



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3975

DATE FILMED 11-7-96 CAMERA NO. 4

CAMERAMAN JmH

96043761434

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6000 • FACSIMILE (202) 434-1690

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAY 16 3 27 PM '94

May 11, 1994

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

Dear Commissioners:

The Democratic Congressional Campaign Committee ("DCCC") files this complaint charging violations of the Federal Election Campaign Act of 1971, as amended ("FECA"), 2 U.S.C. §§ 431 et seq., and related regulations of the Federal Election Commission ("FEC"), 11 C.F.R. §§ 100.1 et seq., by U.S. Term Limits.

Respondents have violated the FECA by making prohibited expenditures of corporate funds in connection with a federal election. 2 U.S.C. § 441b; 11 C.F.R. § 114.1. In the alternative, Respondent has failed to register as a political committee and report its receipts and disbursements.

DCCC asks that the FEC conduct an expedited review of this complaint. U.S. Term Limits has indicated that it intends to conduct similar activities across the country during the 1994 election cycle. Resolution of this matter after the 1994 general election would make a mockery of the FECA and its underlying principles.

The Facts

In connection with the special general election to be held in the 6th Congressional District of Oklahoma on May 10, 1994, U.S. Term Limits, a District of Columbia corporation, announced that it was conducting a mail and radio campaign which, by their own estimate, would cost "upwards of \$30,000." (See U.S. Term Limits Press Release attached.)

The press release makes clear the purpose of the organization's campaign. It is entitled "Frank Lucas Signs Voters' Contract/Webber Refuses to Support Term Limits." It quotes Paul Jacob, the organization's Executive Director at length:

[04031-0044/DA941300.014]

96043761435

- "The voters of Oklahoma's sixth district have a clear choice. They can vote for Frank Lucas, a true term limit supporter, or vote for a former congressional staffer dedicated to a career in Congress and opposed to term limits."
- "It is imperative that the voters know who will act on this crucial issue when they reach Washington, and who will join the incumbent political club."
- "Our polling shows that 78 percent of the registered voters in the sixth district want a constitutional amendment for term limits. If they want term limits, then they need to know that only Frank Lucas has taken a pro-term limit stand."

The press release also indicates that the poll taken "showed a plurality of sixth district constituents less likely to re-elect an incumbent who opposes term limits."¹

The release attempts to cloud the true purpose of the campaign by describing its efforts as "voter education" and stating that U.S. Term Limits does not endorse Congressional candidates, a dubious claim, given the remaining text of the release and the materials used in the campaign.

The purpose of the radio advertisements is equally clear. See full text attached. In comparing the positions of the two candidates, the ad states: "Only one candidate for Congress in the Sixth District is for term limits for career politicians . . .". Again, although the advertisement attempts to avoid an election-influencing tone by urging listeners to "convince both candidates to support term limits," the remaining text makes it clear which candidate the voters should choose in the special election.

¹The FEC should also look into whether the polling data was provided to one of the candidates before it was made public. This, of course, would result in an additional violation of the FECA.

The Law

The FEC has reviewed the issues raised by the actions of U.S. Term Limits and has concluded that such corporate spending violates the FECA. In Advisory Opinion 1992-23, the FEC considered facts strikingly similar to those here and concluded that corporate funds could not be used to run ads that expressly advocated the election or defeat of a clearly identified candidate. The analysis of that Opinion, when applied to the facts here, has the same result: a violation of the corporate spending prohibition of the FECA.

In AO 1992-23, the FEC reviewed the advertisements in question with a view toward determining whether the ads contained "express advocacy." The Commission relied on a series of Supreme Court decisions defining this term and setting out the following standards:

- Express advocacy deals with "spending that is unambiguously related to the campaign of a particular federal candidate." Buckley v. Valeo, 424 U.S.C. 1, 80 (1976).
- In determining whether a communication contains express advocacy, you must look to the "essential nature" of the communication. Express advocacy should be found where the communication goes "beyond issue discussion to express electoral advocacy." Federal Election Commission v. Massachusetts Citizens for Life ("MCFL"), 479 U.S.C. 238, 249 (1986).
- Specific words are not required to find express advocacy where the communication "when read as a whole, and with limited reference to external events, [is] susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate." Federal Election Commission v. Furgatch, 807 F.2d 857, 864 (9th Cir.), cert. denied, 484 U.S. 850 (1987).

Applying these standards, the Commission determined that the advertisements contained express advocacy. The FEC acknowledged that the advertisements addressed public issues, but when taken together with the timing of the ads (right

before an election) and the contents of the ads (specific reference to elections; disparaging one candidate and his positions on issues), the Commission concluded that the advertisements went beyond mere issue discussion, and, if paid with corporate funds, would result in a prohibited corporate expenditure.

The application of these standards to the activities of U.S. Term Limits yields the same result: The communications identify specific candidates. The communications were made immediately before an election and specifically mention that "the voters have a clear choice" in that election. The communications favor one candidate over the other.

Even though there are no "magic" express advocacy words ("vote for," "support," "elect"), there can be no other reasonable interpretation than that U.S. Term Limits intended the communications to be "an exhortation against a specific candidate." The press release states that if the voters favor term limits "only Frank Lucas has taken a pro-term limit stand.". There is nothing ambiguous about which candidate U.S. Term Limits would like the voters to choose. The spending by U.S. Term Limits violates the FECA.

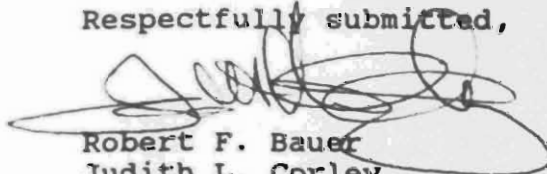
U.S. Term Limits cannot use the exception under MCFL for independent expenditures by a certain limited class of corporations. First, the expenditure could not have been independent under the Commission's regulations, since such expenditures must not be made with the cooperation of or coordination with any candidate. 11 C.F.R. § 109.1. By coordinating the signing of the "voters' contract" on term limits with the candidate, U.S. Term Limits' ability to make independent expenditures on behalf of that candidate is barred. There is the further question whether U.S. Term Limits could even meet the MCFL exemption, which requires that the organization have a clear policy of not accepting donations from incorporated business entities.

Conclusion

On the basis of the foregoing, the DCCC believes it has made a case for expedited review of this matter. The FEC should conduct and prompt and thorough investigation, take all

appropriate steps to remedy the violations alleged in this complaint, and, most importantly, ensure that no further violations occur.

Respectfully submitted,



Robert F. Bauer
Judith L. Corley
Counsel to
Democratic Congressional
Campaign Committee

DISTRICT OF COLUMBIA:

On this 12th day of May, 1994 before me, the undersigned Notary Public, personally appeared Judith L. Corley, who executed the foregoing instrument.

IN WITNESS WHEREOF, I hereunto sign my hand and official seal.

Donna M. Lenthart
Notary Public

My Commission Expires:

2-28-98

Donna M. Lenthart
Notary Public, District of Columbia
My Commission Expires Feb. 28, 1998



News Release

For Immediate Release

May 4, 1994

U.S. Term Limits Unveils Voter Education Program

Contact: Chris Marks
202-393-6440

Frank Lucas Signs Voters' Contract Webber Refuses to Support Term Limits

1914 K Street, NW

Suite 500

Washington, DC

200 005

202-393-6440

600-733-6440

FAX 202-393-6434

Washington, D.C. -- Today, U.S. Term Limits announced that State Representative Frank Lucas, running for Congress in the May 10th special election in Oklahoma's sixth district, has signed the Voters' Contract for a Citizen Congress, while his opponent, Dan Webber, has not. The announcement came as part of U.S. Term Limits' voter education program, designed to convince Webber to sign the Voters' Contract. The program is expected to cost upwards of \$30,000.

"The voters of Oklahoma's sixth district have a clear choice," said Paul Jacob, executive director of U.S. Term Limits in Washington, D.C. "They can vote for Frank Lucas, a true term limit supporter, or vote for a former congressional staffer dedicated to a career in Congress and opposed to term limits."

The Voters' Contract, being distributed to every congressional candidate nationwide, asks prospective members of Congress to support a constitutional amendment limiting members of the U.S. House of Representatives to six years in office, and limiting U.S. Senators to 12 years (consistent with the Oklahoma initiative sponsored by Citizens for Congressional and Legislative Reform). In addition, it asks that they sign, or file if necessary, a discharge petition on the legislation and vote for the amendment when it ultimately reaches the floor.

"It is imperative that the voters know who will act on this crucial issue when they reach Washington, and who will join the incumbent politician club," said Jacob, whose organization does not offer endorsements to congressional candidates. "The Voters' Contract helps determine who is truly committed to the ideal of public service and the enactment of term limits."

Jacob went on to outline an expensive national voter education program being spearheaded by U.S. Term Limits. In Oklahoma's sixth district, the program entails a 50,000 piece mailing to registered voters and includes radio advertisements outlining the two candidates' platforms on the issue of term limits. The program is paid for by the U.S. Term Limits Voter Education Fund.

"Our polling shows that 78 percent of the registered voters in the sixth district want a constitutional amendment for term limits," concluded Jacob. "If they want term limits, then they need to know that only Frank Lucas has taken a pro-term limit stand."

