in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

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

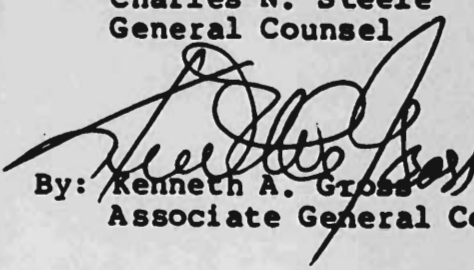
If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

3 4 0 4 0 4 7 2 9 9 2

If you have any questions, please contact Anne Weissenborn, the attorney assigned to this matter at (202) 523-4000. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel


By: Kenneth A. Gross
Associate General Counsel

Enclosures

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

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JUL 16 4 09:56

BEFORE THE
FEDERAL ELECTION COMMISSIONCOMPLAINTNATIONAL CONSERVATIVE POLITICAL
ACTION COMMITTEE,

Petitioner,

v.

UNKNOWN MEMBERS AND/OR EMPLOYEES
OF THE FEDERAL ELECTION COMMISSION
and THE WASHINGTON POST,

Respondents.

MUR NO. 1724I. INTRODUCTION

On January 28, 1984, the New York State Democratic Committee filed a complaint with the Federal Election Commission pursuant to 2 U.S.C. 437g(a)(1). The complaint alleged that certain expenditures reported by National Conservative Political Action Committee as independent expenditures urging the defeat of Senator Daniel P. Moynihan in the 1982 United States Senate election for the State of New York were in-kind contributions to the Caputo for Senate Committee. That complaint was numbered MUR 1424.

On August 21, 1982, the Commission found reason to believe that National Conservative Political Action Committee violated 2 U.S.C. 441a(a)(2)(A) by making excessive in-kind contributions to the Caputo Committee and violated 2 U.S.C. 434(b)(4)(H)(i) by failing to report to the Commission those contributions. Pursuant to 2 U.S.C. 437g(a)(2) the Commission then authorized an investigation of the complaint. From February 23, 1983, until August 10, 1983, pursuant to Commission regulation 11 C.F.R. §111.18(d), the Commission attempted without success to enter into a conciliation agreement with National Conservative Political Action Committee prior to finding probable cause to believe violations had been committed. On September 29, 1983, pursuant to 2 U.S.C. 437g(a)(4)(A)(i), the Commission found

probable cause to believe that National Conservative Political Action Committee violated 2 U.S.C. 441a(2)(A) and 434(b)(4)(H)(i). Since September 29, 1983, the Commission attempted without success to correct the violations through informal means of conference, conciliation and persuasion pursuant to 2 U.S.C. 437g(a)(4)(A)(i). Throughout this process, National Conservative Political Action Committee elected not to make the investigation by, or the findings of, the Commission public. See 2 U.S.C. 437g(a)(12).

Upon information and belief, the Caputo for Senate Committee, also named as a respondent in MUR 1424, entered into a conciliation agreement with the Commission. That conciliation agreement, upon information and belief, was not made public by the Commission prior to January 20, 1984, in accordance with the procedures set forth by law.

On January 20, 1984, Thomas B. Edsall, a staff writer for The Washington Post, telephoned Craigan P. Shirley, Director of Communications of National Conservative Political Action Committee and advised Mr. Shirley that he had a copy of the Caputo for Senate Committee conciliation agreement. When asked how he came into possession of the conciliation agreement, Mr. Edsall advised Mr. Shirley that "it came under my door."

Attached, as Exhibit A, is a copy of the article written by Thomas B. Edsall about the conciliation agreement signed by the Caputo for Senate Committee. The article was published in The Washington Post on January 20, 1984. It will be noted that the article reports that the conciliation agreement had not been made public. It appears that a copy of the conciliation agreement was provided to The Washington Post by a member or an employee of the Federal Election Commission.

On or after January 25, 1984, the Federal Election Commission filed an action against National Conservative Political Action Committee in the United States District Court for the Southern District of New York. That action arose from

the refusal of National Conservative Political Action Committee to enter into a conciliation agreement in connection with MUR 1424. It thus appears that a member or an employee of the Federal Election Commission provided confidential material to The Washington Post for the purpose of causing harm and embarrassment to National Conservative Political Action Committee and for the purpose of enhancing the publicity that would follow the filing of the complaint in Federal court.

II. THE LAW

Section 437g(a)(12) of Title 2 of the United States Code provides that any notification or investigation may not be made public by the Commission or by any person without the written consent of the respondent. Any member or employee of the Commission, or any other person, who violates that provision shall be fined not more than \$2,000.00; and, any such member, employee or other person who knowingly and willfully violates that provision shall be fined not more than \$5,000.00. See also 11 C.F.R. 111.21. The Washington Post is a "person" for the purposes of 2 U.S.C. 437g(a)(12). See 2 U.S.C. 431(11).

III. CONCLUSION

The evidence is clear that The Washington Post violated the provisions of 2 U.S.C. 437g(a)(12) by making public the results of MUR 1424 without the written consent of either National Conservative Political Action Committee or Caputo for Senate Committee. In addition, it appears that Thomas B. Edsall, an employee of The Washington Post, was provided copies of confidential documents protected by 2 U.S.C. 437g(a)(12) by a member or employee of the Federal Election Commission.

