



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 1835

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Washington, D.C. 20530

JUL 20 1984

GCC #4154

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

Dear Mr. Steele:

Charlie

Enclosed is a copy of a solicitation recently referred to our Office. The solicitation was sent by the "National Conservative Political Action Committee" and the "Americans To Re-Elect President Reagan."

The solicitation materials do not appear to state who paid for the communication, as required by 2 U.S.C. §441d. In addition, to the extent that the solicitation appears to be from "Americans To Re-Elect President Reagan," a possible violation of the prohibition in 2 U.S.C. §432(e)(4) against use of a candidate's name in the name of an unauthorized committee may exist.

We are referring this matter to the Commission for whatever action it deems appropriate.

Sincerely,

Gerald E. McDowell, Chief
Public Integrity Section
Criminal Division

By:

Nancy S. Stewart
NANCY S. STEWART, Attorney
Public Integrity Section

Enclosure

TO OPEN LIFT TAB →

**AMERICANS TO RE-ELECT
PRESIDENT REAGAN**

1001 Prince St.
Alexandria, Va. 22314

BULK RATE POSTAGE
PAID
NATIONAL CONSERVATIVE
POLITICAL ACTION
COMMITTEE

Attention: POSTMASTER PLEASE DELIVER PROMPTLY

INTERNAL REVENUE SERVICE
APPEALS OFFASST CHF
BOX 327
DES MOINES, IA 50302



SHOULD REAGAN BE REELECTED?

POLL ENCLOSED FOR

INTERNAL REVENUE SERVICE

ALONG WITH SPECIAL MESSAGES FROM

SENATOR JEREMIAH DENTON

AND

CONGRESSMAN DENNY SMITH

TO OPEN LIFT TAB →

AMERICANS TO RE-ELECT
PRESIDENT REAGAN

1001 Prince St.
Alexandria, Va. 22314

BULK RATE POSTAGE
PAID
NATIONAL CONSERVATIVE
POLITICAL ACTION
COMMITTEE

Attention: POSTMASTER PLEASE DELIVER PROMPTLY

WGA
Inspection

I R S DISTRICT COUNSEL
CHOUTEAU CENTER
133 SOUTH 11TH STREET
LOUIS, MO 63102



RECEIVED SHOULD REAGAN BE REELECTED?

POLL ENCLOSED FOR

JUN 1 1984

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I R S DISTRICT COUNSEL

ALONG WITH SPECIAL MESSAGES FROM

SENATOR JEREMIAH DENTON

AND

CONGRESSMAN DENNY SMITH

RECEIVED

JUN 18 1984

DISTRICT COUNSEL
INTERNAL REVENUE SERVICE
MIDWEST REGION
ST. LOUIS, MO

**AMERICANS TO
RE-ELECT
PRESIDENT REAGAN
CAMPAIGN FOLDER**

INTERNAL REVENUE SERVICE

AMERICANS TO RE-ELECT PRESIDENT REAGAN

IOWA SUPPORTER

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THE REAL REAGAN RECORD...

Much of the news media and Ronald Reagan's political opponents would have you believe that he is the enemy of the poor and a failure as a president.

But we want to remind you of some hard facts and the real achievements of Ronald Reagan without bias or distortion. We think the Reagan record is one of the most impressive in recent history, especially given the mess he inherited three years ago.

INFLATION FALLS TO 3.5%

Under President Reagan the inflation rate is down from 13% to just 3.5% the lowest in a decade.

INTEREST RATES PLUMMET

Under President Reagan the prime interest rate fell from 21.5% down to 11.5%.

THE LARGEST TAX CUT IN AMERICAN HISTORY

President Reagan cut tax rates 25% and indexing will help to keep them down starting in 1985.

U.S. DEFENSES STRENGTHENED

President Reagan has started to reverse the drastic decline in America's defenses that began during the Carter administration. Purchased in the President's 5-point defense plan were the B-1B bomber, the development of the Stealth plane, the MX and the Trident II missiles.

MORTGAGE RATES LOWERED

Under President Reagan FHA mortgage rates have decreased from 17-18% in 1980 down to 12-13% at the present. The monthly cost of a \$50,000 mortgage is now \$200 less than at the peak rates of 1981.

AIR CONTROLLERS STRIKE HANDLED FIRMLY AND SAFELY

When the Air Traffic Controllers Union bosses broke the law and challenged the President's authority by going on strike, Ronald Reagan reacted firmly and decisively. Instead of knuckling under to union boss pressure, President Reagan fired these employees and brought on new controllers without jeopardizing passenger safety.

REGULATIONS SLASHED

The Federal Register, the record of Federal regulations, average 7251 pages a month in 1980 before Ronald Reagan took over as president. Two years after Reagan was in office the Federal Register was down to 4875 pages a month. A decrease of 33%, and 300 million man hours.

Letter from Senator Denton

Postcard to President Reagan

TO OPEN LIFT TAB →

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Please make as many copies of this record of President Reagan's accomplishments as you want and hang them up or pass them out to friends, neighbors and business associates.

AMERICANS TO RE-ELECT PRESIDENT REAGAN



The National Conservative Political Action Committee
1001 Prince St. • Alexandria, Va. 22314

Jeremiah A. Denton
U.S. Senator

Dear fellow American,

Do you want Ronald Reagan re-elected President in 1984?

Your answer to this important question is urgently needed on the enclosed AMERICANS TO RE-ELECT PRESIDENT REAGAN POLL.

You may be wondering why a U.S. Senator wants you to fill out a poll for an independent conservative group.

I'm here because Terry Dolan, Chairman of the National Conservative Political Action Committee, asked me if I wanted Reagan re-elected. I enthusiastically said, "Yes!"

Terry then told me that many people did not want Reagan to run again - at least that was what the big media was reporting in their polls.

Following my release as a prisoner of war by the North Vietnamese I learned how the media used their power to slowly erode the faith our people had in our anti-communist efforts in Southeast Asia.

And look what happened!

Could Reagan get the idea that he does not have our support for a second four years?

Maybe.

Some media reports have said most Americans don't want him to run in '84. What's worse, some polls have claimed President Reagan would be defeated in 1984.

NCPAC could only afford to send this POLL to Americans like you, who they thought would be most interested in helping. So even if you're undecided in your poll answers, please return it to me at NCPAC in the enclosed postage-paid envelope. They are costly to distribute — and for us to get accurate results, we must have yours back.

The NCPAC staff is ready and waiting to tally your poll as soon as it arrives.

I've also had them enclose a postcard for you to mail directly to President Reagan at the White House. I sincerely hope

Letter from Senator Denton

Postcard to President Reagan

AMERICANS TO RE-ELECT PRESIDENT REAGAN

Page two

you'll help us show President Reagan you support him by completing your poll as well as mailing your postcard as your personal message of support.

We here at AMERICANS TO RE-ELECT PRESIDENT REAGAN have launched our "AMERICANS TO RE-ELECT PRESIDENT REAGAN" campaign for one purpose only — to get Ronald Reagan re-elected.

Now I know many people around the country have felt some frustration with the President. But I'd like to take just a few moments to remind you of the good things about Ronald Reagan and his record that we can take pride in.

I hope you'll answer "YES" on your poll after you've considered the facts. (But even if your answer is NO, please return your poll to me.)

But before you decide, let's just think about where America was just three years ago under Jimmy Carter. We had the hostage crisis, 12% inflation, 21.5% interest rates and the leadership of despair.

Now I think you'll agree things are vastly different under President Reagan, despite the mess he inherited. Since Ronald Reagan became President just three years ago:

- * Inflation has fallen from over 12% in 1980 to just 4.6% at the end of 1982.
- * He's strengthened our national defense and is bringing worldwide respect back to America.
- * He has given us taxpayers the largest tax cut in history — 25% over three years.
- * The prime interest rate has fallen from 21% in 1980 to 11% today.

And this is only a partial list of his major accomplishments.

So you can see, we do have reason to cheer.

That's why I'm hoping you'll help us get Ronald Reagan re-elected in 1984.

But I won't kid you. I've no doubt that it will be a tough battle.

I already have word the powerful labor unions bosses are prepared to spend \$20 to \$40 MILLION to help defeat Ronald Reagan.

But we're going to fight back. In addition to our grassroots polling effort, we have a massive campaign planned to help get Ronald Reagan re-elected. Here's what we're geared up to do:

- * Emphasize the good things President Reagan has

Page three

accomplished in his first term through a 30 minute TV documentary we hope to show coast-to-coast.

- * Take out TV, radio and newspaper ads to rally support behind the President.
- * Send out letters with the facts to American voters — a reminder of how much Ronald Reagan has done for our nation compared to where we were three years ago.
- * Set up rallies and get-out-the-vote drives in towns and cities all across the nation.

I know we'll be fighting against two of the most powerful forces in America today — the Big Labor Union bosses and the media.

But if we can help enough Americans see the actual accomplishments of Ronald Reagan, without media bias or distortions, I think Ronald Reagan will be re-elected overwhelmingly.

But we have two major dangers facing us: 1) having too many people thinking their individual participation won't make a difference and 2) not getting the financial support we'll need to fund our efforts.

We know from experience this is a fight we can win. In fact, NCPAC was instrumental in getting Ronald Reagan, and Congressional candidates who share his philosophy, elected to office in 1980.

But to implement our plan and be successful it will cost us a lot of money. Unlike the Big Labor Unions WHO ARE WELL FUNDED FROM INVOLUNTARY UNION DUES, we must depend solely on voluntary support from Americans like you.

And unlike the media, we must pay dearly for TV, radio and newspaper ads to get our message out.

Because our money is limited I must be very careful how it is spent. Just to send out one "AMERICANS TO RE-ELECT PRESIDENT REAGAN" POLL like the one I've enclosed, costs about 35 cents.

That's \$175,000 to get them into the hands of just 500,000 Americans. And to reach the number of Americans we'll need to be successful, we must distribute millions.

So in addition to returning your completed POLL today, I hope you'll consider helping us out by sending AMERICANS TO RE-ELECT PRESIDENT REAGAN your most generous contribution.

You'll consider it well worth it if we can re-elect President Reagan. Think about this:

Do you want to wind up living under a new President like, say, Walter Mondale, Jimmy Carter's Vice-President — the same politician who helped Carter create the mess Ronald Reagan is working so hard to reverse?

DENT REAGAN

Please make as many copies of this record of President Reagan's accomplishments as you want and hang them up or pass them out to friends, neighbors and business associates.

AMERICANS TO RE-ELECT PRESIDENT REAGAN

Page four

I don't. I bet you don't either.

I strongly feel most Americans share President Reagan's vision of a prosperous, strong and safe America. Our job now is to reach these people and rally their support behind President Reagan. Our POLL effort is the first and most vital step.

I hope you'll help by doing your part today.

Please, do these three things today to help us get Ronald Reagan re-elected President:

- 1) Fill out and return your specially numbered "AMERICANS TO RE-ELECT PRESIDENT REAGAN" POLL in the enclosed postage- paid envelope.
- 2) Sign and mail the enclosed postcard directly to President Reagan at the White House to send him your personal message of support.
- 3) Enclose a contribution of \$15, \$25, \$50 even \$100 or as much as you can to AMERICANS TO RE-ELECT PRESIDENT REAGAN. Your check is badly needed to help us distribute more POLLS to the millions of Americans who can help us re-elect President Reagan.

As I said earlier, sending this poll to you was costly and NCPAC's funds are limited. For me to get an accurate reading on the POLL we must have yours back.

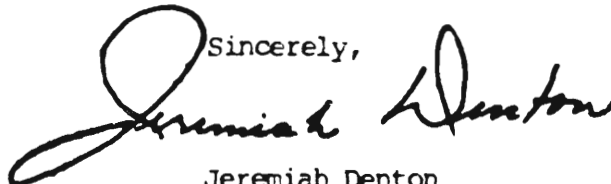
But I sincerely hope you'll answer "YES".

I think you'll agree, President Reagan has started turning this great nation around from the mess he inherited three years ago from Jimmy Carter.

And it would now be disastrous for us to sit back and watch someone like Jimmy Carter's Vice-President, Mondale win in 1984.

There's so much at stake for your future, your family's future and our nation's future. Please — let us hear from you today.

Sincerely,



Jeremiah Denton
U.S. Senator

P.S. Just last night I heard another media report attacking President Reagan. Please help me rally support to re-elect the President by returning your POLL, mailing your postcard and sending a generous contribution to AMERICANS TO RE-ELECT PRESIDENT REAGAN today.

FROM:

INTERNAL REVENUE SERVICE

DEPT. OF TREASURY

49R

TO: Americans to RE-ELECT
PRESIDENT REAGAN.

Detach Here and Return Reply with Your Check

National Conservative Political Action Committee
1801 Prince St.