The poll, conducted by Lantz Research Companies in late February, showed a large plurality of sixth district constituents less likely to re-elect an incumbent who opposes term limits.

U.S. Term Limits is a national non-profit organization, dedicated to rallying Americans to limit congressional, state and local terms. For more information or to obtain a complete copy of the poll, please contact Chris Marks at 202-393-6440.

-- 30 --

"TERM LIMITS - it's something you can do"

96043761400

THOMPSON COMMUNICATIONS

CLIENT: U.S. TERM LIMITS
LENGTH: 30
TV/RADIO: RADIO
TITLE: "SOME THINGS ARE CLEAR"

(Audio)

VOICE: BOB MAXWELL
COPYWRITER: THOMPSON
PRODUCER: THOMPSON
DATE: 6/27/94

(Visuals)

SOME THINGS ARE CLEAR.

ONLY ONE CANDIDATE FOR
CONGRESS IN THE SIXTH DISTRICT
IS FOR TERM LIMITS FOR CAREER
POLITICIANS...

FRANK LUCAS SIDES WITH THE
VAST MAJORITY OF US.

LUCAS SUPPORTS TERM LIMITS
AND A TRUE CITIZEN LEGISLATURE.

THE OTHER CANDIDATE, DAN
WEBBER SIDES WITH THE CAREER
POLITICIANS AND OPPOSES TERM
LIMITS.

LUCAS FOR TERM LIMITS.

WEBBER OPPOSED TO TERM
LIMITS.

HELP CONVINCE BOTH
CANDIDATES TO SUPPORT TERM
LIMITS.

PAID FOR BY U.S. TERM
LIMITS.

Communications, Marketing & Media Services

P.O. Box 5 • Marshfield, Missouri 65706 • (417) 569-5428 • FAX (417) 488-7577

96043761421



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MAY 17, 1994

Robert F. Bauer
Judith L. Corley
Counsel to Democratic
Congressional Campaign Committee
607 Fourteenth Street, NW
Washington, DC 20005-2011

Dear Ms. Corley:

This is to acknowledge receipt on May 16, 1994, of your letter dated May 11, 1994. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint meet certain specific requirements. One of these requirements is that a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter was not properly sworn to.

In order to file a legally sufficient complaint, you must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. The preferred form is "Subscribed and sworn to before me on this ____ day of ____, 19__." A statement by the notary that the complaint was sworn to and subscribed before her also will be sufficient. We regret the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

Enclosed is a Commission brochure entitled "Filing a Complaint." I hope this material will be helpful to you should you wish to file a legally sufficient complaint with the Commission.

If you have any questions concerning this matter, please contact me at (202) 219-3410.

Sincerely,

Retha Dixon

Retha Dixon
Docket Chief

Enclosure
cc: U.S. Term Limits

96043761402

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-0000 • FACSIMILE (202) 434-1690

OGC 1401
RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAY 19 1 00 PM '94

May 19, 1994

MUR 3975

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

Dear Commissioners:

The Democratic Congressional Campaign Committee ("DCCC") files this complaint charging violations of the Federal Election Campaign Act of 1971, as amended ("FECA"), 2 U.S.C. §§ 431 et seq., and related regulations of the Federal Election Commission ("FEC"), 11 C.F.R. §§ 100.1 et seq., by U.S. Term Limits.

Respondents have violated the FECA by making prohibited expenditures of corporate funds in connection with a federal election. 2 U.S.C. § 441b; 11 C.F.R. § 114.1. In the alternative, Respondent has failed to register as a political committee and report its receipts and disbursements.

DCCC asks that the FEC conduct an expedited review of this complaint. U.S. Term Limits has indicated that it intends to conduct similar activities across the country during the 1994 election cycle. Resolution of this matter after the 1994 general election would make a mockery of the FECA and its underlying principles.

The Facts

In connection with the special general election to be held in the 6th Congressional District of Oklahoma on May 10, 1994, U.S. Term Limits, a District of Columbia corporation, announced that it was conducting a mail and radio campaign which, by their own estimate, would cost "upwards of \$30,000." (See U.S. Term Limits Press Release attached.)

The press release makes clear the purpose of the organization's campaign. It is entitled "Frank Lucas Signs Voters' Contract/Webber Refuses to Support Term Limits." It quotes Paul Jacob, the organization's Executive Director at length:

[04031-0044/DA941300.014]

- "The voters of Oklahoma's sixth district have a clear choice. They can vote for Frank Lucas, a true term limit supporter, or vote for a former congressional staffer dedicated to a career in Congress and opposed to term limits."
- "It is imperative that the voters know who will act on this crucial issue when they reach Washington, and who will join the incumbent political club."
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The release attempts to cloud the true purpose of the campaign by describing its efforts as "voter education" and stating that U.S. Term Limits does not endorse Congressional candidates, a dubious claim, given the remaining text of the release and the materials used in the campaign.

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¹The FEC should also look into whether the polling data was provided to one of the candidates before it was made public. This, of course, would result in an additional violation of the FECA.

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U.S. Term Limits cannot use the exception under MCFL for independent expenditures by a certain limited class of corporations. First, the expenditure could not have been independent under the Commission's regulations, since such expenditures must not be made with the cooperation of or coordination with any candidate. 11 C.F.R. § 109.1. By coordinating the signing of the "voters' contract" on term limits with the candidate, U.S. Term Limits' ability to make independent expenditures on behalf of that candidate is barred. There is the further question whether U.S. Term Limits could even meet the MCFL exemption, which requires that the organization have a clear policy of not accepting donations from incorporated business entities.

Conclusion

On the basis of the foregoing, the DCCC believes it has made a case for expedited review of this matter. The FEC should conduct a prompt and thorough investigation, take all

96043761406

Federal Election Commission
May 19, 1994
Page 5

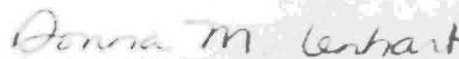
appropriate steps to remedy the violations alleged in this complaint, and, most importantly, ensure that no further violations occur.

Respectfully submitted,



Robert F. Bauer
Judith L. Corley
Counsel to
Democratic Congressional
Campaign Committee

SUBSCRIBED AND SWORN to before me this 19th day of
May, 1994.



Notary Public

My Commission Expires:

2-28-98

Donna M. Lanthier
Notary Public, District of Columbia
My Commission Expires Feb. 28, 1998

26043761407



News Release

For Immediate Release

May 4, 1994

U.S. Term Limits Unveils Voter Education Program

Contact: Chris Marks
202-393-6440

Frank Lucas Signs Voters' Contract Webber Refuses to Support Term Limits

Washington, D.C. — Today, U.S. Term Limits announced that State Representative Frank Lucas, running for Congress in the May 10th special election in Oklahoma's sixth district, has signed the Voters' Contract for a Citizen Congress, while his opponent, Dan Webber, has not. The announcement came as part of U.S. Term Limits' voter education program, designed to convince Webber to sign the Voters' Contract. The program is expected to cost upwards of \$30,000.

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"Our polling shows that 78 percent of the registered voters in the sixth district want a constitutional amendment for term limits," concluded Jacob. "If they want term limits, then they need to know that only Frank Lucas has taken a pro-term limit stand."

The poll, conducted by Lantz Research Companies in late February, showed a large plurality of sixth district constituents less likely to re-elect an incumbent who opposes term limits.

U.S. Term Limits is a national non-profit organization, dedicated to rallying Americans to limit congressional, state and local terms. For more information or to obtain a complete copy of the poll, please contact Chris Marks at 202-393-6440.

-- 30 --

"TERM LIMITS — It's something you can do!"

96043761408

THOMPSON COMMUNICATIONS

CLIENT: U.S. TERM LIMITS
LENGTH: 30
TV/RADIO: RADIO
TITLE: "SOME THINGS ARE CLEAR"

(Audio)

VOICE: BOB MAXWELL
COPYWRITER: THOMPSON
PRODUCER: THOMPSON
DATE: 4/27/94

(Visuals)

SOME THINGS ARE CLEAR.

ONLY ONE CANDIDATE FOR
CONGRESS IN THE SIXTH DISTRICT
IS FOR TERM LIMITS FOR CAREER
POLITICIANS...

FRANK LUCAS SIDES WITH THE
VAST MAJORITY OF US.

LUCAS SUPPORTS TERM LIMITS
AND A TRUE CITIZEN LEGISLATURE.

THE OTHER CANDIDATE, DAN
WEBBER SIDES WITH THE CAREER
POLITICIANS AND OPPOSES TERM
LIMITS.

LUCAS FOR TERM LIMITS.

WEBBER OPPOSED TO TERM
LIMITS.

HELP CONVINCE BOTH
CANDIDATES TO SUPPORT TERM
LIMITS.

PAID FOR BY U.S. TERM
LIMITS.