On the basis of the foregoing, National Conservative Political Action Committee requests that the Federal Election Commission:

1. Disqualify itself and all members of its staff, in particular all employees of the Office of General Counsel, from conducting an investigation of the facts stated in this complaint;
2. Refer this complaint to the United States Department of Justice with a request that the Federal Bureau of Investigation conduct an immediate investigation of the facts stated in this complaint;
3. Request that the United States Department of Justice refer the findings of the Federal Bureau of Investigation to the appropriate United States Attorney for action; and,
4. Ensure that no further violations of 2 U.S.C. 437g(a)(12) occur.

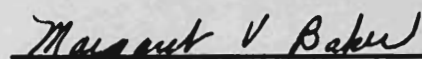
Respectfully submitted,

NATIONAL CONSERVATIVE POLITICAL
ACTION COMMITTEE

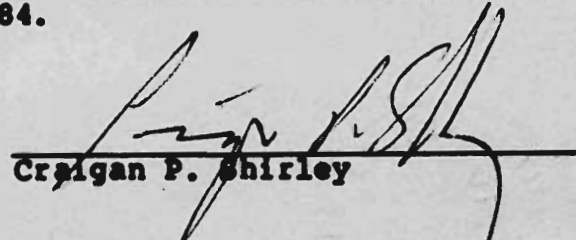
By: 

John T. Dolan, Chairman
1001 Prince Street
Alexandria, Virginia 22314
(703) 684-1800

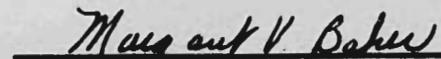
Subscribed and sworn to before me, a notary public,
this 5TH day of ~~February~~ JUNE 1984.


Notary Public - NOTARY AT LARGE
STATE OF VIRGINIA
MY COMMISSION EXPIRES - 4-8-88

I, CRAIGAN P. SHIRLEY, Director of Communications of
National Conservative Political Action Committee, affirm under
oath that Thomas B. Edsall made the statements described in this
complaint to me on January 19, 1984.


Craigan P. Shirley

Subscribed and sworn to before me, a notary public,
this 5TH day of ~~February~~ JUNE 1984.


Notary Public
NOTARY AT LARGE
STATE OF VIRGINIA
MY COMMISSION EXPIRES
4-8-88

Election Law Violations Admitted in '82 Race

By Thomas B. Edsall
Washington Post Staff Writer

Officials of the 1982 Senate campaign of Bruce F. Caputo in New York have admitted to the Federal Election Commission that they violated federal election law by working in coordination with the National Conservative Political Action Committee (NCPAC).

The admission, in a consent agreement with the FEC, could prove damaging to NCPAC, which specializes in controversial "independent" campaigns against liberal candidates and in support of conservative ones.

The consent agreement declares that the "independence" of a NCPAC campaign against Sen. Daniel Patrick Moynihan (D-N.Y.) was "compromised" by illegal ties to the Caputo camp.

However, NCPAC officials reject any suggestion of illegal activity, and intend to fight the case through FEC proceedings and in court, if necessary, according to Craig Shirley, a spokesman for the group.

Shirley, who confirmed the FEC agreement, said the Caputo campaign was forced by lack of funds to give up fighting the case.

In the agreement, the Caputo campaign agreed to pay a \$3,000 fine. Attempts to reach officials of the campaign were unsuccessful.

By law, organizations such as NCPAC may spend unlimited sums for or against federal candidates as long as the expenditures are made

without consultation with the campaign that benefits from them. The FEC consent agreement raises questions about NCPAC's claims that it has run independent campaigns.

In 1982, Caputo, a former Republican House member, entered the GOP senatorial primary with the intention of challenging Moynihan, the Democratic incumbent, in the general election. At the same time, NCPAC conducted an independent campaign against Moynihan budgeted at \$750,000, although only \$73,775 was spent.

In the consent agreement, which has not been made public, Caputo campaign officials acknowledged that Robin E. Martin, the chairman of NCPAC's anti-Moynihan campaign, attended "some of the staff meetings of the Caputo for Senate Committee."

In addition, Caputo and NCPAC hired the same pollster, Arthur Finkelstein & Associates, to conduct surveys and provide advice. The New York Democratic Committee, which originated the FEC complaint against NCPAC and the Caputo campaign, charged that the similar rhetoric of the two campaigns suggested illegal collusion.

Both campaigns came to an abrupt halt in March, 1982, when it was disclosed that Caputo had exaggerated claims concerning his military service and academic training. The disclosures forced Caputo to drop out of the race for the GOP nomination.

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Craig Shiley
From: NCPAC
1001 Prince Street
Alexandria, VA 22314

8 4 0 4 0 4 7 2 9 9 9



FIRST CLASS

To: General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

JUN 6 9:57

84040473000



FEDERAL ELECTION COMMISSION

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

THIS IS THE BEGINNING OF MUR # 1724

Date Filmed 8/24/84 Camera No. --- 1

Cameraman JRL