Detach Here and Return Reply with your Check

FROM:

INTERNAL REVENUE SERVICE
APPEALS OFFICE
BOX 927
DES MOINES, IA 50302

49R

**TO: Americans to RE-ELECT
PRESIDENT REAGAN.**

National Conservative Political Action Committee
1001 Prince St.
Alexandria, Va. 22314



AMERICANS TO RE-ELECT PRESIDENT REAGAN POLL

ASSIGNED TO: INTERNAL REVENUE SERVICE

INSTRUCTIONS: Please answer the following questions by checking the appropriate box. Your answers will be tabulated along with others. **EVEN IF YOU DON'T WANT TO ANSWER THIS POLL, PLEASE RETURN IT TO NCPAC IN THE ENCLOSED POSTAGE-PAID ENVELOPE.**

1. DO YOU THINK PRESIDENT REAGAN SHOULD BE RE-ELECTED IN 1984? ☐ YES ☐ NO ☐ UNDECIDED
2. Do you approve or disapprove of the way Ronald Reagan is handling the job as President? ☐ APPROVE ☐ DISAPPROVE
3. Apart from the way Ronald Reagan has handled the job as President, what do you think of him as a person? ☐ APPROVE ☐ DISAPPROVE
4. Who's more to blame for the economic problems in the U.S. today? ☐ Previous liberal Democratic policies ☐ Reagan ☐ Other ☐ Congress
5. If the 1984 Presidential elections were held today and you had to choose between Reagan and Mondale who would you vote for? ☐ REAGAN ☐ MONDALE
6. Will you mail a contribution today to our campaign to help re-elect Ronald Reagan? ☐ YES ☐ NO

I've enclosed my maximum contribution to help Americans to re-elect President Reagan distribute thousands of these polls and to help with your massive campaign to re-elect President Reagan.

Enclosed is my contribution of:

☐ \$15 ☐ \$25 ☐ \$50 ☐ \$100
☐ \$250 ☐ \$500 ☐ \$_____ Other

INTERNAL REVENUE SERVICE, PLEASE
MAKE YOUR CHECK PAYABLE TO NCPAC.

Federal law requires we ask the following:

Occupation _____

Employer _____

City & State of Employer _____

Americans to re-elect President Reagan Poll

Postcard to President Reagan

Get your copy of **Reagan: A Record of Achievement**—free.

For any contribution of \$20 or more to Americans for Reagan in '84 you're entitled to a free, publishers proof copy of **Reagan: A Record of Achievement**.

This exciting new book details Ronald Reagan's political ideals and distinguished career.

And it's yours free for any contribution of \$20 or more to Americans for Reagan in '84.

Please give as generously as you can today—and hurry because our supply of **Reagan: A Record of Achievement** is limited.

☐ Yes! I want a free copy of **Reagan: A Record of Achievement**.

For more ways to help take a personal role in helping Ronald Reagan get re-elected—**Americans to Re-Elect President Reagan** has the following items available for your use or for you to distribute to your friends and neighbors:

(Please check those items you want us to send you.)

- | | | | |
|--|---------------|---------------------|---------------|
| <input type="checkbox"/> BUMPERSTICKER(S) | (.50 each) | Number ordered_____ | Total \$_____ |
| <input type="checkbox"/> FACT SHEET(S) | (.50 each) | Number ordered_____ | Total \$_____ |
| <input type="checkbox"/> YARD SIGN(S) | (\$5.00 each) | Number ordered_____ | Total \$_____ |
| <input type="checkbox"/> LAPEL PIN(S) | (.50 each) | Number ordered_____ | Total \$_____ |

☐ Would you like information on joining a national volunteer effort to help Ronald Reagan win re-election?

Federal election law requires we ask the following:

OCCUPATION_____
EMPLOYER_____

How Your Contribution Will Help

A **\$15** contribution made to **AMERICANS TO RE-ELECT REAGAN** today will let us mail over 42 Reagan letters to voters.

A **\$25** contribution will pay for air time to run one radio advertisement in prime time . . .

OR . . . for one fourth the production costs of an average 30 second radio ad.

A **\$50** contribution will pay for a quarter of a full page, hometown, newspaper ad supporting President Reagan . . .

OR . . . will cover half the costs to produce a newspaper ad to be used nationwide.

A **\$100** contribution will cover half the cost of running a 30 second TV commercial . . .

OR . . . will pay for one fifth of the production costs of a 30 second TV commercial.

A **\$250** contribution will pay for a minute of TV commercial time and cover the costs of sending over 120 pro-Reagan letters to voters . . .

OR . . . will buy a minute of TV commercial time and cover the costs for a full page hometown newspaper ad.

A **\$500** contribution will cover the full production costs of a 30 second TV commercial . . .

OR . . . purchase five minutes of local TV ad time.

A **\$1000** contribution will pay a third of the TV air time to show our 30 minute documentary on Ronald Reagan . . .

OR . . . cover full production costs for one 60 second TV commercial.

You can make a difference.

Please mail your most generous contribution today.

FIRST CLASS

FROM INTERNAL REVENUE SERVICE

PRESIDENT REAGAN
THE WHITE HOUSE
WASHINGTON, D.C. 20500

Place
Stamp
Here

Remove postcard along this line

DETACH
THIS
POSTCARD
AND MAIL
TODAY!



Dear F:

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your survey today.

PRESIDENT REAGAN



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NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



*Your 20¢ stamp
here will help
save needed
funds! →*

BUSINESS REPLY MAIL

FIRST CLASS PERMIT NO. 12540, WASHINGTON, D.C.

POSTAGE WILL BE PAID BY ADDRESSEE

**ATTN: SURVEY TABULATION DEPT'
AMERICANS TO RE-ELECT
PRESIDENT REAGAN**

NATIONAL CONSERVATIVE POLITICAL ACTION COMMITTEE

P.O. BOX 5660

WASHINGTON, D.C. 20016

**ATTENTION:
TABULATION
DEPARTMENT**

AMERICANS TO RE-ELECT PRESIDENT REAGAN

Honorable Benny Smith
UNITED STATES CONGRESSMAN
WASHINGTON, D.C.



Dear Friend:

IF YOU'VE DECIDED YOU CAN'T HELP AMERICANS TO RE-ELECT PRESIDENT REAGAN TODAY PLEASE CONSIDER...

...in his 1980 campaign Ronald Reagan promised to cut taxes, lower interest rates, and restore our country's defenses.

Less than three years later President Reagan has done just that. He just completed the third part of the largest tax cut in American history. He's driven interest rates and inflation way down. And he's directing the strongest build up of American defenses in years.

He's one of the few presidents in modern times to deliver on much of what he promised.

But because he's been so successful Ronald Reagan has created a host of powerful enemies. The media, Big Labor, the Democratic Party bosses -- they know that Ronald Reagan is virtually the only thing that stands between them and business as usual.

They know that, if they defeat President Reagan, they can return the country to the old fleece-the-taxpayer days of Jimmy Carter.

That's why it's so important we support the efforts of AMERICANS TO RE-ELECT PRESIDENT REAGAN now. They have the know how and the talented staff to see to it that Ronald Reagan is given the best shot possible at being re-elected. After all, they were the people who helped get him elected in the first place.

But they can't do it without your help.

That's why I'm asking you to give as much as you can today to AMERICANS TO RE-ELECT PRESIDENT REAGAN. Your contribution now just might make the difference between victory or defeat on election day.

Please -- let AMERICANS TO RE-ELECT PRESIDENT REAGAN hear from you today.

Sincerely,

Benny Smith
U.S. Congressman

The National Political Action Committee The Political Action Committee of the Reagan Agenda



"I have appreciated your support and am grateful for your expression of continuing the same."

Ronald Reagan



Senator Roger Jepsen,
R-Iowa

"Upon learning we were going to announce, NCPAC came forth with assistance in a way that brought us some early funds. And frankly, that made the difference."



Senator Chuck Grassely,
R-Iowa

"Despite the pressures which were brought to bear, I was re-elected against the same opponent by a 27,000 vote margin! I can say without any hesitancy that this type of victory would not have been possible without the valuable technical assistance provided by NCPAC. It simply wasn't available anywhere else."



Senator Gordon Humphrey,
R-New Hampshire

"At a critical stage of my campaign John T. Dolan, NCPAC's Chairman, temporarily became my campaign manager, which in effect set my campaign on a winning course."



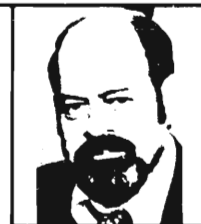
Senator Orrin Hatch,
R-Utah

"I am taking a moment to express my thanks for NCPAC for your outstanding support of my candidacy.
"Since our original meeting your advice, counsel, guidance and goodwill have been valued assets.
"Again, my sincere thanks for your strong support and wise counsel."



Edwin Meese III,
Counsellor to the President

"We are still celebrating our victory in Congress concerning the tax-cut. It is good to know of NCPAC's support, and I am sure that your campaign helped to turn the vote in the Administration's favor."



Lyn Nofziger,
Former Assistant to the President for Political Affairs

"On behalf of the President, I wish to thank you for the continuing support the National Conservative Political Action Committee has given to our Economic Recovery Program ... Some like you and NCPAC have made that extra commitment to ensure his program is enacted. Keep up the good work."

Americans to Re-elect President Reagan,
A project of
National Conservative Political Action Committee



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 30, 1984

Nancy S. Stewart, Esquire
Public Integrity Section
Criminal Division
• U.S. Department of Justice
Washington, D.C. 20530

Re: Pre-MUR 128

Dear Ms. Stewart:

This is to acknowledge receipt on July 25, 1984, of your letter of July 20, 1984, advising us of the possibility of a violation of the Federal Election Campaign Act of 1971, as amended, by the National Conservative Political Action Committee and the Americans to Re-Elect President Reagan. We are currently reviewing the matter and will advise of the Commission's determination.

If you have any questions or additional information, please call Paul Reyes, the staff member assigned to this matter, at (202) 523-4000. Our file number for this matter is Pre-MUR 128.

Pursuant to 2 U.S.C. § 437g(a)4(B) and § 437g(a)(12)(A), the Commission's review of this matter shall remain confidential.

Sincerely,

Charles N. Steele
General Counsel

By: 
Kenneth A. Gross
Associate General Counsel

●● SENSITIVE ●●

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

RECEIVED
OFFICE OF THE
COMMISSIONER

FIRST GENERAL COUNSEL'S REPORT 11 11 82:22

DATE AND TIME OF TRANSMITTAL BY OGC
TO THE COMMISSION 10/11/84 - 2:45

Pre-MUR NO. 128
STAFF MEMBER
Paul Reyes

SOURCE OF PRE-MUR: Department of Justice Referral

RESPONDENTS' NAMES: Americans to Re-Elect President Reagan,
National Conservative Political
Action Committee
Leif E. Noren, Treasurer

RELEVANT STATUTE: 2 U.S.C. § 432(e)(4)
§ 441d(a)

RELEVANT MURs: 1252/1299, 1316, 1399

RELEVANT CASES: Common Cause v. FEC, U.S. District Court
for the District of Columbia,
Civil Action No. 83-2199, Cross Motions
for Summary Judgment Pending

INTERNAL REPORTS
CHECKED: Committee Reports

FEDERAL AGENCIES
CHECKED: Department of Justice, Public Integrity
Unit

GENERATION OF MATTER

On July 20, 1984, the Public Integrity Section of the Criminal Division of the United States Department of Justice referred this matter to the Federal Election Commission as a possible violation of sections 432(e)(4) and 441d of Title 2, United States Code.

SUMMARY OF ALLEGATIONS

Solicitation materials referred to that office were sent by the National Conservative Political Action Committee ("NCPAC")

and the "Americans to Re-Elect President Reagan" to the "IRS District Counsel" and the "IRS Appeals Office". The Department of Justice observed that the solicitation package did not appear to state who paid for the communication, as required by 2 U.S.C. § 441d. In addition, Justice observed that to the extent that the solicitation appeared to be from "Americans to Re-Elect President Reagan", a violation of the prohibition in 2 U.S.C. § 432(e)(4) against the use of a candidate's name in the name of an unauthorized committee might exist.

FACTUAL AND LEGAL ANALYSIS

A. Use of Candidate's Name by Political Committee

Section 432(e)(4) of Title 2, United States Code, provides that "[t]he name of each authorized committee shall include the name of the candidate who authorized such committee. . . . In the case of any political committee which is not an authorized committee, such political committee shall not include the name of any candidate in its name." With one exception, not relevant here, section 102.14 of Title 11, Code of Federal Regulations, makes the same provision. Thus, no unauthorized political committee may use the name of a federal candidate in the committee's name.

Section 431(4)(A) of Title 2, United States Code, defines a political committee as "any committee, club, association, or other group of persons which received contributions aggregating in excess of \$1,000 during a calendar year or which makes

expenditures aggregating in excess of \$1,000 during a calendar year. . . ."

The principle issue is whether "Americans to Re-Elect President Reagan" is a political committee within the definition of 2 U.S.C. § 431(4)(A). If this is the case, then a violation of 2 U.S.C. § 432(e)(4) has occurred.