Communications, Marketing & Media Services

P.O. Box 5 • Marshfield, Missouri 65706 • (417) 868-6428 • FAX (417) 868-7571

96043761409



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MAY 26, 1994

Robert F. Bauer, Esq.
Judith L. Corley, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-1690

RE: MUR 3975

Dear Mr. Bauer and Ms. Corley:

This letter acknowledges receipt on May 19, 1994, of your complaint, filed on behalf of the Democratic Congressional Campaign Committee, alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3975. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure
Procedures

96043761500



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MAY 26, 1994

C.A. Wheeler, Jr., Treasurer
Lucas for Congress
P.O. Box 26825
Oklahoma City, OK 73126

RE: MUR 3975

Dear Mr. Wheeler:

The Federal Election Commission received a complaint which indicates that Lucas for Congress ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3975. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

96043761501

C.A. Wheeler, Jr., Treasurer
Lucas for Congress
Page 2

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

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

96043761502



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 26, 1994

Norman Leahy, Registered Agent
U.S. Term Limits Foundation
216 5th Street, NE
Washington, DC 20002

RE: MUR 3975

Dear Mr. Leahy:

The Federal Election Commission received a complaint which indicates that U.S. Term Limits Foundation and its Executive Director may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3975. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against U.S. Terms Limits Foundation and its Executive Director, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

96043761503

Norman Leahy, Registered Agent
U.S. Term Limits Foundation
Page 2

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

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

96043761504



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 26, 1994

Norman Leahy, Registered Agent
U.S. Term Limits
216 5th Street, NE
Washington, DC 20002

RE: MUR 3975

Dear Mr. Leahy:

The Federal Election Commission received a complaint which indicates that U.S. Term Limits and its Executive Director may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3975. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against U.S. Term Limits and its Executive Director in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

96043761505

Norman Leahy, Registered Agent
U.S. Terms Limits
Page 2

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

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

96043761506

OGL # 1545

**R. DAVID LIGHTFOOT
ATTORNEY AT LAW**

(405)721-8298

8104 NORTHWEST 122ND
OKLAHOMA CITY, OKLAHOMA 73162

Fax (405)720-0113

June 8, 1994

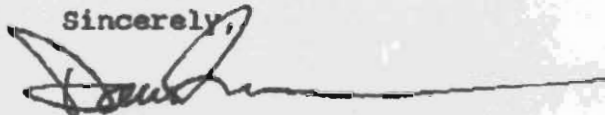
Federal Election Commission
Washington, D.C. 20463ATTN: Office of General Counsel
Ms. Mary L. Taksar, Esq.

RE: MUR 3975

Dear Ms. Taksar:

The campaign is currently tying up books and making last minute reports and filings as well as establishing a congressional office. We respectfully request an additional fifteen (15) days to respond to the reference complaint.

Sincerely,



David Lightfoot

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 8 11 12 AM '94

96043761507

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3975

NAME OF COUNSEL: David Lightfoot
ADDRESS: 8104 N.W. 122nd
Oklahoma City, OK 73162
TELEPHONE: 405-721-8298

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.

6-7-94
Date

Frank D. Lucas
Signature

RESPONDENT'S NAME: Lucas for Congress
ADDRESS: 215 Dean A. McGee
Suite 109
Oklahoma City, OK 73102
HOME PHONE: 405-983-2771
BUSINESS PHONE: 405-231-5511

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUN 8 11 17 AM '84

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 13, 1994

David Lightfoot, Esq.
8104 N.W. 122nd Street
Oklahoma City, OK 73162

RE: MUR 3975
Lucas for Congress and
C.A. Wheeler, as Treasurer

Dear Mr. Lightfoot:

This is in response to your letter dated June 8, 1994, requesting an extension of fifteen days to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on June 28, 1994.

If you have any questions, please contact Joan McEnery at (202) 219-3400.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

96043761509

**R. DAVID LIGHTFOOT
ATTORNEY AT LAW**

8104 NORTHWEST 122ND
OKLAHOMA CITY, OKLAHOMA 73162

(405) 721-8298

RECEIVED
FEDERAL ELECTION
COMMISSION
ADMINISTRATIVE DIVISION

JUN 21 11 36 AM '94 FAX (405) 720-9113

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 21 2 36 PM '94

June 17, 1994

Federal Election Commission
Washington, D.C. 20463

ATTN: Ms. Mary L. Taksar, Esq.
Office of General Counsel

RE: MUR 3975

Dear Ms. Taksar:

The Lucas for Congress Committee is in receipt of a copy of the complaint filed against the U.S. Term Limits Organization. Since it was not named as a Respondent, the Committee was surprised to receive a copy of the complaint.

We acknowledge that we signed the pledge supporting term limits, but such activity does not constitute a contribution under the Act. It is typical for organizations to inquire with regards to a candidate's positions.

We have not received notice of any reportable contribution from U.S. Term Limits and therefore have reported none.

Sincerely,



David Lightfoot

DL:11

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 462-0000 • FACSIMILE (202) 462-1000

RECEIVED
FEDERAL ELECTION
COMMISSION

1204 N STREET, N.W.

JUN 10 11:40 AM '94

June 10, 1994

MUR 3975

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

Dear Commissioners:

Last month the Democratic Congressional Campaign Committee ("DCCC") filed a complaint against U.S. Term Limits. Copy attached. This letter is intended to supplement that initial complaint.

The U.S. Term Limits activities described in that complaint were not isolated, limited only to the Oklahoma special election, but rather the first in a pattern of continuing violations of the federal campaign laws. Moreover, evidence indicates that other organizations, including Americans for Tax Reform and the Christian Coalition, among others, are apparently engaging in similar tactics designed to influence federal elections without complying with the source restrictions, contribution limits and disclosure requirements of the Federal Election Campaign Act.

Kentucky Special Election: U.S. Term Limits

The activities of U.S. Term Limits in advocating the election of a particular candidate in an election continued in the Kentucky special election for the 2nd Congressional District. As the enclosed news stories show, the organization undertook a similar ad campaign against the Democratic nominee in this special election.

U.S. Term Limits has stated that it intends to continue its activities in future elections. The press release issued by the organization in connection with the Oklahoma special election described a "national" effort. As described below, their efforts are apparently part of a group of organizations that are apparently using the same techniques to influence federal elections.

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OFFICE OF GENERAL
COUNSEL

JUN 10 2 40 PM '94

[04031-0044/DA941590.032]

Discussion

These organizations are conducting what amounts to a "shadow" campaign on behalf of one of the candidates in these elections. As the news stories set out, the spending by these groups is widely perceived to have had a profound impact on the outcome of the elections.

The activities undertaken -- advertising and mailings advocating one candidate over another -- are financed without regard to lawful sources, contribution limits or disclosure requirements of federal law. Yet, the other participants in the election, candidates, party committees, PACs, must comply fully with these laws or face enforcement action by the Commission.

This case does not fall into the "gray" areas of the law. In one of the very earliest cases to consider the "express advocacy" standard, Federal Election Commission v. Central Long Island Tax Reform Immediately Committee et al., 616 F.2d 397 (2d Cir. 1980), the court considered whether a voter guide produced by CLITRIM contained express advocacy. The standard applied by the court to find that it did not contain such advocacy shows a clear distinction between CLITRIM's activities and those of U.S. Term Limits and the other organizations:

The CLITRIM Bulletin of Fall, 1976, contains nothing which could rationally be termed express advocacy. The nearest it comes to expressly calling for action of any sort is its exhortation that '[i]f your Representative consistently votes for measures that increase taxes, let him know how you feel. And thank him when he votes for lower taxes.' Neither this nor the voting chart calls for anyone's election or defeat. Indeed, a reader of the pamphlet could not find any indication, express or implied, of how TRIM would have him or her vote, without knowing the positions of the incumbent's opponent. There is no reference anywhere in the Bulletin to the congressman's party, to whether he is running for re-election, to the existence of an election or the act of voting in any election' nor is there anything approaching an unambiguous statement

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in favor of or against the election of [the
congressman].

The standards for express advocacy set out by the courts (including those described in the DCCC's first complaint) can only result in the determination that express advocacy is present, and, as a result, the organizations in question have made contribution and expenditures in violation of the campaign law.

Need for Injunctive Relief

The actions of U.S. Term Limits in Oklahoma and in Kentucky demonstrate the organization's commitment to a continuing course of unlawful conduct in support of its candidates. They have announced that they intend to practice this tactic in other Congressional districts this year.

Upon information and belief other organizations have practiced and will continue to practice the same evasions of the campaign laws in House and possibly other federal races this year. Organizations such as the Christian Coalition and Americans for Tax Reform were active in Kentucky with advertising, mailings and other GOTV activities conducted outside the requirements of the FECA. While DCCC does not have possession of all of the materials used for these efforts, it does appear from press accounts, and not withstanding the denials of the organizations, that they, too, are utilizing this newest generation of "soft" money gambits to avoid the requirements of the campaign laws.

For this reason, the Commission should act immediately to address both the activities that have occurred to date and those which by the profession of these organizations can be expected in other races this year. Should the Commission treat this as a "normal" enforcement matter, requiring only routine case processing, these organizations will receive a clear signal and encouragement to ignore federal campaign finance controls in the pursuit of electoral victory for the candidates they support.

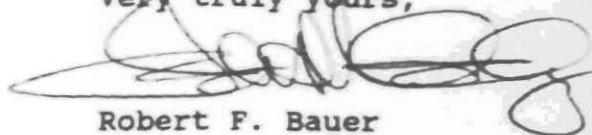
Conclusion

The Commission must act swiftly to prevent the continuing violations of law. The general election is only five months away -- primary elections are scheduled almost weekly until September. Any effort to resolve this complaint through the

normal compliance procedures of the Commission will render the eventual decision made by the Commission moot. The Commission has the authority, under 2 U.S.C. § 437g, to expedite the review of a complaint and to seek injunctive relief or a restraining order to prevent just such continuing violations. The DCCC asks that the Commission take these steps to ensure meaningful enforcement of the law.

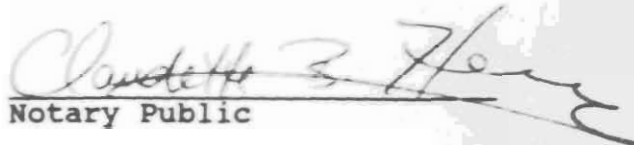
If the Commission cannot act in a timely manner, it should dismiss the complaint and allow the DCCC to seek a judicial remedy. The Commission can exercise its prosecutorial discretion to dismiss a case which, for want of four votes favoring the pursuit of injunctive relief, it acknowledges it cannot pursue in a timely fashion toward a meaningful remedy. This is the threshold question the Commission should decide: Does it wish to proceed on an equitable basis to seek injunctive relief against expected recurring violations? Should the Commission conclude that it cannot, it may nonetheless fulfill the intention of Congress that private party complainants may act where the Commission is unable to do so, and clear the way for a federal district court on appeal of the complainant to consider the violations in question and their suitability for the application of equitable remedies.

Very truly yours,



Robert F. Bauer
Judith L. Corley
Counsel for DCCC

Subscribed and sworn to before me this 10th day of June, 1994.


Notary Public

My Commission Expires:

6/30/98

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May 17, 1994, Tuesday - LATE KENTUCKY Edition

SECTION: NEWS; Pg. 1B

LENGTH: 1267 words

HEADLINE: LEWIS, OTHERS TAKE AIM AT PRATHER IN 2ND DISTRICT RACE CLINTON
GOVERNMENT; ADMINISTRATION

BYLINE: AL CROSS

BODY:

Republican nominee Ron Lewis continued to play offense while Democrat Joe Prather remained on defense yesterday as next Tuesday's special election for Congress in the 2nd District heated up again.

While Lewis was unveiling a new TV campaign financed with more than \$90,000 from national Republican sources, Prather was targeted by the national term-limits campaign -- and faced the potential of similar radio-commercial attacks from a national anti-tax group.

Prather yesterday signed two of the tax pledges demanded by Americans for Tax Reform, which Lewis had challenged him to sign at a forum Saturday in Owensboro, but the group said it probably would still make Prather the target of a radio campaign if he doesn't sign a similar pledge on health care today.

Prather, who is refusing out-of-state and party contributions but has put \$50,000 of his own into the race, said he is now the financial underdog in the race to fill the vacancy created by the death of Democrat William Watcher of Bowling Green.

In an effort to respond, the once heavily favored Prather ordered a new TV commercial and scheduled a news conference in Louisville today. The district includes more than 50,000 people in southern and eastern Jefferson County.

In a telephone interview, Prather said his record on taxes and his stance toward President Clinton are being distorted by Lewis.

"Anyone who has ever known Joe Prather knows that he's a fiscal conservative," Prather said. "I've always insisted we get a dollar's worth of value for a dollar spent."

Lewis' ads say Prather voted to raise taxes and fees more than 40 times during 11 of his 19 years as a state legislator, and say he and Clinton are both professional politicians who cut state-government deals for friends.

As the ad makes that charge, it displays the word "Whitewater" over Clinton's face and "no-bid contracts" over Prather's.

State Republican Chairman Terry Carmack said the ad refers to the state's main depository banking contract, which Prather, as finance secretary, renewed with Farmers Bank and Capital Trust Co. of Frankfort in March 1992 at about

the same time Gov. Brereton Jones was refinancing more than \$5 million in personal loans at the bank, to which many of his campaign contributors were connected.

Prather said at the time that he and Jones never discussed the matter and that he was unaware of Jones' statement while running for governor that the contract would be rebid, not renewed as the contract allowed.

Lewis' second round of ads, which have not yet been televised, make little mention of Prather and focus on Clinton, who lost the district in 1992 while carrying the state. "If you want to send a message to Bill Clinton, send me to Congress," Lewis concludes in one of the new ads.

Carmack said the National Republican Congressional Committee is buying Lewis \$58,600 worth of TV time for the new ads.

That is twice the normal legal maximum, but Lewis can double-dip because he is also on the May 24 primary ballot for the nomination for a full term. Bruce Bartley of Glasgow is also on the ballot, but has withdrawn, removing any obstacle to party contributions designated for the primary.

The GOP congressional committee also gave Lewis \$5,000, the legal maximum for a direct contribution for a single election.

The party's national senatorial committee, taking an unusual interest in a House race, gave \$10,000, the same as the state Republican Party.

Several congressional Republicans gave \$1,000 each, individually or through their campaign committees. Senate Minority Leader Robert Dole's political action committee gave \$2,500. (Only contributions of \$1,000 or more must be reported at this stage of a campaign.)

All told, Lewis was benefiting from at least \$91,100 in new Republican money. The contributions buttress Carmack's insistence that Clinton's unpopularity and recent GOP gains in the Democratic district make it winnable for Lewis in the expected light turnout.

Carmack noted that Bartley got almost 40 percent of the vote against Natcher in 1992 despite running a very limited campaign. "That tells me there's a pretty good base of people there who want to vote for a conservative," he said.

Prather picked up another conservative credential yesterday as he signed two pledges proffered by **Americans for Tax Reform** -- one to oppose a national sales or value-added tax, the other to oppose any effort to raise income taxes or to scale back deductions and credits without matching reductions in tax rates.

Carmack said Lewis' pressure prompted Prather to sign the pledges, but Prather's campaign manager, Mike Johnson, said Prather hadn't had time to study the pledges and discuss them with Grover Norquist, the group's president, until yesterday.

Norquist said the group probably would still run radio commercials if Prather doesn't sign its pledge to vote against any health-care legislation that "mandates costs . . . rations health care or establishes price controls; increases taxes under any name or guise; or restricts or limits choices,"

including insurance. Lewis has signed the pledge.

Prather opposes limits on congressional terms, and that will make him the target of an advertising campaign by U.S. Term Limits, the group's executive director said yesterday. Paul Jacob said the group would spend up to \$20,000.

The group ran a similar campaign against the Democrat running in this month's special congressional election in Oklahoma. The Democrat lost. The Democratic Congressional Campaign Committee filed a complaint with the Federal Election Commission yesterday questioning the legality of the campaign.

GRAPHIC: PHOTOS (2) Lewis ; Prather

LANGUAGE: English

LOAD-DATE-MDC: May 18, 1994

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May 24, 1994, Tuesday - METRO Edition

SECTION: NEWS; Pg. 8B

LENGTH: 1014 words

BYLINE: AL CROSS GROUPS

BODY:

Voters in the 2nd District will elect a congressman today amid intense efforts by Republican Ron Lewis, Democrat Joe Prather and others to get out the vote in the special election to fill the vacancy created by the death of Democrat William Natcher.

Both campaigns took issue with the role of outside groups: Prather questioned a 90,000-copy epistle from the **Christian Coalition**, and Lewis objected to The Kentucky Education Association's pro-Prather mailing to the district's 5,400 KEA members.

3 The **Christian Coalition** did not advocate the election of Lewis, a Baptist minister and Christian bookstore owner, in a flier that described in one or two words the candidates' positions on 10 issues ranging from term limits to school prayer.

1 The Prather campaign said the flier described his position on federal firearm registration incorrectly -- saying he "supports" it, when he wants to register only assault weapons. Coalition spokesman Mike Russell said the characterization was fair.

3 Prather's campaign manager, Mike Johnson, also questioned the flier's description as "unclear" of Prather's positions on income-tax increases and tax credits that could be used for private education, an idea that KEA opposes.

0 Prather's letter to the coalition said public schools should have priority for public funds, but "I would never rule out the possibility of providing targeted assistance for students who attend private schools, if our resources would allow it."

He also wrote, "I do not support any increase in income taxes or income-tax rates for Americans who already pay more than their fair share of the cost of running our country."

Russell said that Prather's replies were in fact unclear, and that his choice to answer with a letter instead of simple responses, as the group requested, "always makes it more difficult for us to ascertain a candidate's positions."

Russell declined to provide a copy of the questionnaire.

Prather's campaign manager also took issue with insertion of the flier in church bulletins. He said Lewis and the coalition were trying "to use the churches for political gain."

Lewis said he didn't have any specific knowledge of the flier in advance, but he assumed one would go out because the Christian Coalition does that in all races.

Actually, Russell said that decision depends on circumstances and the interest of coalition members in a state. He said about 75,000 copies of the flier were sent to churches and another 10,000 to 15,000 "to various databases of conservative voters."

More were distributed at bookstores and "family events," he said, and "there is some effort to get grass-roots activists out there to do neighborhood distributions."

The KEA mailing, Lewis said, undercut Prather's claim that he is not obligated to special interests because he isn't taking money from political action committees and non-Kentuckians.

"He's not standing on what he said he was going to do," Lewis said.

Officials of KEA and the Prather campaign said the campaign was unaware of the mailing until it was going out. "We said yahoo, but we haven't encouraged them to do it or asked them to do it," Johnson said. He said Prather, even if he wins by just a small margin, would be no more beholden to KEA than to other supporters who are trying to get out the vote for him.