At the outset it is necessary to examine the relationship between the National Conservative Political Action Committee and the "Americans to Re-Elect President Reagan". In prior enforcement matters, the Commission has considered several factors in making a determination of political committee status under a "totality of circumstances" test. The focus of past investigations has been to determine the connection between ostensibly separate entities called "projects" and registered political committees. Finding that the projects were not independent political committees but rather alter egos of registered political committees has led to Commission determinations that no violation of 2 U.S.C. § 432(e)(4) had occurred in these past investigations.

Factors considered in the past include (1) whether the project has a separate existence from the political committee; (2) whether political committee funds were the sole source of support for the project; (3) whether contributions were directed to be made payable to the project or the political committee; (4) whether solicitations identified the project as a project of

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the committee; (5) whether solicitations contained a disclaimer stating who paid for and authorized the solicitations; (6) whether project titles were mere designations identifying the advertising agency used to promote the activity; (7) whether the political committee listed depositories of the project on its Statement of Organization filed under the Act; and (8) whether the political committee disclosed the contributions received for the project on its FEC Disclosure reports. These factors have been considered in MURs 1252/1299, 1316 and 1399. Additionally, the Commission has taken the position in litigation that section 432(e)(4) applies only to the use of a candidate's name in the name of an unauthorized committee but does not apply to other uses of a candidate's name by an unauthorized committee, such as in advertisements or solicitations.*

"Americans to Re-Elect President Reagan" is described throughout the solicitation materials as a "project" of the National Conservative Political Action Committee. In MUR 1399, the question was raised as to whether "NCPAC violated 2 U.S.C. § 432(e)(4) by including the name of candidates in the names it used to communicate with the public." See MUR 1399, First General Counsel's Report, at 6. In that instance, NCPAC projects were found not to be political committees subject to the restriction of 2 U.S.C. § 432(e)(4). In line with the First

*/ In this litigation, Common Cause v. FEC, U.S. District Court for the District of Columbia, Civil Action No. 83-2199, cross motions for Summary Judgment pending, the Commission has advanced factors (1), (5), and (8), listed above.

General Counsel's Report, the Commission considered these factors: the depository for the project was the same as NCPAC's, the projects were authorized by NCPAC's chairman and treasurer, and NCPAC accounted for all of the receipts and disbursements of the projects as required by law. Additionally, the communications at issue, radio and print advertisements, contained the following language: "Paid for by _____, a project of the National Conservative Political Action Committee, and not authorized by any candidate." See MUR 1399, First General Counsel's Report, at 5. The Commission, therefore, found no reason to believe that NCPAC or its projects violated 2 U.S.C. § 432(e)(4) in MUR 1399.

In the instant MUR, the solicitation materials direct that checks be made payable to NCPAC and the materials seek to obtain the contributor disclosure information required by the Act. However, this matter is distinguishable from MUR 1399 in that the disclaimer used does not indicate who paid for the solicitation. (See Attachment 1, page 13). The presence or absence of an adequate disclaimer has figured prominently in all the MURs noted, 1252/1299, 1316 and 1399.

On the basis of the materials forwarded from the Justice Department, this Office believes that an examination of the relationship of "Americans to Re-Elect President Reagan" and the National Conservative Political Action Committee is warranted to determine whether a violation of 2 U.S.C. § 432(e)(4) occurred. It is not known who, if anyone, serves as treasurer for

"Americans to Re-Elect President Reagan." Thus, the General Counsel's recommendations made with respect to "Americans to Re-Elect President Reagan" do not, at this time, refer to a treasurer.

B. Disclaimer

Section 441d(a)(3) of Title 2, United States Code, requires that whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits contributions through general public political advertising means, including direct mailings, if not authorized by a candidate, or candidate's committee, the communication shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

Section 110.11(a)(1) of Title 11, Code of Federal Regulations, provides that such disclaimers shall appear and be presented in a clear and conspicuous manner to give the reader, observer, or listener adequate notice of the identity of persons who paid for and, where required, who authorized the communication. Such person is not required to place the disclaimer on the front face or page of any such material, as long as a disclaimer appears within the communication.

This Office believes that the NCPAC materials referred from the Justice Department fail to meet the requirements of 2 U.S.C. § 441d. The materials are part of a mass public mailing campaign

by their own account. A letter from Senator Jeremiah Denton enclosed as part of the package (Attachment 1, page 9), explains that "...Just to send out one 'Americans to Re-elect President President Reagan' Poll like the one I've enclosed, costs about 35 cents. That's \$175,000 to get them into the hands of just 500,000 Americans. And to reach the number of Americans we'll need to be successful, we must distribute millions. . . ."

Moreover, the poll referred to in the letter is but one page of the self mailer package. Another letter included from Congressman Denny Smith (Attachment 1, page 17), urges the reader to "...support the efforts of Americans to Re-elect President Reagan now. They have the know how and the talented staff to see to it that Ronald Reagan is given the best shot at being reelected . . . give as much as you can. . . ." One page of the materials explains to the reader "How your contribution will help." (Attachment 1, page 14).

The "Poll" page (Attachment 1, page 12) asks five questions about the readers' views of the Reagan administration. The sixth "Poll" question is "Will you mail a contribution today to our campaign to help re-elect Ronald Reagan?" This "Poll" page directs contributors to make checks payable to NCPAC. It also indicates that "Federal law requires we ask the following: Occupation, Employer, City and State of Employer." The heading on this page directs that the "Poll" be sent to "Americans to Re-Elect President Reagan," with "National Conservative Political Action Committee" listed in smaller print underneath.

Another page (Attachment 1, page 13) with spaces for checking off a choice of items to receive in return for contributions carries a disclaimer partially meeting the requirements of 2 U.S.C. § 441d(a)(3) which reads: "Not authorized or paid for by any candidate or candidates' (sic) committee." Only "Americans to Re-Elect President Reagan" and not NCPAC is referred to anywhere on that page. Nowhere in the package is the statement, "Paid for by the National Conservative Political Action Committee." Accordingly, this Office believes that NCPAC has violated 2 U.S.C. § 441d by mailing solicitations for contributions with a defective disclaimer in that it does not state who paid for the solicitation.

In addition, expenditures for the solicitation of contributions and express advocacy involved in this matter carry further implications since the Commission approved, on August 27, 1984, payment of \$40,400,000 in federal funds for the general election campaign of Republican Presidential nominee Ronald Reagan and his Vice Presidential running mate, George Bush. It should be noted that if NCPAC or "Americans to Re-Elect President Reagan" have continued expending funds for this project since August 27, 1984, a violation of 26 U.S.C. § 9012(f) arises. However, since at this time, the Commission has no evidence before it that such expenditures were made since August 27, 1984, this Office makes no recommendations, at this time, with regard to violations of section 9012(f).

RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that the National Conservative Political Action Committee, and Leif E. Noren as treasurer, violated 2 U.S.C. § 432(e)(4).
3. Find reason to believe that the National Conservative Political Action Committee, and Leif E. Noren as treasurer, violated 2 U.S.C. § 441d.
4. Find reason to believe that Americans to Re-Elect President Reagan violated 2 U.S.C. §§ 432(e)(4) and 441d.
5. Approve and send the attached letters, General Counsel's factual and legal analyses, and Order with Interrogatories.

Charles N. Steele
General Counsel

October 11, 1987
Date

BY: *[Signature]*

Kenneth A. Gross
Associate General Counsel

Attachments

DOJ Referral
General Counsel's Factual and Legal Analyses
Order with one page of Interrogatories
Letters (2)

90040302341

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Americans to Re-Elect President Reagan) Pre-MUR 128
National Conservative Political)
Action Committee)
Leif E. Noren, Treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the
Federal Election Commission executive session of October 23,
1984, do hereby certify the Commission took the following
action with respect to Pre-MUR 128:

1. Decided by a vote of 4-1 to open a MUR.

Commissioners Elliott, Harris, McDonald,
and Reiche voted affirmatively for the
decision. Commissioner Aikens dissented.
Commissioner McGarry was not present at
the time of the vote.

2. Decided by a vote of 5-0 to find reason to
believe that the National Conservative
Political Action Committee, and Leif E. Noren
as treasurer, violated 2 U.S.C. § 432(e)(4).

Commissioners Aikens, Elliott, McDonald,
Harris, and Reiche voted affirmatively for
the decision. Commissioner McGarry was
not present at the time of the vote.

(continued)

3. Decided by a vote of 4-0 to find reason to believe that the National Conservative Political Action Committee, and Leif E. Noren as treasurer, violated 2 U.S.C. § 441d.

Commissioners Elliott, Harris, McDonald, and Reiche voted affirmatively for the decision; Commissioner Aikens abstained in the vote; Commissioner McGarry was not present at the time of the vote.

4. Decided by a vote of 5-0 to direct the Office of General Counsel to send appropriate letters, General Counsel's factual and legal analyses, and Order with Interrogatories pursuant to the above actions taken this date.

Commissioners Aikens, Elliott, Harris, McDonald, and Reiche voted affirmatively for this decision; Commissioner McGarry was not present at the time of the vote.

Attest:

Oct. 24, 1984

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

20040802843



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL
FROM: MARJORIE W. EMMONS/JODY C. RANSOM *JCR*
DATE: OCTOBER 16, 1984
SUBJECT: OBJECTIONS - PRE-MUR 128 First General
Counsel's Report signed October 11, 1984

The above-named document was circulated to the
Commission on Friday, October 12, 1984 at 2:00.

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

Commissioner Aikens	<u>X</u>
Commissioner Elliott	<u>X</u>
Commissioner Harris	<u>X</u>
Commissioner McDonald	<u> </u>
Commissioner McGarry	<u> </u>
Commissioner Reiche	<u> </u>

This matter will be placed on the Executive Session
agenda for Tuesday, October 23, 1984.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20541

November 29, 1984

Leif E. Noren, Treasurer
National Conservative Political
Action Committee
1001 Prince Street
Alexandria, Virginia 22314

RE: MUR 1835
National Conservative Political
Action Committee
Leif E. Noren, Treasurer

Dear Mr. Noren:

On October 23, 1984, the Federal Election Commission determined that there is reason to believe that the National Conservative Political Action Committee and you, as treasurer, violated 2 U.S.C. §§ 432(e)(4) and 44ld, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you and the committee. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials along with your response to the enclosed Order to Answer Questions.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission. It is required that you submit the information under oath and that you do so within ten days of your receipt of this order.

In the absence of any additional information which demonstrates that no further action should be taken against you and your committee, the Commission may find probable cause to believe that a violation has occurred and proceed with

90040802345


Leif E. Noren, Treasurer
Page 2

conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe if you so desire.

The investigation now being conducted will be 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 investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Paul Reyes, the staff member assigned to this matter, at (202) 523-4000.

Sincerely,


Lee Ann Elliott
Chairman

Enclosures

Order with one page of questions
General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Form

100-40000346

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Leif E. Noren, Treasurer
National Conservative Political
Action Committee

)
)
) MUR 1835
)
)

ORDER TO SUBMIT WRITTEN ANSWERS

To: Leif E. Noren, Treasurer
National Conservative Political
Action Committee
1001 Prince Street
Alexandria, Virginia 22314

Pursuant to 2 U.S.C. § 437d(a)(1), and in furtherance of its investigation in the above-styled matter, the Federal Election Commission hereby orders you to submit written answers to the interrogatories attached to this Order.


Such answers must be submitted under oath and must be forwarded to the Commission within 10 days of your receipt of this Order.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set her hand in Washington, D.C. on this 29th day of November, 1984.



Lee Ann Elliott

ATTEST:



Marjorie W. Emmons
Secretary to the Commission

Attachment
Interrogatories, one page

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SEDAM & HERGE

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SUITE 1100

8300 GREENSBORO DRIVE

McLEAN, VIRGINIA 22102

(703) 821-1000

GLENN J. SEDAM, JR.

J. CURTIS HERGE

ROBERT R. SPARKS, JR.

A. MARK CHRISTOPHER

CHRISTOPHER S. MOFFITT

PHILIP H. BANE

DONNA L. MILLER

OF COUNSEL

THOMAS J. FADOUL, JR.

RECEIVED AT THE FEC
GCC#5910

84 DEC 10 AIO: 04

TELEX: 710-831-0896

CABLE: SEDAMHERG

SEDAM, HERGE & REED

SUITE 1000

1250 EYE STREET, N.W.

WASHINGTON, D.C. 20005

(202) 898-0900

RESIDENT PARTNER: CHARLES D. REED

December 7, 1984

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

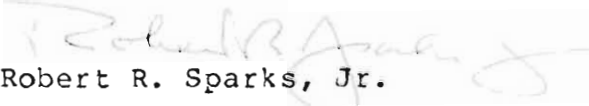
Re: MUR 1835

Dear Mr. Reyes:

This letter confirms my request, on behalf of the respondent National Conservative Political Action Committee, for an extension of ten days, to and including December 26, 1984 (taking into account the holidays), within which NCPAC may attempt to demonstrate that no action should be taken against it in this matter, and within which it may respond to the Order to submit written answers served contemporaneous with the Commission's November 29 letter.