"We'll take the help of any Kentucky teachers who want to send a letter for us," he said. "That's small potatoes, considering the special-interest money that's coming to the other campaign."

Lewis said he is not obligated to PACs that gave to his campaign because he did not solicit their money. A solicitation was made on his behalf by the National Republican Congressional Committee, which has underwritten much of his campaign.

On another point, Lewis said GOP leaders have assured him he will be on the Agriculture Committee if he wins the November general election for the next full term. That was confirmed by Kansas Rep. Pat Roberts, the panel's top Republican.

Lewis spent the day traveling to every corner of the district, ending with an evening rally in Leitchfield. Prather said going on the road "would have made a little more pizazz," but he chose to make phone calls to supporters in an effort to mobilize traditional Democratic turnout.

He told Owensboro Mayor David Adkisson, "We could have made a big splash, but I think it's more effective to stay in touch with our key people in the counties."

LANGUAGE: English

LOAD-DATE-MDC: May 25, 1994

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June 5, 1994, Sunday - METRO Edition

SECTION: NEWS; Pg. 1A

LENGTH: 1787 words

HEADLINE: CONSERVATIVE ADVOCACY GROUPS PROPELLED LEWIS

BYLINE: AL CROSS

BODY:

Republican U.S. Rep. Ron Lewis got massive help from conservative interest groups in winning last month's special election in the 2nd District, so much that it could have made the difference in his defeat of Democrat Joe Prather.

The Christian Coalition and the National Rifle Association inundated the district with literature and telephone calls, and there was last-minute advertising from Ross Perot's political organization and groups that favor term limits and oppose taxes.

The activity is part of a national trend, say nonpartisan observers and Democratic campaign specialists.

Mike Casey, a spokesman for the House Democratic campaign committee, also questioned whether the conservative advocacy groups are "skirting the law" that bars such groups from coordinating their activities with candidates or party organizations.

Whatever the groups did in the 2nd District, "those are some really pretty hefty outside players," said Ellen S. Miller, executive director of the Center for Responsive Politics, a Washington group that monitors campaign activity. "To have them all coalesce on one side of this race was bound to have a major impact."

Miller, a Louisville native, said the effect in the lightly voted race could have been as much as 10 percentage points, which was Lewis' margin of victory. Christian Coalition spokesman Mike Russell said he wouldn't disagree.

Of the district's 343,397 registered voters, only 72,838, or 21.2 percent, cast ballots in the election to fill the vacancy created by the death of Democrat William Natcher.

The number of voters was outstripped by the number of messages that descended on the district in the last 10 days of the race, when Prather's early advantage dissolved in unexpectedly heavy television advertising from the national Republican Party.

The candidates' pre-election reports indicated that Lewis and the Republicans outspent Prather by about \$40,000. The outside groups, whose activity doesn't fall under contribution limits as long as it is independent of a campaign, said they spent less than \$50,000 total.

Such outlays, however, can have more impact than spending by a candidate, since adherents to a group put more trust in its messages, people in both parties said. They cited the NRA as an example.

The NRA has 15,000 members in the 2nd District and told all of them by mail that Lewis opposed any form of gun control while Prather supported registration of assault weapons and the new waiting period to buy a handgun. Most members also got a call "to make sure they got out and voted for Ron Lewis," said Tanya Metaksa, director of the NRA's political unit.

She said the group did the same thing for 1st District Rep. Tom Barlow, D-Paducah, who easily won what was thought would be a close race with state Sen. Henry Lackey of Henderson. Lackey and Barlow didn't differ on gun issues, but interest groups usually favor incumbents in such cases.

Metaksa said that if NRA members see a clear difference between candidates, as in the 2nd, 60 percent to 70 percent go to the polls. Both campaigns in the 2nd said the NRA was probably the most influential outside group, though Prather's campaign manager, Mike Johnson, said the gun issue was distorted by the NRA and the Christian Coalition.

The coalition said in an issues flier placed in mailboxes and church bulletins that Prather supported "registration of firearms" -- incorrectly implying all firearms.

Bill Hancock, pastor of the conservative and politically interested Highview Baptist Church in southern Jefferson County, said he didn't distribute the flier because of past experience with such material. "There have been times when it has been inflammatory, and we would prefer more objectivity," he said.

The Christian Coalition, founded by broadcaster and 1988 presidential candidate Pat Robertson, has almost 20,000 members in Kentucky, spokesman Russell said. He said the group called about 3,000 members in the 2nd District to get out the vote but did not mention candidates in the calls. Still, such calls could have been important because polls have shown that people who say they are evangelicals or are "born again" are less likely to vote than the general population.

Also targeted in the final days were the 33,192 people in the district who voted for Perot for president in 1992. The Kentucky chapter of his group, United We Stand America, ran a quarter-page ad in The Courier-Journal the day before the election to say that Prather had refused to answer its questionnaire or attend its forums, while Lewis had, and that Lewis favored term limits and deficit reduction.

A United We Stand news release said the ad was aimed at members, but officials of the group said that it also targeted Perot voters and the general public.

Miller said a pro-Lewis message to the general public may have violated the group's tax-exempt status, but Perot spokeswoman Sharon Holman said United We Stand "can endorse candidates as long as it's not our primary activity."

Legal questions have been raised about the radio campaigns of US Term Limits, a corporation that targeted Prather and the Democrat who lost a special election in Oklahoma two weeks earlier. The ads gave candidates' positions on term limits and urged pressure on the Democrat to support the idea.

Before the Kentucky ads began, the Democratic Congressional Campaign Committee filed a complaint with the Federal Election Commission alleging that the Oklahoma ads were illegal because corporate money was used in a federal election.

Other groups may have been involved. The Prather campaign said it got many reports of phone calls that claimed to be for Prather but raised a point to Prather's disadvantage -- that he supported the "don't ask, don't tell" policy on gays in the military. "We ran no phone bank highlighting that issue," Prather adviser Larry Hayes said.

On the other side, Republican State Chairman Terry Carmack said calls made for Prather portrayed Lewis as a minister more like Jimmy Swaggart than Billy Graham. Johnson, the Prather campaign manager, said he didn't recall Swaggart's name being used.

Such "dirty tricks" have long been played in campaigns, but independent activity by outside groups hasn't been so heavy since the early 1980s, said Miller and Casey, the House Democratic campaign spokesman.

"This is proof positive that we've got a trend going in the country, where what in effect are wholly owned subsidiaries of the Republican National Committee . . . on the far right are running shadow campaigns that mirror and support local Republican campaigns," Casey said.

Carmack replied, "Any organization has a right to be involved in the political process," within legal limits. "I find it surprising that the national Democratic Party would find that fewer people involved in the process is better."

GROUPS THAT HELPED ELECT LEWIS

Christian Coalition, Chesapeake, Va.

- 70,000 "voter guides" in church bulletins the Sunday before the election; 10,000 to 15,000 guides mailed to evangelical voters and distributed at bookstores and events; 3,000 phone calls to evangelical voters; estimated cost \$10,000.

National Rifle Association, Washington, D.C.

- Pro-Lewis mailing to the 15,000 NRA members in the district the week before the election; pro-Lewis phone calls to members; estimated cost \$12,000; also gave Lewis campaign \$9,900 directly in its final week.

United We Stand America, Dallas and Louisville

- \$2,000 newspaper ad the day before the election said that Lewis responded favorably to the organization's questionnaire and that he attended forums,

while his opponent did not.

US Term Limits, Washington, D.C.

- \$15,513 for radio and newspaper ads in final days saying Lewis backed limits and his opponent did not.

Americans for Tax Reform, Washington, D.C.

- \$3,000 for radio ads in final week noting that Lewis signed health-care pledge while his opponent did not.

GRAPHIC: INFORMATIONAL GRAPHIC OF GROUPS THAT HELPED ELECT LEWIS

LANGUAGE: English

LOAD-DATE-MDC: June 7, 1994

96043761523

**U.S. TERM LIMITS SAYS IT IS SUBJECT OF DCCC 'WITCH-HUNT';
GROUP PLEDGES TO CONTINUE VOTER EDUCATION PROGRAM**

WASHINGTON, May 16 /PRNewswire/ -- U.S. Term Limits issued the following:

Today, U.S. Term Limits angrily responded to a complaint filed with the Federal Election Commission by the Democratic Congressional Campaign Committee (DCCC), charging that ille corporate donations were made in last week's Oklahoma special election. U.S. Term Limits expended close to \$30,000 in an effort to inform the voters of Oklahoma's sixth congressional district where the two candidates stood on the issue of term limits. The expenditures were made through the U.S. Term Limits Voter Education Fund.

"Once again, it's the people on one side and a legion of lawyers on the other. While term limits continues to win at the ballot box, the establishment continues to respond with outlandish legal attacks," said Paul Jacob, executive director of U.S. Term Limits in Washington. "The DCCC should be trying to get their candidates on the right side of this issue, rather than expending their energy and resources attempting to thwart the will of the overwhelming majority of Americans."

In the special election to replace retiring Rep. Glenn Englis (D-Okla.), limit supporter and Republican candidate Frank Lucas narrowly defeated term limit opponent and Democratic candidate Dan Webber.

"Our campaign to educate the voters in Oklahoma was exactly what the courts have defined as permissible issue discussion," said Jacob. "I am surprised that the DCCC would attempt to impede on our First Amendment right to undertake such activities."

The expenditure came in the form of a mailing to 50,000 households within the district and radio advertisements which outlined the two candidates positions and asked voters to contact Webber and urge him to sign the U.S. Term Limits Voters' Contract for a Citizen Legislature.

"Candidates who are against term limits, Republicans and Democrats alike, are going to have to answer to the voters in 1994," said Jacob. "It is our mission to make sure the voters are informed and educated before they go to the ballot box."

Jacob went on to describe similar expenditures to be made in Kentucky's second congressional district later this week, where term limit supporter Ron Lewis is taking on term limit opponent and state Sen. Joe Prather, for the right to replace the recently deceased William Natcher.

"We will not let this witch-hunt by the DCCC distract us from our efforts," concluded Jacob. "I guarantee they won't be crying foul when one of their candidates finds him or herself on the right side of this crucial issue."

U.S. Term Limits is a national non-profit organization, dedicated to rying Americans to limit congressional, state and local terms.

-0- 5/16/94

/NOTE TO EDITORS: For more information or to arrange an interview, please call the contact below./

/CONTACT: Chris Marks of U.S. Term Limits, 202-393-6440/

CO: U.S. Term Limits
ST: District of Columbia, Oklahoma
IN:
SU: LEG

96043761524

Editorial

A PAC Is a PAC...

A PAC is not a PAC is not a PAC. Just ask Rep. Newt Gingrich (R-Ga), whose controversial committee GOPAC is being sued by the Federal Election Commission for its refusal to accept fines and punishment for funds raised and spent in connection with a 1989 fundraising letter. Or the leaders of U.S. Term Limits, the national pro-term limits group that ran radio ads and sent direct mail touting Republican Frank Lucas before the recent Oklahoma special election. The Democratic Congressional Campaign Committee is now complaining, saying the activity amounted to an illegal corporate contribution since U.S. Term Limits is not registered as a PAC and did not disclose how much it spent in Oklahoma or where the money came from.

The courts and the FEC will decide the merits of these cases. But they have one very important fact in common: They represent a murky area in federal campaign laws that Congress ought to clear up in the campaign finance reform bill its leaders still pledge to finish this year. The stakes are high. Ever since the post-Watergate reforms to the campaign finance system for presidential and Congressional elections, the guiding principle has been disclosure, disclosure, and more disclosure of political money. Individuals and groups can say whatever they want in the context of a campaign. What they can't do is spend money without disclosure "for the purpose of influencing a federal election," according to the Federal Election Campaign Act.

Yet GOPAC and U.S. Term Limits, which are among many non-profit groups that claim they do not engage in specific campaign activity, seemingly operate between the cracks in the campaign finance system. The GOPAC letter at issue contained blistering attacks on House Democrats and asserted that contributions to GOPAC would help "break the Democrats' stranglehold on power." The reply form specifically suggested contributions would go toward "building a new Republican majority in the House of Representatives." Eventually, the letter brought in \$275,000 for GOPAC, but since none of it was actually contributed to GOP candidates, Gingrich is claiming the letter didn't really constitute federal election activity.

As for U.S. Term Limits, the group's executive director says that "we didn't tell anyone to vote for one candidate or the other." The DCCC insists that claim strains credibility: Anyone hearing the radio ad, airing in the week before the Oklahoma special, wouldn't have had a hard time figuring out which candidate U.S. Term Limits wanted them to vote for. "Some things are clear," said the group's ad. "Only one candidate for Congress in the 6th district is for term limits for career politicians. Frank Lucas sides with the majority of us."

Both GOPAC and U.S. Term Limits insist there's a difference between what they did and "expressive advocacy" — the line in the sand the courts have drawn to delineate where the FEC's jurisdiction starts and unrestricted, undisclosed spending stops. This is where Congress can step in, offering statutory clarification so that in the future, whether it's a national GOP fundraising campaign to retake control of the House or a last-ditch effort to bring another term-limits supporter to Congress, the public will know who's bringing them the message and how much it's costing.

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somehow to offset with another from tax increases or spending. The assumption here is that taxpayer behavior never changes when taxes do. During the Republican years, this weird notion was used by Congress to defeat cuts in capital gains and other taxes by assuming they would always "cost" the government revenue, dollar for dollar.

The nuttiness of this idea is finally clear under the new GATT accord.

So here's where we are: A free-trader like Rosty risks undermining an historic trade agreement because he's got his computers programmed to order up \$14 billion to "pay" for it. And rather than joining with its natural trade allies, the Republicans or Democratic trade moderates, to seek a GATT waiver of this budget strait-jacket, the Clinton Administration once again sides with Congressional liberals. Some policy. *70 July*

The U.S. is not alone in worrying about rights in China. Other Western nations have made their concern plain. But nowhere in the world is that concern felt more acutely than in Hong Kong. More than 15% of the population here took to the streets to express concern about the killings in Beijing in 1989. The question that concerns Hong Kong—perched on the edge of China—is not whether to promote human rights, but how that can best be done.

Hong Kong residents don't believe that withdrawing MFN is the way to help human rights in China. Its chief effect would be to hurt our economy. Hong Kong is the gateway through which the world does business with China. The dramatic reduction of trade that would result from MFN withdrawal would cut by more than half our economic growth and would more than double our unemployment rate.

Such a blow would come at the worst possible time for Hong Kong. We are now in the final three years of the transition from British to Chinese sovereignty. Implementation of the Sino-British Joint Declaration, which provides for Hong Kong to remain a highly autonomous entity within China and to continue functioning the way it does now in nearly all aspects of life, has been an enormously challenging task. That it has generally gone well so far has been in large part due to Hong Kong's robust economic performance, which in turn has been due in large part to the growth of Chinese trade. A body blow to that trade would be a body blow to confidence in Hong Kong at a crucial time. It would put at risk all that we are trying to do to secure Hong Kong's future.

U.S. policy, reaffirmed by President Clinton last month, has been supportive of the efforts of the British and Hong Kong governments to secure Hong Kong's future. Large U.S. interests are at stake. Nine hundred U.S. firms are established in Hong Kong, and we have the largest American Chamber of Commerce in the world. U.S. investment in Hong Kong is more than \$9 billion; we buy more U.S. exports per capita than the European Union; and the growing U.S. investment and trade interests in the booming China market are to a large extent managed through Hong Kong.

But even if it were not so important for Hong Kong's own interests that China's MFN status be renewed, I would be extremely skeptical of the argument that its withdrawal would lead to improvements in human rights in China. Experience elsewhere suggests that economic progress improves the prospects for social and political progress. We are certainly not yet seeing the kind of human rights in China that we would all like to see, but it is undoubtedly the case that people living in the areas of greatest economic progress, such as Guangdong and Shanghai, are seeing the quality of their lives improve in more than the purely material sense. They have more control over their own lives than they did 10 years ago, and more than others now in the less developed areas of the country. They make more choices for themselves. From choice grows freedom.

There is every reason to expect that over the long term, the encouragement of prosperity in China will help create stability and social and political progress.

Democratic Losing Streak

Something odd may be happening on the way to November's off-year elections: Whenever voters go to the polls, Democrats keep losing races they should be winning. It's true all politics is local, but when the president's party loses almost every election of consequence, it should start worrying.

A real shocker came late last month in Delaware. Margaret Rose Henry became the first black woman ever elected to the state Senate. What was even more remarkable is that Ms. Henry won 54% in a minority Wilmington district by running on the Republican line.

There's more: The 49-year-old Ms. Henry defeated the two best-known African-American politicians in the state. State Rep. Herman Holloway Jr., the Democratic candidate, was the namesake-son of the senator who had held the seat for 30 years until his recent death. Sam Guy, who ran as an independent, was president of the state NAACP. What happened?

Ms. Henry disdains political labels, but her views clearly challenge the liberal orthodoxy. She told us she supports school prayer and vouchers for private and religious schools. She also would like to end court-ordered busing. She favors mild forms of affirmative action but rejects quotas: "They just don't work." She told the newspaper Human Events that state spending has to be reduced, and she would like to cut taxes so "companies can create more jobs."

Ms. Henry is a businesswoman and former chair of the Delaware State Arts Council. She only recently thought about running for office, saying conditions in the inner city now require people like her to step forward. Noting that juvenile crime has gone up 25% in Wilmington in the past year, she says, "We've got to strengthen the family unit at home before our kids all turn into sociopaths."

We now turn from Delaware to Oklahoma, site this week of another surprising election result. Republican Frank Lucas won 54% to capture a formerly Democratic U.S. House seat. While George Bush carried the district in 1992, Democrats made an all-out effort. Democrat Dan Webber, a former aide to Senator David Boren, ran to the right and took the anti-tax pledge issued by Americans for Tax Reform. In the final week, he even criticized Senator Boren for having supported the Brady bill.

New Democrat and all, it fizzled. His opponent Mr. Lucas reminded voters that Bill Clinton had also sounded like a moderate but has governed as a liberal.

Citizens' groups played a key role in educating the voters. Citizens for a Sound Economy publicized a district poll that found that 76% of Democrats wanted to "avoid getting the government more involved in health care." Democrat Webber ended up flatly opposing an employer health insurance mandate. U.S. Term Limits mailed 50,000 letters noting that Mr. Webber, who has spent his entire adult career as a Congressional staffer, wouldn't back term limits. Supporters of Ross Perot demanded to know if Mr. Webber would sign the A to Z Spending Cuts discharge petition. He said no.