NCPAC's records reflect that it received the Commission's November 29 papers on December 3, 1984. Please confirm in writing the Commission's agreement to extend the time within which NCPAC may respond in this matter.

Sincerely,


Robert R. Sparks, Jr.

cc: Mr. Leif E. Noren

A11: 08

RECEIVED
FEDERAL ELECTION COMMISSION
DEC 10 1984

97040003348



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 13, 1984

Mr. Robert R. Sparks, Jr.
Sedam & Herge
Suite 1100
8300 Greensboro Drive
McLean, Virginia 22102

RE: MUR 1835
National Conservative
Political Action Committee
Leif E. Noren, Treasurer

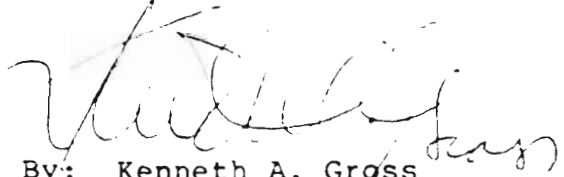
Dear Mr. Sparks:

This is in reference to your letter dated December 7, 1984, requesting an extension of ten days to respond to the Commission's reason to believe notice and order. After considering the circumstances presented in your letter, this office has determined to grant you your requested extension. Accordingly, your response will be due on December 26, 1984.

If you have any questions, please contact Paul Reyes, the staff member assigned to this matter at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel


By: Kenneth A. Gross
Associate General Counsel

SEDAM & HERGE

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SUITE 1100

8300 GREENSBORO DRIVE

MCLEAN, VIRGINIA 22102

(703) 821-1000

GLENN J. SEDAM, JR.
J. CURTIS HERGE
ROBERT R. SPARKS, JR.
A. MARK CHRISTOPHER
CHRISTOPHER S. MOFFITT
GEORGE V. BIONDI
PHILIP H. BANE
DONNA LYNN MILLER

OF COUNSEL
THOMAS J. FADGUL, JR.

RECEIVED AT THE FEC
GCC# 5936
84 DEC 12 AB: 48

December 11, 1984

SEDAM, HERGE & REED

SUITE 1000

1250 EYE STREET, N.W.

WASHINGTON, D. C. 20005

(202) 898-0200

CHARLES D. REED

RESIDENT PARTNER

JOHN D. HEFFNER

TELEX: 710-831-0896

CABLE: SEDAMHERG

Mr. Paul Reyes
Office of General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

RE: MUR 1835

Dear Mr. Reyes:

As a supplement to the letter from Robert R. Sparks, Jr., Esq., to you, dated December 7, 1984, in connection with the above-captioned matter, I am sending to you herewith the Statement of Designation of Counsel of the National Conservative Political Action Committee.

Sincerely,



J. Curtis Herge

Enclosure

000004030350

STATEMENT OF DESIGNATION OF COUNSEL

MUR 1835

NAME OF COUNSEL: J. Curtis Herge

ADDRESS: 8300 Greensboro Dr

Suite 1100

McLean VA 22102

TELEPHONE: (703) 821-1000

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.

NATIONAL CONSERVATIVE POLITICAL
ACTION COMMITTEE

12/3/84
Date

By: [Signature]
Signature Treasurer

RESPONDENT'S NAME: National Conservative PAC / Leaf Noran

ADDRESS: 1001 Prince Street

Alexandria VA 22304

HOME PHONE: (703) 671-6430

BUSINESS PHONE: (703) 684-1800

90040802351

6-CC # 6108

SEDAM & HERGE

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PHILIP H. BANE
DONNA LYNN MILLER

OF COUNSEL
THOMAS J. FADOUL, JR.

December 27, 1984

SEDAM, HERGE & REED

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WASHINGTON, D. C. 20005

(202) 898-0200

CHARLES D. REED

RESIDENT PARTNER

JOHN D. HEFFNER

TELEX 710 831-0896

CABLE SEDAMHERG

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463
ATTN: Mr. Paul Reyes

Re: MUR 1835

Dear Mr. Steele:

This responds to the letter from the Chairman of the Federal Election Commission to the National Conservative Political Action Committee, dated November 29, 1984, in which it was reported that the Federal Election Commission has determined there is reason to believe that the National Conservative Political Action Committee may have violated the provisions of 2 U.S.C. §§432(e)(4) and 441d. By letter dated December 11, 1984, we forwarded to you the Statement of Designation of Counsel of National Conservative Political Action Committee, designating the undersigned as its counsel in connection with this matter.

The General Counsel's Factual and Legal Analysis in this matter states that the allegations relate to a mailing produced by the National Conservative Political Action Committee in connection with its independent expenditure campaign in support of the election of Ronald Reagan to the Office of President of the United States. A photocopy of the mailing was provided to us by the Federal Election Commission on December 20, 1984.

Enclosed, for your records, is a duplicate original of the mailing in question. The mailing is referred to as a "self-mailer," meaning it had no separate envelope. In addition, all

Charles N. Steele, Esq.
December 27, 1984
Page Two

the pages and inserts of the mailing were attached to the exterior jacket. The package was written on behalf of National Conservative Political Action Committee by its direct-mail agent, The Viguerie Company, and it was printed and mailed by Response Graphics in Green Bay, Wisconsin. It was mailed between April 6, 1984 and June 11, 1984 to 955,752 names and addresses, which were selected by The Viguerie Company from in excess of 100 separate mailing lists. The cost of the package was \$373,020 and 12,607 individuals responded by returning an aggregate of \$206,721 in contributions. The mailing of copies of the package to "IRS District Counsel" and the "IRS Appeals Office" was accidental, as it was the understanding of the National Conservative Political Action Committee that the computer used to address the packages was programmed to eliminate any business and office addresses which might have been on the mailing lists.

It will be noted that the mailing solicited funds to assist the National Conservative Political Action Committee in its independent expenditure program in support of the President. This particular program had a project designation, Americans to Re-elect President Reagan. The project had no separate, identifiable independent status. The officers and staff of the National Conservative Political Action Committee conceptualized and administered the project. The expenses of the project were paid from the general treasury of the National Conservative Political Action Committee and all funds, or contributions, received in response to solicitations in the name of the project, including the instant mailing, were deposited into the general treasury of the National Conservative Political Action Committee. All such expenses and contributions were reported on the reports of receipts and disbursements filed by the National Conservative Political Action Committee.

At issue is whether the mailing in question properly disclosed the fact that Americans to Re-elect President Reagan was a project of National Conservative Political Action Committee; and, whether the mailing met the disclaimer requirements of 2 U.S.C. 441d. An analysis of the mailing clearly demonstrates that both requirements were met. For example:

Charles N. Steele, Esq.
December 27, 1984
Page Three

1. On the front page of the exterior of the jacket, it states in the upper right corner:

Paid
National Conservative Political
Action Committee

The address of National Conservative Political Action Committee, 1001 Prince Street, Alexandria, Virginia 22314, appears in the upper left corner.

2. On the back page of the exterior of the jacket, it states at the foot of the page:

Americans to Re-elect President Reagan
A project of
National Conservative Political Action Committee

In addition, the acronym, "NCPAC," appears six times in the context of six endorsements of the National Conservative Political Action Committee.

3. The focal point of the package, a letter signed by Senator Jeremiah A. Denton, is on stationery which states:

Americans
To Re-Elect
President Reagan
The National Conservative Political Action Committee
1001 Prince Street, Alexandria, Virginia 22314

In the letter, Senator Denton made the reader even more aware that Americans to Re-elect President Reagan was a project of the National Conservative Political Action Committee. For example, the letter states:

20040303354

Charles N. Steele, Esq.
December 27, 1984
Page Four

"I'm here, because Terry Dolan,
Chairman of the National
Conservative Political Action
Committee, asked me if I wanted
Reagan re-elected. I enthusia-
stically said, 'Yes'!

* * * *

"NCPAC could only afford to
send this POLL to Americans like
you,* who they thought would be most
interested in helping. So even if
you're undecided in your poll
answers, please return it to me at
NCPAC in the enclosed postage-paid
envelope. They are costly to
distribute - and for us to get
accurate results, we must have yours
back.

"The NCPAC staff is ready and
waiting to tally your poll as soon
as it arrives." (Emphasis added.)

4. The poll, which follows the Denton
letter, is addressed:

To: Americans to Re-elect President Reagan
National Conservative Political Action Committee
1001 Prince Street
Alexandria, Virginia 22314

Under "Instructions," a respondent is directed
to return the completed poll to NCPAC.
Finally, contributors are instructed to make
their checks payable to NCPAC.

* There can be no doubt whatsoever, in light of this sentence,
that the mailing was paid for by the National Conservative
Political Action Committee.

Charles N. Steele, Esq.
December 27, 1984
Page Five

5. One page in the package contains a summary of NCPAC's support for President Reagan. Under the caption, "Electing Reagan - NCPAC's Done It Before," the summary concludes:

"But for us to continue this vital work, we need the help of concerned Americans like you. We've helped elect Ronald Reagan once before. We've helped him begin the tough job of making America prosperous and secure once more. Together, with your help, we can do it again."

6. The reply envelope is addressed to Americans to Re-elect President Reagan/ National Conservative Political Action Committee.

In summary, "National Conservative Political Action Committee" or "NCPAC" appears in the package twenty-one times. Included were: "Paid, National Conservative Political Action Committee"; "Americans to Re-elect President Reagan, A project of National Conservative Political Action Committee"; and, "Not authorized or paid for by any candidate or candidate's committee." Thus, there is no doubt whatsoever that American's to Re-elect President Reagan was a project, or alter-ego, of National Conservative Political Action Committee. See MUR 1252/ 1299, 1316 and 1399.

Not only does the package make it clear that it was paid for by National Conservative Political Action Committee, but contributors are directed to make their checks payable to "NCPAC." Those funds, when received, were deposited in the general account of the National Conservative Political Action Committee. All the costs associated with the production and mailing of the package and all contributions received in response to the package were reported on the reports of receipts and disbursements filed by National Conservative Political Action Committee. To obviate any doubt, the recipient of the package was told:

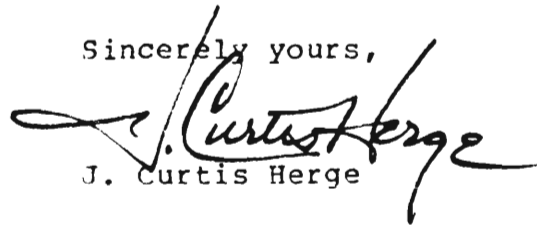
Charles N. Steele, Esq.
December 27, 1984
Page Six

Americans to Re-elect President Reagan
A project of
National Conservative Political Action Committee

It was made as clear as possible that contributors were making their contributions to the National Conservative Political Action Committee.

Section 110.11(a)(1) of Title 11 of the Code of Federal Regulations provides that disclaimers must be presented in a clear and conspicuous manner. In Advisory Opinion 1980-145, the Commission determined that a disclaimer need not appear on each element of a solicitation package. The law requires neither the use of specific language, nor the specific placement of any language. It is submitted that the subject package, when read together, contains all the elements of a disclaimer as required by law.

Sincerely yours,



J. Curtis Herge

Enclosure

20040303357



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM TO:

CHARLES N. STEELE
GENERAL COUNSEL

FROM:

marj MARJORIE W. EMMONS/JODY C. RANSOM jcr

DATE:

FEBRUARY 1, 1985

SUBJECT:

MUR 1835 - Comprehensive Investigative
Report #1 signed January 30, 1985

The above-captioned matter was circulated to the Commission on a 24 hour no-objection basis at 4:00, January 31, 1985.

There were no objections to the Comprehensive Investigative Report at the time of the deadline.

RECORDED
OFFICE OF THE FEC
COMMISSION SECRETARY

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25 JAN 31 P12:53

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2 . J 4 0 3 0 2 3 5 9

This Office is currently analyzing the responses and will report to the Commission shortly.

January 30, 1985
Date

Charles N. Steele
General Counsel

By:

Kenneth A. Gross
Associate General Counsel

Attachment
NCPAC Response

00040303360

SEDAM & HERGE

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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MCLEAN, VIRGINIA 22102

(703) 821-1000

SEDAM, HERGE & REED

SUITE 1000

1250 EYE STREET N.W.

WASHINGTON, D. C. 20005

(202) 698-0200

CHARLES D. REED

RESIDENT PARTNER

JOHN D. HEFFNER

TELEX 710-8310896

CABLE SEDAMHERG

GLENN J. SEDAM JR.
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CHRISTOPHER S. MOFFITT
GEORGE V. BOND
PHILIP H. BANE
DONNA LYNN MILLER

OF COUNSEL
THOMAS J. FADOUL JR.

December 27, 1984

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463
ATTN: Mr. Paul Reyes

Re: MUR 1835

Dear Mr. Steele:

This responds to the letter from the Chairman of the Federal Election Commission to the National Conservative Political Action Committee, dated November 29, 1984, in which it was reported that the Federal Election Commission has determined there is reason to believe that the National Conservative Political Action Committee may have violated the provisions of 2 U.S.C. §§432(e)(4) and 441d. By letter dated December 11, 1984, we forwarded to you the Statement of Designation of Counsel of National Conservative Political Action Committee, designating the undersigned as its counsel in connection with this matter.

The General Counsel's Factual and Legal Analysis in this matter states that the allegations relate to a mailing produced by the National Conservative Political Action Committee in connection with its independent expenditure campaign in support of the election of Ronald Reagan to the Office of President of the United States. A photocopy of the mailing was provided to us by the Federal Election Commission on December 20, 1984.

Enclosed, for your records, is a duplicate original of the mailing in question. The mailing is referred to as a "self-mailer," meaning it had no separate envelope. In addition, all

Attachment-MUR 1835-C.I.R.#1

Charles N. Steele, Esq.
December 27, 1984
Page Two

the pages and inserts of the mailing were attached to the exterior jacket. The package was written on behalf of National Conservative Political Action Committee by its direct-mail agent, The Viguerie Company, and it was printed and mailed by Response Graphics in Green Bay, Wisconsin. It was mailed between April 6, 1984 and June 11, 1984 to 955,752 names and addresses, which were selected by The Viguerie Company from in excess of 100 separate mailing lists. The cost of the package was \$373,020 and 12,607 individuals responded by returning an aggregate of \$206,721 in contributions. The mailing of copies of the package to "IRS District Counsel" and the "IRS Appeals Office" was accidental, as it was the understanding of the National Conservative Political Action Committee that the computer used to address the packages was programmed to eliminate any business and office addresses which might have been on the mailing lists.

It will be noted that the mailing solicited funds to assist the National Conservative Political Action Committee in its independent expenditure program in support of the President. This particular program had a project designation, Americans to Re-elect President Reagan. The project had no separate, identifiable independent status. The officers and staff of the National Conservative Political Action Committee conceptualized and administered the project. The expenses of the project were paid from the general treasury of the National Conservative Political Action Committee and all funds, or contributions, received in response to solicitations in the name of the project, including the instant mailing, were deposited into the general treasury of the National Conservative Political Action Committee. All such expenses and contributions were reported on the reports of receipts and disbursements filed by the National Conservative Political Action Committee.

At issue is whether the mailing in question properly disclosed the fact that Americans to Re-elect President Reagan was a project of National Conservative Political Action Committee; and, whether the mailing met the disclaimer requirements of 2 U.S.C. 441d. An analysis of the mailing clearly demonstrates that both requirements were met. For example:

Charles N. Steele, Esq.
December 27, 1984
Page Three

1. On the front page of the exterior of the jacket, it states in the upper right corner:

Paid
National Conservative Political
Action Committee

The address of National Conservative Political Action Committee, 1001 Prince Street, Alexandria, Virginia 22314, appears in the upper left corner.

2. On the back page of the exterior of the jacket, it states at the foot of the page:

Americans to Re-elect President Reagan
A project of
National Conservative Political Action Committee

In addition, the acronym, "NCPAC," appears six times in the context of six endorsements of the National Conservative Political Action Committee.

3. The focal point of the package, a letter signed by Senator Jeremiah A. Denton, is on stationery which states:

Americans
To Re-Elect
President Reagan
The National Conservative Political Action Committee
1001 Prince Street, Alexandria, Virginia 22314

In the letter, Senator Denton made the reader even more aware that Americans to Re-elect President Reagan was a project of the National Conservative Political Action Committee. For example, the letter states:

Charles N. Steele, Esq.
December 27, 1984
Page Four

"I'm here, because Terry Dolan,
Chairman of the National
Conservative Political Action
Committee, asked me if I wanted
Reagan re-elected. I enthusia-
stically said, 'Yes'!

* * * *

"NCPAC could only afford to
send this POLL to Americans like
you,* who they thought would be most
interested in helping. So even if
you're undecided in your poll
answers, please return it to me at
NCPAC in the enclosed postage-paid
envelope. They are costly to
distribute - and for us to get
accurate results, we must have yours
back.

"The NCPAC staff is ready and
waiting to tally your poll as soon
as it arrives." (Emphasis added.)

4. The poll, which follows the Denton
letter, is addressed:

To: Americans to Re-elect President Reagan
National Conservative Political Action Committee
1001 Prince Street
Alexandria, Virginia 22314

Under "Instructions," a respondent is directed
to return the completed poll to NCPAC.
Finally, contributors are instructed to make
their checks payable to NCPAC.

* There can be no doubt whatsoever, in light of this sentence,
that the mailing was paid for by the National Conservative
Political Action Committee.

Charles N. Steele, Esq.
December 27, 1984
Page Five

5. One page in the package contains a summary of NCPAC's support for President Reagan. Under the caption, "Electing Reagan - NCPAC's Done It Before," the summary concludes:

"But for us to continue this vital work, we need the help of concerned Americans like you. We've helped elect Ronald Reagan once before. We've helped him begin the tough job of making America prosperous and secure once more. Together, with your help, we can do it again."

6. The reply envelope is addressed to Americans to Re-elect President Reagan/
National Conservative Political Action Committee.

In summary, "National Conservative Political Action Committee" or "NCPAC" appears in the package twenty-one times. Included were: "Paid, National Conservative Political Action Committee"; "Americans to Re-elect President Reagan, A project of National Conservative Political Action Committee"; and, "Not authorized or paid for by any candidate or candidate's committee." Thus, there is no doubt whatsoever that American's to Re-elect President Reagan was a project, or alter-ego, of National Conservative Political Action Committee. See MUR 1252/1299, 1316 and 1399.

Not only does the package make it clear that it was paid for by National Conservative Political Action Committee, but contributors are directed to make their checks payable to "NCPAC." Those funds, when received, were deposited in the general account of the National Conservative Political Action Committee. All the costs associated with the production and mailing of the package and all contributions received in response to the package were reported on the reports of receipts and disbursements filed by National Conservative Political Action Committee. To obviate any doubt, the recipient of the package was told:

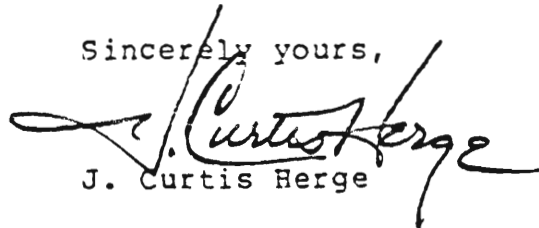
Charles N. Steele, Esq.
December 27, 1984
Page Six

Americans to Re-elect President Reagan
A project of
National Conservative Political Action Committee

It was made as clear as possible that contributors were making their contributions to the National Conservative Political Action Committee.

Section 110.11(a)(1) of Title 11 of the Code of Federal Regulations provides that disclaimers must be presented in a clear and conspicuous manner. In Advisory Opinion 1980-145, the Commission determined that a disclaimer need not appear on each element of a solicitation package. The law requires neither the use of specific language, nor the specific placement of any language. It is submitted that the subject package, when read together, contains all the elements of a disclaimer as required by law.

Sincerely yours,


J. Curtis Herge

Enclosure



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 4, 1985

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele
General Counsel *CN Steele*

SUBJECT: MUR 1835

Attached for the Commission's review is a brief stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of this brief and a letter notifying the respondent of the General Counsel's intent to recommend to the Commission a finding of no probable cause to believe was mailed on March 4, 1985. Following receipt of the Respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments

1. Brief
2. Letter to Respondent

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 4, 1985

J. Curtis Herge, Esquire
Sedam & Herge
Suite 1100
8300 Greensboro Drive
McLean, Virginia 22102

RE: MUR 1835
The National Conservative
Political Action Committee

Dear Mr. Herge:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on October 23, 1984, found reason to believe that your client had violated 2 U.S.C. §§ 432(e)(4) and 44ld, provisions of the Federal Election Campaign Act of 1971, as amended, (the "Act"), and instituted an investigation of this matter.

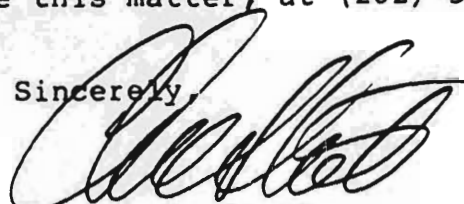
After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find no probable cause to believe that a violation of 2 U.S.C. § 432(e)(4) occurred and probable cause to believe that a violation of 2 U.S.C. § 44ld occurred. The Commission may or may not approve the General Counsel's recommendations.

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

National Conservative
Political Action Committee
Page 2

Should you have any questions, please contact Paul Reyes,
the staff member assigned to handle this matter, at (202) 523-
4000.

Sincerely,



Charles N. Steele
General Counsel

Enclosure
Brief

202540003359

BEFORE THE FEDERAL ELECTION COMMISSION
January 25, 1985

In the Matter of)
National Conservative Political) MUR 1835
Action Committee)
Leif E. Noren, Treasurer)

GENERAL COUNSEL'S BRIEF

I. Statement of Case

Based on information referred from the United States Department of Justice, Public Integrity Section, the Commission, on October 23, 1984, found reason to believe that the National Conservative Political Action Committee, ("NCPAC") and Leif E. Noren, as treasurer, violated 2 U.S.C. §§ 432(e)(4) and 441d by using the name of a candidate interchangeably with its name and improperly identifying who paid for a contribution solicitation directed to the general public. The Commission, at that time, ordered NCPAC to answer interrogatories concerning the subject contribution solicitation. NCPAC requested and received an extension of time in which to file its answer; making NCPAC's response due on December 26, 1984. Prior to answering, NCPAC requested and received a copy of the solicitation material which had been the subject of the Justice Department referral. The Commission received NCPAC's response on December 27, 1984. The General Counsel's Office believes that based on the NCPAC response the Commission should find no probable cause to believe that NCPAC or Leif E. Noren, as treasurer, violated 2 U.S.C. §§ 432(e)(4) and probable cause to believe that NCPAC and Leif E. Noren, as treasurer, violated 2 U.S.C. § 441d.

II. Legal Analysis

Section 432(e)(4) of Title 2, United States Code, provides that "(t)he name of each authorized committee shall include the name of the candidate who authorized such committee.... In the case of any political committee which is not an authorized committee, such political committee shall not include the name of any candidate in its name." With one exception, not relevant here, Section 102.14 of Title 11, Code of Federal Regulations, makes the same provision. Thus, no unauthorized political committee may use the name of a federal candidate in the committee's name.

Section 431(4)(A) of Title 2, United States Code, defines a political committee as "any committee, club, association, or other group of persons which received contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year...." NCPAC is an unauthorized political committee within the meaning of Section 431(4)(A). It may not therefore, use the name of a federal candidate in its name.

Section 441d(a)(3) of Title 2, United States Code, requires that whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits contributions through general public political advertising means, including direct mailings, if not authorized by a candidate, or candidate's committee, the communication shall clearly state the

The materials are part of a mass public mailing campaign by their own account. A letter from Senator Jeremiah Denton enclosed as part of the package, explains that "....Just to send out one 'Americans to Re-elect President Reagan' Poll like the one I've enclosed, costs about 35 cents. That's \$175,000 to get them into the hands of just 500,000 Americans. And to reach the number of Americans we'll need to be successful, we must distribute millions..." Moreover, the poll referred to in the

The "Poll" page asks five questions about the readers' views of the Reagan administration. The sixth "Poll" question is "Will you mail a contribution today to our campaign to help re-elect Ronald Reagan?" This "Poll" page directs contributors to make checks payable to NCPAC. It also indicates that "Federal law requires we ask the following: Occupation, Employer, City and State of Employer." The heading on this page directs that the "Poll" be sent to "Americans to Re-Elect President Reagan," with "National Conservative Political Action Committee" listed in smaller print underneath.

Another page with spaces for checking off a choice of items to receive in return for contributions carries a disclaimer partially meeting the requirements of 2 U.S.C. § 441d(a)(3) which reads: "Not authorized or paid for by any candidate or candidates' (sic) committee." Only "Americans to Re-Elect President Reagan" and not NCPAC is referred to anywhere on that page. Nowhere in the package is a clear and conspicuous statement that the mailing was "Paid for by the National Conservative Political Action Committee."

The words "Americans to Re-Elect President Reagan" appeared to be used as a part of NCPAC's name by placing it directly in front of NCPAC's name or using it interchangeably with "NCPAC."

The General Counsel, therefore, recommended that the principal issue in this matter was whether the "Americans to Re-Elect President Reagan" is or should be treated as part of NCPAC's official name; if Americans to Re-Elect President Reagan was found to be a separate political committee, it would have violated 2 U.S.C. § 432(e)(4). The General Counsel concluded that it was necessary to examine the relationship between the National Conservative Political Action Committee and the "Americans to Re-Elect President Reagan".