The victories of Ms. Henry and Mr. Lucas are the latest in a string of GOP victories from Los Angeles to New York City and New Jersey that have some common threads. All featured GOP candidates who argued for real controls on crime, a halt to the expansion of government and more accountability from elected officials. Some of their Democratic opponents tried more or less to embrace the same arguments, but it didn't work for them. You know something's happening, but so far it's not clear that Democrats know what it is.

Asides



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 22, 1994

Robert F. Bauer, Esq.
Judith L. Corley, Esq.
Perkins Coie
607 Fourteenth Street, NW
Washington, DC 20005-2011

RE: MUR 3975

Dear Mr. Bauer and Ms. Corley:

This letter acknowledges receipt on June 10, 1994, of the amendment to the complaint the DSCC filed on May 19, 1994. The respondent(s) will be sent copies of the amendment. You will be notified as soon as the Federal Election Commission takes final action on your complaint.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

96043761527



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

JUNE 22, 1994

David Lightfoot, Esq.
8104 N.W. 122nd
Oklahoma City, OK 73162

RE: MUR 3975
Lucas for Congress and
C.A. Wheeler, as
Treasurer

Dear Mr. Lightfoot:

On May 26, 1994, your clients were notified that the Federal Election Commission received a complaint from the Democratic Congressional Campaign Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your clients were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On June 10, 1994, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. As this new information is considered an amendment to the original complaint, you are hereby afforded an additional 15 days in which to respond to the allegations.

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

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure

96043761528



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 22, 1994

Norman Leahy, Registered Agent
U.S. Term Limits
216 5th Street, NE
Washington, DC 20002

RE: MUR 3975
U.S. Term Limits and
its Executive Director

Dear Mr. Leahy:

On May 26, 1994, you were notified that the Federal Election Commission received a complaint from the Democratic Congressional Campaign Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On June 10, 1994, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. As this new information is considered an amendment to the original complaint, you are hereby afforded an additional 15 days in which to respond to the allegations.

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

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure

96043761599



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 22, 1994

Norman Leahy, Registered Agent
U.S. Term Limits Foundation
1511 K Street, NW
Washington, DC 20003

RE: MUR 3975
U.S. Term Limits
Foundation and its
Executive Director

Dear Mr. Leahy:

On May 26, 1994, you were notified that the Federal Election Commission received a complaint from the Democratic Congressional Campaign Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On June 10, 1994, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. As this new information is considered an amendment to the original complaint, you are hereby afforded an additional 15 days in which to respond to the allegations.

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

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure

96043761530



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

JUNE 22, 1994

Executive Director
Americans for Tax Reform
1301 Connecticut Avenue, NW
Washington, DC 20036

RE: MUR 3975

Dear Sir or Madam:

The Federal Election Commission received an amendment to a complaint which indicates that the Americans for Tax Reform and you, as Executive Director, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the amendment and the original complaint is enclosed. We have numbered this matter MUR 3975. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Americans for Tax Reform and you, as Executive Director, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

96043761531

Executive Director
MUR 3975
Page 2

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

96043761572



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUNE 22, 1994

Ralph Reed, Executive Director
The Christian Coalition
1801-L Sara Drive
Chesapeake, VA 23320

RE: MUR 3975

Dear Mr. Reed:

The Federal Election Commission received an amendment to a complaint which indicates that the Christian Coalition and you, as Executive Director, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the amendment and the original complaint is enclosed. We have numbered this matter MUR 3975. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Christian Coalition and you, as Executive Director, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

96043761533

Ralph Reed, Executive Director
MUR 3975
Page 2

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

96043761534



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

POSTMASTER

WASHINGTON, DC 20002

MUR 3975

ADDRESS INFORMATION REQUEST

Pursuant to 39 C.F.R. § 265.6(d)(1), please furnish this agency with a new address, if available, for the individual or entity listed below, or verify whether the address given below is one at which mail for this individual or entity is currently being delivered.

NAME: NORMAN LEAHY, REGISTERED AGENT

LAST KNOWN ADDRESS: US TERM LIMITS FOUNDATION
216 5TH STREET, NE
WASHINGTON, DC 20002

Under 39 C.F.R. § 265.9(g)(5)(i), we request a waiver of fees. In this connection I hereby certify that the Federal Election Commission, an agency of the U.S. Government, requires the information requested above in the performance of its official duties, and that all other known sources for obtaining it have been exhausted. A return envelope is enclosed for your convenience.



Lois G. Lerner
Associate General Counsel

FOR POST OFFICE USE ONLY

- () Mail is Delivered to Above Address
- () Moved, left no forwarding address
- () No such address
- () Other (Please Specify)

New Address : 1724 N TRUY ST # 778
ARLINGTON VA 22201



2604361535

960437615336

GEORGE D WEBSTER
J COLEMAN BEAN
ARTHUR L HEROLD
ALAN P DYE
EDWARD D COLEMAN
BURKETT VAN KIRK
FRANK M NORTHAM
GERARD P PANARO
JOHN W HAZARD JR
CHARLES M WATKINS
HUGH K WEBSTER
DAVID P GOCH
TIMOTHY W SMITH

LAW OFFICES
WEBSTER, CHAMBERLAIN & BEAN

1747 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006

(202) 785-9500

FAX: (202) 835-0243

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

RECEIVED
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COMMISSION
ADMINISTRATIVE DIVISION

JUL 5 10 02 AM '94

JUL 5 8 10 AM '94

OF COUNSEL
CHARLES E. CHAMBERLAIN
ASSOCIATION ADVISOR
HUGH MCCAHEY

June 30, 1994

Mary L. Taksar, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3975
U.S. Term Limits and its Executive Director

Dear Ms. Taksar:

Please find enclosed a Designation of Counsel in MUR 3975 that has been executed by U.S. Term Limits and its Executive Director. In your letter of June 22, 1994, the caption refers to U.S. Term Limits Foundation. U.S. Term Limits and U.S. Term Limits Foundation are separate organizations and the activities referred to in the complaints comprising MUR 3975 were carried out by U.S. Term Limits. Therefore, the reference to the Foundation should be deleted.

Your letters of May 26 and June 22, 1994 (with attachments) were received by U.S. Term Limits on June 27, 1994. Therefore, our response to the complaint, as amended, is due on July 13 and we anticipate that we will be able to respond by that date.

Sincerely,


Frank M. Northam

FMN/atc

cc: Paul Jacob

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3975

NAME OF COUNSEL: Alan P. Dye
Frank M. Northam
ADDRESS: Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
TELEPHONE: (202) 785-9500

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.

6/29/94
Date


Signature

RESPONDENT'S NAME: Paul Jacob
U.S. Term Limits
ADDRESS: 73 Spring Street / 511 K St NW
Suite 909 540
Washington, DC 20005
New York, NY 10012
HOME PHONE: _____
BUSINESS PHONE: (212) 925-8992 202-393-6440

96043761537

R. DAVID LIGHTFOOT
ATTORNEY AT LAW

8104 NORTHWEST 122ND
OKLAHOMA CITY, OKLAHOMA 73162

(405)721-8298

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUL 6 9 07 AM '94

FAX (405)720-9113

July 1, 1994

Federal Election Commission
Washington, D.C. 20463

Attn: Ms. Mary L. Taksar, Esq.
Office of General Counsel

Re: MAR 3975

Dear Ms. Taksar:

We have received the amendment to the complaint which involves an entirely different context or congress and therefore, you will have no further response.

Sincerely,



David Lightfoot

DL/bjg

96043761538

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COMMISSION
ADMINISTRATIVE DIVISION
JUL 6 8 49 AM '94

LAW OFFICES
WEBSTER, CHAMBERLAIN & BEAN
1747 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006
(202) 785-9500
FAX: (202) 835-0243

GEORGE D. WEBSTER
J. COLEMAN BEAN
ARTHUR L. HEROLD
ALAN P. DYE
EDWARD D. COLEMAN
BURNETT VAN KIRK
FRANK M. NORTHAM
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ADMINISTRATIVE DIVISION

JUL 8 11 51 AM '94

OF COUNSEL
CHARLES E. CHAMBERLAIN
ASSOCIATION ADVISOR
HUGH MCCAHEY

July 7, 1994

Mary L. Taksar, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUL 8 2 51 PM '94

Re: MUR 3975
Christian Coalition and its Executive Director

Dear Ms. Taksar:

Please find enclosed a facsimile copy of a Designation of Counsel in MUR 3975 signed by Ralph Reed, Jr., the Executive Director of the Christian Coalition. We have reviewed the complaint and amendment in MUR 3975 and have concluded that it is readily apparent that the complaint should be dismissed as to the Christian Coalition and its Executive Director.

Only the amendment to the complaint mentions the Christian Coalition and, then, only in passing. The amendment merely refers to "mailings and other GOTV activities conducted outside the requirements of the FECA." The amendment does not provide any specific information as to the contents of any mailings made by the Christian Coalition or as to the nature of the GOTV activities.

The amendment does, however, attach several newspaper articles and those articles contradict the complainant's allegation that the Christian Coalition engaged in express advocacy or partisan activity. The May 24, 1994 edition of "The Courier Journal" stated: "The Christian Coalition did not advocate the election of Lewis . . . in a flier that described in one or two words the candidates' positions on 10 issues . . ." (Emphasis added). The June 5, 1994 edition of "The Courier Journal" reported that a spokesman for the Christian Coalition stated that there had been about 3,000 calls to get out the vote but that there had been no mention of the candidates in the calls.