In prior enforcement matters, the Commission considered several factors in making a determination of political committee status. Past investigations in similar matters focused on determining the connection between ostensibly separate entities called "projects" and registered political committees. Finding that the projects were not independent political committees but rather alter egos of registered political committees led to Commission findings that no violation of 2 U.S.C. § 432(e)(4) had occurred.

Factors considered included (1) whether the project has a separate existence from the political committee; (2) whether political committee funds were the sole source of support for the project; (3) whether contributions were directed to be made

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payable to the project or the political committee; (4) whether solicitations identified the project as a project of the committee; (5) whether solicitations contained a disclaimer stating who paid for and authorized the solicitations; (6) whether project titles were mere designations identifying the advertising agency used to promote the activity; (7) whether the political committee listed depositories of the project on its Statement of Organization filed under the Act; and (8) whether the political committee disclosed the contributions received for the project on its FEC Disclosure reports. These factors have been considered in MURs 1252/1299, 1316 and 1399. Additionally, the Commission has taken the position in litigation that section 432(e)(4) applies only to the use of a candidate's name in the name of an unauthorized committee but does not apply to other uses of a candidate's name by an unauthorized committee, such as in advertisements or solicitations.^{1/}

"Americans to Re-Elect President Reagan" is described throughout the solicitation materials as a "project" of the National Conservative Political Action Committee. In MUR 1399, the question was raised as to whether "NCPAC violated 2 U.S.C. § 432(e)(4) by including the name of candidates in the names it used to communicate with the public." In that instance, NCPAC projects were found not to be political committees subject to the

^{1/} Common Cause v. FEC, U.S. District Court for the District of Columbia, Civil Action No. 83-2199, cross motions for Summary Judgment pending.

The Commission, therefore, found no reason to believe that NCPAC or its projects violated 2 U.S.C. § 432(e)(4) in MUR 1399. The present MUR is distinguishable because the words "Americans to Re-Elect President Reagan" appear to be presented interchangeably with the name "National Conservative Political Action Committee" and no coherent disclaimer statement is made.

In the instant MUR, one page of the solicitation materials directs that checks be made payable to NCPAC and the materials seek to obtain the contributor disclosure information required by the Act. Moreover, several other pages of the mailing represent that contributors are specifically asked to send their contributions to Americans to Re-Elect President Reagan. For example, one endorsement letter says, "support the efforts of Americans to Re-elect Reagan now. They have the know how and talented staff to see that Ronald Reagan is given the best shot possible at being reelected. After all, they were the

people who helped get him elected in the first place". The presence or absence of an adequate disclaimer has figured prominently in all the MURs noted, 1252/1299, 1316 and 1399. From the lack of an effective disclaimer and the fact that the subject mailing tends to emphasize the "project" name, using it interchangeably with "NCPAC," it appeared to the General Counsel that the words "Americans to Re-Elect President Reagan" should be treated as a part of NCPAC's official name; and it was on that basis that the General Counsel recommended that a violation of 2 U.S.C. § 432(e)(4) had occurred.

In its response, NCPAC contends that Americans to Re-Elect President Reagan, was a project designation or a part of NCPAC's independent expenditure program of behalf of the President. As the project is an alter ego of NCPAC, counsel contends, no violation of 2 U.S.C. § 432(e)(4) occurred. Counsel for NCPAC also contends that all of the elements of a disclaimer, as required by 2 U.S.C. § 441d, are present in NCPAC's mailing and, therefore, no violation of 2 U.S.C. § 441d occurred.

Counsel explains that the package was written on behalf of NCPAC by its direct-mail agent, The Viguerie Company, and it was printed and mailed by Response Graphics in Green Bay, Wisconsin. According to the response, it was mailed between April 6, 1984 and June 11, 1984 to 955,752 names and addresses, which were selected by The Viguerie Company from in excess of 100 separate mailing lists, and it cost \$373,020. Some 12,607 individuals responded by returning an aggregate of \$206,721 in contributions.

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Counsel further asserts that the project had no separate, identifiable independent status. The officers and staff of the National Conservative Political Action Committee conceptualized and administered the project. The expenses of the project were paid from the general treasury of the National Conservative Political Action Committee and all funds, or contributions, received in response to solicitations in the name of the project, including the instant mailing, were deposited into the general treasury of the National Conservative Political Action Committee. All such expenses and contributions, counsel says, were reported on the reports of receipts and disbursements filed by the National Conservative Political Action Committee.

On the basis of NCPAC's response, the General Counsel agrees that Americans to Re-Elect President Reagan was a project or independent expenditure program operated by NCPAC prior to the Republican Party National Convention in 1984, and as such is not a separate political committee but the alter-ego of NCPAC. Thus, the General Counsel recommends that the Commission find no probable cause to believe that NCPAC violated 2 U.S.C. § 432(e)(4).

However, the General Counsel contends that NCPAC fails to demonstrate that it has met the requirement of a clear and conspicuous disclaimer as required by 2 U.S.C. § 441d. As NCPAC's counsel observes, Advisory Opinion 1980-145 [1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5599] explains that a disclaimer need not appear on each piece of a solicitation package. If a

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communication advocates the election or defeat of a candidate but is not authorized by the candidate's campaign, the communication must identify the committee that has paid for it and state that it has not been authorized by any candidate or the candidate's committee. As noted above, NCPAC's mailing makes the statement of non-authorization clearly on one page of its package^{2/}. For the statement as to who paid for the mailing, however, counsel relies on the fact that the front or face of the package, in the upper right hand corner, enclosed within a printed box, bears the postal designation: "Bulk Rate Postage **PAID** National Conservative Political Action Committee."

In no Advisory Opinion regarding disclaimers has the Commission discussed, much less sanctioned, the use of a postal designation as part of the disclaimer required by 2 U.S.C. § 441d.^{3/} In fact, as a general rule, in its public instructions to committees like NCPAC, the Commission sanctions only certain, coherent statements, no matter where they are placed, such as:

^{2/} See, supra p. 4.

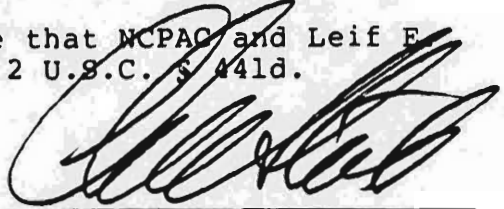
^{3/} See e.g., Advisory Opinion (AO) 1976-35
[1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5206]; AO 1978-
24 [1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5314]; AO 1978-
33 [1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5324]; AO 1978-
38 [1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5336]; AO 1980-
36 [1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5486]; AO 1980-
42 [1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5507]; AO 1980-
67 [1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5527]; AO 1980-
71 [1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5527]; AO 1980-
105 [1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5554]; RE:AOR
1976-46 [1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 6003]; AO 1981-
27 [1 Fed. Elec. Camp. Fin. Guide (CCH) ¶ 5615].

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2. Find probable cause to believe that MCPAC and Leif E. Noren, as treasurer, violated 2 U.S.C. § 441d.

Date

1 March 1985


Charles N. Steele
General Counsel

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RECEIVED AT THE FEC

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SEDAM & HERGE

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SUITE 1100

8300 GREENSBORO DRIVE

MCLEAN, VIRGINIA 22102

(703) 821-1000

GLENN J. SEDAM, JR.
J. CURTIS HERGE
ROBERT R. SPARKS, JR.
A. MARK CHRISTOPHER
CHRISTOPHER S. MOFFITT
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PHILIP H. BANE
DONNA LYNN MILLER

OF COUNSEL
THOMAS J. FADOUL, JR.

March 15, 1985

SEDAM, HERGE & REED

SUITE 1000

1250 EYE STREET, N.W.

WASHINGTON, D. C. 20005

(202) 898-0200

CHARLES D. REED

RESIDENT PARTNER

JOHN D. HEFFNER

TELEX: 710-831-0896

CABLE: SEDAMHERG

Ms. Marjorie W. Emmons
Secretary of the Commission
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

RE: MUR 1835

Dear Ms. Emmons:

In response to a letter from the General Counsel of the Federal Election Commission to me, dated March 4, 1985, we are submitting to you herewith ten (10) copies of the brief of National Conservative Political Action Committee and Leif E. Noren, as its treasurer, in connection with the above-captioned matter.

We are submitting three (3) additional copies of the enclosed brief to the Office of General Counsel with a copy of this letter.

Sincerely yours,

(Sgd) J. Curtis Herge

J. Curtis Herge

Enclosures

cc: Office of General Counsel
Attention: Paul Reyes, Esq.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

NATIONAL CONSERVATIVE POLITICAL
ACTION COMMITTEE,

Respondent.

MUR 1835

BRIEF OF RESPONDENT

I. Statement of Case

The specific issue in this case is whether there is probable cause to believe that the National Conservative Political Action Committee ("NCPAC") violated the provisions of 2 U.S.C. 441d(a)(3) for producing a direct mail solicitation package which included the phrases, "Paid National Conservative Political Action Committee," and, "Not authorized or paid for by any candidate or candidate's committee."

The direct mail package in question was produced for NCPAC by an independent agency, The Viguerie Company, as part of NCPAC's independent expenditure program in support of the re-election of President Reagan. The package is referred to as a "self-mailer," meaning that it was self-contained and not in an envelope, consisting of eighteen attached pages, including covers. NCPAC conducted this independent expenditure program under the project designation, Americans to Re-elect President

Reagan. The passages and components of the mailing relevant to this matter are the following:

1. On the front page of the package it states, in the upper right corner:

Paid
National Conservative Political
Action Committee

The address of National Conservative Political Action Committee, 1001 Prince Street, Alexandria, Virginia 22314, appears in the upper left corner.

2. On the back page of the package it states, at the foot of the page:

Americans to Re-elect President Reagan
A project of
National Conservative Political Action Committee

In addition, the acronym, "NCPAC," appears six times in the context of six endorsements of the National Conservative Political Action Committee.

3. The focal point of the package, a letter signed by Senator Jeremiah A. Denton, is on stationery captioned:

Americans
To Re-Elect
President Reagan
The National Conservative Political Action Committee
1001 Prince Street, Alexandria, Virginia 22314

In the letter, Senator Denton made the reader even more aware that Americans to Re-elect President Reagan was a project of the National Conservative Political Action Committee and that NCPAC paid for the mailing. For example, the letter states:

"I'm here, because Terry Dolan, Chairman of the National Conservative Political Action Committee, asked me if I wanted Reagan re-elected. I enthusiastically said, 'Yes'!"

* * * *

"NCPAC could only afford to send this POLL to Americans like you, who they thought would be most interested in helping. So even if you're undecided in your poll answers, please return it to me at NCPAC in the enclosed postage-paid envelope. They are costly to distribute - and for us to get accurate results, we must have yours back.

"The NCPAC staff is ready and waiting to tally your poll as soon as it arrives." (Emphasis added.)

4. The poll, which follows the Denton letter, carries the following return address:

To: Americans to Re-elect President Reagan
National Conservative Political Action Committee
1001 Prince Street
Alexandria, Virginia 22314

Under "Instructions," a respondent is directed to return the completed poll to NCPAC. Finally, contributors are instructed to make their checks payable to NCPAC.

5. One page in the package contains a summary of NCPAC's support for President Reagan. Under the caption, "Electing Reagan - NCPAC's Done It Before," the summary concludes:

"But for us to continue this vital work, we need the help of concerned Americans like you. We've helped elect Ronald Reagan once before. We've helped him begin the tough job of making America prosperous and secure once more. Together, with your help, we can do it again."

6. The reply envelope is addressed to Americans to Re-elect President Reagan/
National Conservative Political Action Committee.

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20040302337

candidate's committee, the communication shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

Section 110.11(a)(1) of Title 11 of the Code of Federal Regulations provides that such disclaimers shall appear and be presented in a clear and conspicuous manner to give the reader, observer or listener "adequate notice" of the identity of the person who paid for and, where required, who authorized the communication. The disclaimer need not appear on the front face or page of any such material, as long as a disclaimer appears within the communication. In Advisory Opinion 1980-145, the Commission determined that a disclaimer need not appear on each element of a solicitation package.

The law requires neither the use of specific language, nor the placement of any language. The law only requires that a communication include "adequate notice," in a "clear and conspicuous manner," of the name of the person who paid for and, where required, who authorized the communication.

As noted in page 10 of its Brief, the Office of General Counsel is satisfied that the package contains a satisfactory non-authorization notice. The Office of General Counsel is not willing to concede, on the other hand, that the statement in the upper right corner of the face of the package, "Paid National Conservative Political Action Committee," gives adequate notice

of the name of the person who paid for the package. Albeit, the statement appears as part of a postal designation and that apparently offends the aesthetic sense of the Office of General Counsel. Nevertheless, the statement is certainly "clear and conspicuous." Furthermore, it gives the reader "adequate notice" of the name of the person who paid for the communication. Any reasonable individual would know by reading that statement that NCPAC - not the Republican National Committee, not Reagan/Bush '84, not anyone else - paid for the communication. As a consequence, it may properly be concluded that the package contained statements sufficient to satisfy the requirements of 2 U.S.C. 441d(a)(3).

Respondent acknowledges that, while the statements in the package are technically sufficient to satisfy the provisions of 2 U.S.C. 441d(a)(3), this matter would not be before the Commission if the package had contained the more aesthetic, "Paid for by National Conservative Political Action Committee and not authorized by any candidate or candidate's committee." In fact, NCPAC instructed The Viguerie Company, the agency which designed and produced the package, to include that disclaimer on the subject package and on all the direct mail produced for NCPAC.

Attached to this Brief is the Affidavit of Mr. Robert E. Conover, the Director of Direct Mail at NCPAC, in which he explains that the final draft of this package was not seen by NCPAC before it went into production. Only the initial draft,

consisting only of the substantive text of the package, was seen and approved by NCPAC. Mr. Conover further explains that, because of printing, list rental and mail schedules, there are frequent occasions when there is no time to review final copy before it goes into production. Art work, graphics and various embellishments, including disclaimers and contribution identification requests, are typically incorporated into a package after the initial text is approved. It is for that reason, Mr. Conover certifies, that NCPAC instructs each independent agency with which it works, including The Viguerie Company, that it is the agency's responsibility to include in all final copy the disclaimer required by 2 U.S.C. 441d. NCPAC provides the agency with the specific disclaimer language required by 2 U.S.C. 441d(a)(3) and then periodically reminds the agency of the requirement. Mr. Conover goes on to state that, prior to the production of this particular package, he personally reminded the personnel who work on the NCPAC account at The Viguerie Company about the disclaimer requirement. He also relates that, when the omission was later discovered, the Chairman of NCPAC personally admonished the President of The Viguerie Company to not let it happen again.

As amply demonstrated by Mr. Conover, NCPAC took all reasonable and necessary steps to see to it that the provisions and requirements of 2 U.S.C. 441d were met and had no reason to believe that the appropriate disclaimer was not printed on the

final copy. For that reason, the Commission should find no probable cause to believe that a violation of 2 U.S.C. 441d occurred. See MUR 1771.

Respondent adopts by reference the analysis and argument of the Office of General Counsel in support of its recommendation that the Commission find no probable cause to believe that a violation of 2 U.S.C. 432(e)(4) occurred.

III. Conclusion

The Federal Election Commission should find no probable cause to believe that NCPAC and Leif E. Noren, as its treasurer, violated 2 U.S.C. 441d for the reasons that (1) NCPAC discharged its obligation by instructing The Viguerie Company to include the requisite disclaimer on this and all other direct mail packages produced for NCPAC and had no reason to believe that the appropriate disclaimer was not included in the subject package, and (2) the statements included in the package, while perhaps not aesthetically pure, met the technical requirements of the Act. The Commission should also find no probable cause to believe that NCPAC and Leif E. Noren, as its treasurer, violated 2 U.S.C. 432(e)(4) for the reasons stated in the Brief of the Office of General Counsel.

Dated: March 15, 1985



J. Curtis Herge
Counsel to National Conservative
Political Action Committee and
Leif E. Noren, as treasurer

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

NATIONAL CONSERVATIVE POLITICAL
ACTION COMMITTEE,

Respondent.

MUR 1835

AFFIDAVIT OF ROBERT E. CONOVER

STATE OF VIRGINIA)
CITY OF ALEXANDRIA) ss:

ROBERT E. CONOVER, being duly sworn, deposes and says:

1. That he is employed by the National Conservative Political Action Committee ("NCPAC") in the capacity of Director of Direct Mail and was, at all times relevant to this matter, responsible for the coordination of the direct mail program of NCPAC.

2. That, included in his responsibilities, are the tasks of approving proposed copy for direct mail submitted by independent agencies and of acting as the liaison between NCPAC and such agencies in the production of the mail.

3. That he is acquainted of his own knowledge with the facts and circumstances relevant to the production of the direct mail package which is the subject of the Federal Election Commission matter known as MUR 1835.

4. That the subject direct mail package was written and produced by an independent agency, The Viguerie Company, an agency experienced in the production of direct mail mail for political committees.

5. That the draft text of the subject direct mail package was submitted to him by The Viguerie Company for approval, the draft text consisting only of the printed body of the proposed package and being completely devoid of the art work and other embellishments seen in the final copy. The draft text did not contain the disclaimer required by 2 U.S.C. 441d(a)(3).

6. That the draft text of the subject direct mail package was approved by NCPAC and that approval was communicated to The Viguerie Company.

7. That the final draft of the subject direct mail package, the so-called camera ready copy or blue lines, were not submitted to NCPAC by The Viguerie Company, it being explained to your deponent by The Viguerie Company at the time that printing, list rental and mail house schedules were such that time did permit the delay attendant upon the submission of the final draft for approval.

8. That it is not unusual for independent agencies, including The Viguerie Company, to go to production directly after approval of preliminary text, because political direct mail is typically time sensitive either as to subject matter or production schedules, or both.

9. That it is because final copy is sometimes not submitted for approval prior to production and because art work and embellishments, including disclaimers, are typically included only in the final copy, that NCPAC instructs each independent agency with which it works, including The Viguerie Company, that it is the agency's responsibility to include in all final copy the disclaimer required by 2 U.S.C. 441d and it provides each agency with the specific language required by 2 U.S.C. 441d(a)(3). That directive is communicated to each agency, including The Viguerie Company, by NCPAC at the beginning of each election cycle and at intervals of approximately once every six months thereafter.

10. That your deponent personally reminded personnel assigned to the NCPAC account at The Viguerie Company, prior to the production of the subject package, of its responsibility of including the disclaimer required by 2 U.S.C. 441d(a)(3) on all mail produced for NCPAC.

11. That, on July 13, 1984, the Chairman of NCPAC personally advised the President of The Viguerie Company, with reference to the absence of the specific disclaimer, that "I hope The Viguerie Company will walk the extra mile to see that copy like this does not go out again."

IN WITNESS WHEREOF, your deponent has executed this Affidavit this 15th day of March, 1985.


Robert E. Conover

Sworn to before me, a Notary Public, this 15th day of
March, 1985.

Deanne A. Yeatman
Notary Public

My commission expires: July 23, 1988



90040302394

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
National Conservative Political)
Action Committee)
Leif E. Noren, Treasurer)

MUR 1835 APR 16 12:59

EXECUTIVE SESSION
APR 23 1985

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Based on information obtained in the normal course of its supervisory responsibilities, which had been referred from the United States Department of Justice, the Commission, on October 23, 1984 found reason to believe that the National Conservative Political Action Committee and Leif E. Noren, as treasurer, violated 2 U.S.C. §§ 432(e)(4) and 441d. Respondents were notified of this determination by letter on November 29, 1984. The Commission also ordered respondents, at this time, to provide answers to certain questions related to the mailing of a solicitation package to members of the public. By letter dated December 7, 1984, Respondents requested an extension of ten days in which to respond to the Commission's reason to believe notification and Subpoena. Respondents' request was granted; making their response due December 26, 1984. On December 17, 1984, the Commission received a request (dated December 14, 1984) from Respondents for a copy of the solicitation materials referred from the Justice Department which are the focus of this matter. On December 19, 1984, this office forwarded a copy of the materials to Respondents and advised them that their response was anticipated on December 26, 1984. Respondents response was

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received on December 27, 1984 together with the information requested under subpoena on November 29, 1984.

On March 4, 1985, the General Counsel provided Respondents with his Brief outlining the General Counsel's position on the factual and legal issues of this matter. On March 18, 1985, the Commission received Respondents' Brief in this matter.

II. LEGAL ANALYSIS (OF RESPONDENTS' BRIEF)

(See OGC Brief Signed March 1, 1985.)

Respondents adopt by reference the analysis and argument of the Office of General Counsel in support of the General Counsel's recommendations regarding a violation of 2 U.S.C. § 432(e)(4). Therefore, the General Counsel recommends that the Commission find no probable cause to believe that the National Conservative Political Action Committee and Leif E. Noren, as treasurer, violated 2 U.S.C. § 432(e)(4). See Respondents' Brief, at 8.

As to the violation of 2 U.S.C. § 441d, Respondents' Brief reiterates their arguments made in response to the Commission's reason to believe notification. They argue at length that no violation occurred because Section 441d does not require the use of specific language or the placement of a disclaimer in any certain location within a mailed solicitation package. They argue strenuously that all of the elements of a disclaimer are present, including the argument that a postal designation may be part of the statement required by 2 U.S.C. § 441d. However, the General Counsel believes that the Respondents' Brief,

demonstrates that Respondents knew during the planning stages for the subject mailing that a disclaimer of the nature described in the General Counsel's Brief was required by 2 U.S.C. § 441d.

Respondents state that "NCPAC instructed The Viguerie Company...to include that disclaimer on the subject package...." (Respondents' Brief at 6) Respondents have attached the Affidavit of Mr. Robert E. Conover, the Director of Direct Mail at NCPAC, which concedes that the draft of the subject mailing did not contain the "disclaimer required by 2 U.S.C. § 441d(a)(3)" (Conover Affidavit at 2, number 5.) Respondents' Brief further states that "NCPAC provides [the Viguerie Company] with the specific disclaimer required by 2 U.S.C. § 441d(a)(3) and then periodically reminds the agency of the requirement." (Emphasis supplied). Respondent's Brief explains that NCPAC had discovered that the required disclaimer had been omitted from the subject mailing. When the omission was discovered,"... the Chairman of NCPAC personally admonished the President the Viguerie Company not to let it happen again." (See Respondents' Brief at 7.)

It seems apparent that Respondents have conceded a violation of 2 U.S.C. § 441d but are arguing that they should be excused because disjointed parts of the required disclaimer were scattered throughout its mailing; and that, in any event, it was merely a failure of their agent, The Viguerie Company, that caused the violation.

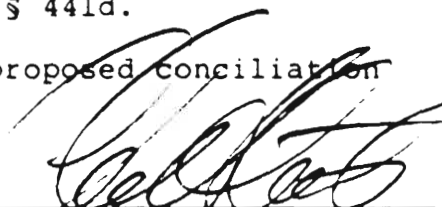
Based on the foregoing, the General Counsel recommends that the Commission find probable cause to believe that the National Conservative Political Action Committee and Leif E. Noren, as treasurer, violated 2 U.S.C. § 441d.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATION

1. Find no probable cause to believe that the National Conservative Political Action Committee and Leif E. Noren, as treasurer, violated 2 U.S.C. § 432(e)(4).
2. Find probable cause to believe that the National Conservative Political Action Committee and Leif E. Noren, as treasurer, violated 2 U.S.C. § 441d.
3. Approve and send the attached proposed conciliation agreement and letter.

18 April 1985
Date



Charles N. Steele
General Counsel

Attachments
Proposed Conciliation Agreement
Letter (1)

90040302398

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
National Conservative Political) MUR 1835
Action Committee)
Leif E. Noren, Treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the
Federal Election Commission executive session of April 23,
1985, do hereby certify that the Commission took the
following actions in MUR 1835:

1. Failed on a vote of 3-3 to pass a motion to
find no probable cause to believe that the
National Conservative Political Action
Committee and Leif E. Noren, as treasurer,
violated 2 U.S.C. § 432(e)(4).

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

2. Failed on a vote of 3-3 to pass a motion to
find probable cause to believe that the
National Conservative Political Action
Committee and Leif E. Noren, as treasurer,
violated 2 U.S.C. § 432(e)(4).

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

(continued)

20040303399

3. Decided by a vote of 6-0 to find probable cause to believe that the National Conservative Political Action Committee and Leif E. Noren, as treasurer, violated 2 U.S.C. § 441d.

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

4. Decided by a vote of 6-0 to direct the Office of General Counsel to send an appropriate conciliation agreement and letter pursuant to the above actions.

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

Attest:

4-24-85

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 29, 1985

J. Curtis Herge, Esquire
Sedam & Herge
Suite 1100
8300 Greensboro Drive
McLean, Virginia 22102

RE: MUR 1835
National Conservative Political
Action Committee
Leif E. Noren, Treasurer

Dear Mr. Herge:

On April 23, 1985, the Commission determined that there is probable cause to believe your client committed a violation of 2 U.S.C. § 441d, a provision of the Federal Election Campaign Act of 1971, as amended, (the "Act") in connection with a direct mail solicitation made during the period from April 1984 to June 1984. Your client's mailing was sent to 955,752 names and addresses and did not contain the disclaimer required by the Act. The Commission was equally divided on the question of whether to find probable cause to believe that your clients had violated 2 U.S.C. § 432(e)(4).

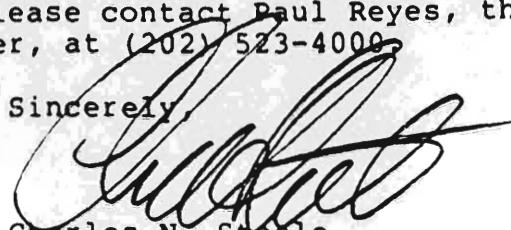
The Commission has a duty to attempt to correct such violations for a period of thirty to ninety days by informal methods of conference, conciliation and persuasion, and by entering into a conciliation agreement. If we are unable to reach an agreement during that period, the Commission may institute civil suit in United States District Court and seek payment of a civil penalty.

We enclose a conciliation agreement that this office is prepared to recommend to the Commission in settlement of this matter. If you agree with the provisions of the enclosed agreement, please have it signed and return it along with the civil penalty to the Commission within ten days. I will then recommend that the Commission approve the agreement. Please make your check for the civil penalty payable to the U.S. Treasurer.

J. Curtis Herge, Esquire
Page 2

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Paul Reyes, the staff member assigned to this matter, at (202) 523-4000.

Sincerely,



Charles N. Steele
General Counsel

Enclosure
Conciliation Agreement

90040802902

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION
July 17, 1985

COPY

D
FEC
CLERK

In the Matter of)
)
National Conservative Political)
Action Committee)
Leif E. Noren, Treasurer)

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MUR 1835

EXECUTIVE SESSION
JUL 30 1985

GENERAL COUNSEL'S REPORT

I. BACKGROUND/PREVIOUS COMMISSION ACTION

20040301903

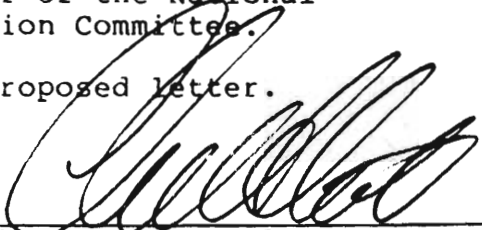
After conferring with the Respondents, counsel advised this Office that, because the Respondents continue to perceive no distinction between this matter and MUR 1771, they again reject any consideration of a civil penalty.

Accordingly, the Office of General Counsel recommends that the Commission authorize the filing of suit against NCPAC and Leif E. Noren as treasurer.

III. RECOMMENDATIONS

1. Authorize the Office of General Counsel to file a civil suit for relief in the United States District Court against:
 - a. The National Conservative Political Action Committee.
 - b. Leif E. Noren, as treasurer of the National Conservative Political Action Committee.
2. Approve and send the attached proposed letter.

19 July 1985
Date


Charles N. Steele
General Counsel

Attachments
Proposed Letter

93040:0:9J4

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
National Conservative Political) MUR 1835
Action Committee)
Leif E. Noren, Treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 30, 1985, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in MUR 1835:

1. Authorize the Office of General Counsel to file a civil suit for relief in the United States District Court against:
 - a. The National Conservative Political Action Committee.
 - b. Leif E. Noren, as treasurer of the National Conservative Political Action Committee.
2. Approve and send the proposed letter attached to the FEC General Counsel's report dated July 19, 1985.

Commissioners Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision; Commissioner Elliott dissented. Commissioner Aikens was not present at the time of the vote.

Attest:

7-31-85

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

90040602905



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

12 August 1985

J. Curtis Herge, Esquire
Sedam & Herge
Suite 1100
8300 Greensboro Drive
McLean, Virginia 22102

RE: MUR 1835
National Conservative Political
Action Committee
Leif E. Noren, Treasurer

Dear Mr. Herge:

You were previously notified that on April 23, 1985, the Federal Election Commission found probable cause to believe that your clients violated 2 U.S.C. § 441d, a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the captioned matter.

As a result of our inability to settle this matter through conciliation within the allowable time period, the Commission has authorized the institution of a civil action for relief in the U.S. District Court.

Should you have any questions, or should you wish to settle this matter prior to suit, please contact Ivan Rivera, the attorney handling this case, at (202) 523-4143 within five days of your receipt of this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Charles N. Steele", is written over the typed name and title.

Charles N. Steele
General Counsel

*National Conservative
Political Action Committee*

1001 Prince Street
Alexandria, Virginia 22314

John T. Dolan
National Chairman

August 9, 1985

05 AUG 21 P 5:23

(703) 684-1800

CERTIFIED MAIL

Mr. John Warren McGarry
Chairman
Federal Election Commission
1325 K Street, N. W.
5th Floor
Washington, D. C. 20463

Re: MUR-1835

Dear Commissioner McGarry:

I am taking the unusual step of writing to you and other members of the Commission by certified mail in reference to NCPAC's MUR-1835. I believe that the legal staff at the Federal Election Commission cannot be communicating our position on this matter to you. Otherwise you would have long ago dismissed it.

In 1984, U. S. Senate candidate James Hunt of North Carolina sent out mailings which failed to include the appropriate disclaimer as prescribed in the Act. FEC's legal staff recommended that no penalties be leveled against Governor Hunt's campaign because the Hunt campaign produced affidavits which claimed a printing company was at fault. To my knowledge, the printing company was not asked to supply an affidavit confirming this statement from the campaign. Curiously enough, virtually the same thing happened with NCPAC, and yet your legal staff is recommending a fine in our case. We demonstrated, through sworn affidavits, that a long-standing order with one of our suppliers was violated. The FEC, to date, has not contacted the supplier to substantiate our claim; nevertheless, the legal staff recommended a fine. How can your legal staff possibly justify the differences between NCPAC's and Governor Hunt's cases? The only answer I can offer you is that this is continuing evidence of attempts by the Office of the General Counsel to harass the National Conservative Political Action Committee.

JTD / cdm

600 7014
RECEIVED AT THE FEC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

87 AUG 3 10:48

57 AUG 3 10:36

FEDERAL ELECTION COMMISSION,:

Plaintiff, :

v. :

Civil Action No. 85-209

NATIONAL CONSERVATIVE :
POLITICAL ACTION COMMITTEE, :
et al., :

Defendants. :

FILED

JUL 29 1987

ORDER

JAMES F. DAVEY, Clerk

90040302909
Upon consideration of the motion of defendant to stay enforcement of the judgment in this action pending disposition of defendants' appeal, plaintiff's opposition thereto, and the record herein, and it appearing to the Court that defendants have failed to make the requisite showing for a stay under Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921 (D.C. Cir. 1958), it is this 29th day of July, 1987,

ORDERED that defendants' motion for a stay be, and hereby is, denied, in all respects.

Norma Holloway Johnson
NORMA HOLLOWAY JOHNSON
UNITED STATES DISTRICT JUDGE

COURT CASES

FEC v. NCPAC

On April 29, 1987, the U.S. District Court for the District of Columbia granted plaintiffs' motions for summary judgment and dismissal of defendants' counterclaim in FEC v. National Conservative Political Action Committee, et al. (Civil Action No. 85-2898). The court found that the defendants had violated the law by failing to include a statement in their solicitation material clearly identifying the person who paid for the communication.

Background

During the 1984 election cycle, NCPAC mounted a \$10 million independent expenditure campaign advocating the reelection of President Reagan. As part of this project, NCPAC mailed out materials urging the reelection of the President and soliciting contributions to finance its expenditures for this effort. The solicitation material did not identify who paid for it. Under the Act and Commission regulations, any communication which expressly advocates the election or defeat of a clearly identified candidate or which solicits contributions must clearly display a disclaimer identifying the person(s) who paid for the communication. 2 U.S.C. §441d(a)(3).

On April 23, 1985, after attempting to resolve this enforcement matter through informal methods of conciliation, the Commission filed suit against the defendants in the U.S. District Court for the District of Columbia. In its complaint, the FEC sought the following:

- o A judgment declaring that the defendants violated the law by failing to include a proper disclaimer in their solicitation material;
- o An order permanently enjoining the defendants from repeating the violation;
- o An assessment of a civil penalty; and
- o An award of attorney's fees and costs incurred by the FEC.

In their counterclaim, the defendants sought review of the FEC's decision to bring this action pursuant to the Administrative Procedure Act (APA), 5 U.S.C. §§701 et seq. The defendants claimed that the FEC decision was "final agency action" within the meaning of section 704 of the APA and, therefore, reviewable. Furthermore, the defendants claimed that the FEC decision was "arbitrary, capricious, and an abuse of discretion under the APA" because the Commission had declined to initiate a civil enforcement action in another similar case. Finally, in denying the alleged violation of the Act, the defendants argued that the use of the NCPAC postal frank and other references throughout the material

made it quite clear who paid for the communication. In their view, therefore, a specific disclaimer was not necessary.

Court's Ruling

In ruling that the defendants had violated 2 U.S.C. §441d(a)(3), the court said that "the Act and regulations do not provide for disclaimers by inference and the court is consequently of the view that these repeated references to NCPAC which appear within the materials do not satisfy section 441d's disclaimer requirement."

The court also dismissed the defendants' counterclaim. Citing an earlier Supreme Court case, the court held that the initiation of enforcement proceedings does not constitute "final agency action" and is, therefore, not subject to judicial review under the APA. Regarding the defendants' allegation that the FEC exercised selective prosecution against NCPAC, the court ruled that one isolated instance of nonenforcement was not evidence that NCPAC was being singled out for prosecution and that even if it were, defendants produced no evidence demonstrating that this action resulted from an improper motive.

Finally, the court assessed a civil penalty of \$3,000 against the defendants.

FEC v. BANK ONE

On May 20, 1987, the United States District Court, Southern District of Ohio, Eastern Division, approved a consent order between the Commission and the defendants in FEC v. Bank One, Columbus, N.A., et al. (Civil Action No. C2-86-1082). Defendants were: the John Glenn Presidential Committee, Inc., William R. White, treasurer, and Senator John Glenn (Glenn Committee); and Bank One, Columbus, N.A., Ameritrust Company National Association, BancOhio National Bank and the Huntington National Bank (the Banks).

Background

The FEC alleged that \$2 million in loans made by the Banks to the Glenn Committee in 1984 were not made on a basis that assured repayment and, therefore, were in violation of 2 U.S.C. §441b(a). After failing to resolve the matter through the conciliation process, the FEC filed suit in federal court on September 9, 1986. For a summary of the FEC's allegations, see page 6 of the November 1986 Record.

Consent Order

- The consent order contained the following:
- o For purposes of settlement of this litigation only, defendants agreed not to further contest the Commission's allegations that the making
- continued

GCC # 4555

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MAIL ROOM

87 OCT 13 AM 11:15

HERGE, SPARKS, CHRISTOPHER & BIONDI

ATTORNEYS AT LAW

SUITE 200

8201 GREENSBORO DRIVE

MCLEAN, VIRGINIA 22102

(703) 848-4700

October 7, 1987

J. CURTIS HERGE
ROBERT R. SPARKS, JR.
A. MARK CHRISTOPHER
GEORGE V. BIONDI

DONNA LYNN MILLER
CARRIE LEE GLASER

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
8 OCT 14 PM 1:49
TELECOM 371

Ms. Lisa E. Klein
Federal Election Commission
999 E Street, N.W.
Washington D.C. 20463

Re: Federal Election Commission v.
National Conservative Political
Action Committee, et al. Civil
Action No. 85-2898

Dear Lisa:

I enclose this firm's check in the amount of \$3,000.00, representing payment in full of the civil penalty assessed in the referenced action. Rather than use the pay off scheme that you and I had discussed several weeks ago, NCPAC has chosen to pay the entire civil penalty at once.

I look forward to receipt from you of a satisfaction of judgment entered with the court.

Sincerely,

Robert R. Sparks, Jr.
Robert R. Sparks, Jr.

:eat

Enclosure

97040802911

HERGE, SPARKS, CHRISTOPHER & BIONDI
ATTORNEYS AT LAW
TRUST ACCOUNT
8201 GREENSBORO DRIVE, SUITE 200
MCLEAN, VIRGINIA 22102
(703) 848-4700

EXPLANATION
F.E.C. Penalty, dec.
National Conservative Political Action Committee - State Election Fund

68-505/560

3736

PAY THE SUM 3000 DOLLARS DOLLARS

DATE	TO THE ORDER OF
10/1/87	Treasurer of the United States

CHECK AMOUNT
3000.00

THE NATIONAL BANK OF NORTHERN VIRGINIA
11 PIGEON HILL DRIVE STERLING, VIRGINIA 22170

RR Jones

⑈003736⑈ ⑆056005059⑆

⑈2000784⑈

CCC #4555

MEMORANDUM

TO: DEBRA A. TRIMIEW

TO: CECILIA LIEBER

FROM: CECILIA LIEBER

FROM: DEBRA A. TRIMIEW

CHECK NO. 3736 { A COPY OF WHICH IS ATTACHED } RELATING TO

MURCA #85-2898 AND NAME FEC v. NCPAC

WAS RECEIVED ON 10/14/87. PLEASE INDICATE THE ACCOUNT INTO

WHICH IT SHOULD BE DEPOSITED:

/ / BUDGET CLEARING ACCOUNT { 95F3875.16 }
/ ✓ / CIVIL PENALTIES ACCOUNT { 95-1099.160 }
/ / OTHER _____

SIGNATURE Debra A. Trimiew DATE 10/14/87

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
87 OCT 14 PM 1:48



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 1835

DATE FILMED 10/31/90 CAMERA NO. 4

CAMERAMAN AS

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