The Democratic Congressional Campaign Committee's ("DCCC") complaint, as amended, merely alleges that there is a "perception" that the Christian Coalition's voter guides and GOTV activities had

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Mary L. Taksar, Esq.

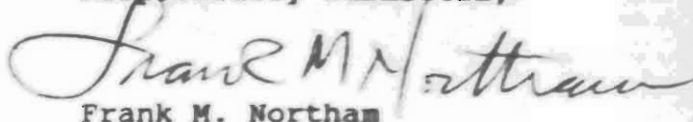
July 7, 1994

Page 2

an effect on the special election in Kentucky. Yet, the newspaper articles on which the DCCC relies make it clear that the Christian Coalition and/or its affiliated chapter in Kentucky did not engage in any activities that would be subject to the Federal Election Campaign Act and the regulations thereunder. As the Commission is well aware from prior and pending MUR's involving the Christian Coalition, the Christian Coalition's voter guides and GOTV activities are entirely nonpartisan; the same holds true as to the activities in Kentucky.

For all of the foregoing reasons, the Office of General Counsel should recommend to the Commission that the complaint (as amended) in MUR 3975 should be dismissed insofar as it pertains to the Christian Coalition and its Executive Director.

Respectfully submitted,


Frank M. Northam


FMN/atc
Enclosure

cc: Ralph Reed, Jr.

9604376154C

STATEMENT OF DESIGNATION OF COUNSELNUR 3975NAME OF COUNSEL: Alan P. Dye
Frank M. NorthamADDRESS: Webster, Chamberlain & Bean
1747 Pennsylvania Ave., N.W., Ste. 1000
Washington, D.C. 20006TELEPHONE: (202) 785-9500

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.

7-6-94
Date
SignatureRESPONDENT'S NAME: Ralph E. Reed, Jr.ADDRESS: The Christian Coalition
1801-L Sara Drive
Chesapeake, Virginia 23320TELEPHONE: HOME(804) 427-7628BUSINESS(804) 424-2630

96043761541



RECEIVED
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COMMISSION
OFFICE OF GENERAL
COUNSEL

AMERICANS FOR TAX REFORM¹ 59 PM '94

Geover C. Norquist
President

July 8, 1994

Mary Takar, Attorney
Central Enforcement Docket
Federal Elections Commission
Washington, D.C. 20463
Telefax 202-219-3923

Re: MUR3975

Dear Ms. Takar:

I phoned your office earlier today to discuss matter MUR 3975.

ATR has had a problem obtaining legal counsel and I was calling to request an extension of time to respond. As you were out of the office for the week, I spoke with Ratha Dixon who explained that ATR could have a 15 day extension just be asking for it.

This letter then, is to confirm that understanding. I will endeavor to have counsel in place not later than Wednesday, July 6. When counsel has been obtained, I will notify you immediately by submitting the "Statement of Designation of Counsel."

I thank you for the prompt assistance of you and your staff in this matter. Please call me if my understanding of the extension is somehow in error.

Sincerely,

Peter Roff
Peter Roff
Executive Director

96043761512



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20541

July 14, 1994

Peter Roff, Executive Director
Americans for Tax Reform
1301 Connecticut Avenue, N.W.
Suite 444
Washington, D.C. 20036

RE: MUR 3975
Americans for Tax Reform and
Peter Roff, as Executive
Director

Dear Mr. Roff:

This is in response to your letter dated July 8, 1994, requesting a 15 day extension to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on July 22, 1994.

If you have any questions, please contact Xavier McDonnell at (202) 219-3400.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

96043761543

ROBERT ALAN DAHL, Esq.

1156 FIFTEENTH STREET, N.W., SUITE 550
WASHINGTON, D.C. 20005
TEL 202/466-8051
FAX 202/828-5625

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JUL 18 10 27 AM '94
JUL 18 12 51 PM '94

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OFFICE OF GENERAL
COUNSEL

July 13, 1994

Mary L. Taksar
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3975

Dear Ms. Taksar:

I will be representing Americans for Tax Reform in MUR 3975.
Enclosed is a Statement of Designation of Counsel signed by the
organization's Executive Director, Peter Roff.

Pursuant to Mr. Roff's discussion with your office on July 8,
Americans for Tax Reform was granted a 15 day extension of time
to respond to the complaint in this matter. I will provide you
such a response by July 22.

Sincerely,

Robert Alan Dahl

Robert Alan Dahl

96043761514

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3975

NAME OF COUNSEL: Robert Alan Dahl
Address : 1156 Fifteenth Street, N.W.
Suite 550
Washington, D.C. 20005
Telephone : (202) 466-8051

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.

7/12/94

Date

11 mt

Signature

RESPONDENT'S NAME: Americans for Tax Reform
Grover G., Norquist, president.
Address: 1301 Connecticut Avenue, NW
Suite 444
Washington, D.C. 20036
Home Phone: (202) 546-2382
Business Phone: (202) 785-0266

96043761545

3

LAW OFFICES
WEBSTER, CHAMBERLAIN & BEAN

1747 PENNSYLVANIA AVENUE, N.W.

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JUL 14 11 29 AM '94

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July 13, 1994

Mary L. Taksar, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3975
U.S. Term Limits and its Executive Director

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUL 14 1 31 PM '94

Dear Ms. Taksar:

On behalf of U.S. Term Limits and its Executive Director ("USTL"), we are filing this response to the complaint filed by the Democratic Congressional Campaign Committee ("DCCC") in MUR 3975.

USTL is a nonprofit organization recognized as tax-exempt under Section 501(c)(4) of the Internal Revenue Code. As its name implies, USTL was formed for the purpose of advocating the establishment of term limits for elected officials at all levels of government and educating the general public as to the need for term limits. As part of its activities, USTL has created a "Voters' Contract" which will be sent to every congressional candidate nationwide. The candidates are asked to sign the "Voters' Contract" and, thereby, to commit themselves to supporting legislation that would limit the terms of office of Congressmen and Senators. In conjunction with the "Voters' Contract" program, USTL also advises the general public of federal candidates' positions on term limits. This is accomplished through radio advertising and direct mail in which USTL informs the public that particular candidates have or have not signed the "Voters' Contract" and advises the public as to whether the candidates support or oppose term limits.

In the complaint and additional materials that the DCCC filed in MUR 3975, the DCCC contends that USTL's voter education activities constitute "express advocacy" and, therefore, are prohibited by 2 U.S.C. § 441b. The DCCC places primary reliance on the Commission's reasoning and conclusions in Advisory Opinion 1992-23. USTL's voter education materials, however, differ from the advertisements that were considered in that advisory opinion. USTL's

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materials constitute "issue advocacy" rather than "express advocacy" and are not subject to the strictures of the Federal Election Campaign Act ("FECA").

In the recent special elections in Oklahoma and Kentucky to fill vacant seats in the House of Representatives, USTL engaged in three types of activities. First, USTL sent copies of its "Voters' Contract" to the candidates and requested that the candidates demonstrate their commitment to support for term limits legislation by signing and returning the "Voters' Contract." Second, USTL prepared and distributed mailings to voters in the election districts. Those mailings advised the recipients as to the candidates' positions on term limits (including information as to whether the candidates had signed the "Voters' Contract") and urged the recipients to contact candidates who had not indicated support for term limits in an effort to convince those candidates to change their position on term limits. Third, USTL ran radio advertisements informing the listeners as to the candidates' positions on term limits and urging the listeners to contact the candidates and persuade them to support term limits. (A copy of the script used in Oklahoma is attached to the DCCC's complaint.)

USTL's communications with the candidates to obtain their signatures on the "Voters' Contract" do not violate any provision of the FECA. Those communications were solely for the purpose of obtaining the candidates' positions on the term limits issue and do not constitute any coordination with the candidates, as alleged by the DCCC.

The mailings and radio advertisements do not advocate the election or defeat of any of the candidates; rather, they urge the electorate to persuade all of the candidates to support term limits. This is readily apparent from the radio advertisement in Oklahoma. That advertisement sets forth the positions of both candidates on the term limits issue, stating that one candidate supports term limits and that the other opposes term limits. It concludes by stating: "Help convince both candidates to support term limits." There is nothing in the advertisement that urges the voters to vote for or against either of the candidates.

The same is true of the mailings. The mailings advise the recipients of the positions of the candidates; ask the recipients to contact the candidates opposed to term limits to persuade those candidates to change their position and sign the "Voters' Contract," and ask the recipients to contact the candidates supporting term limits and thank those candidates for signing the "Voters' Contract." Like the radio advertisements, the mailings do not urge the recipients to vote for or against any of the candidates.

The radio advertisements and mailings serve to inform the public as to the candidates' positions on issues and are precisely the kind of informational activities that the Supreme Court has recognized as being essential to the conduct of meaningful elections:

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In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution.

Buckley v. Valeo, 424 U.S.1, 14-15 (1976). With this important concept in mind, the Buckley court adopted the express advocacy test to create a brightline between "express advocacy" (which is subject to FECA requirements) and "issue advocacy" (which is not subject to FECA requirements). While the Supreme Court and other courts have held that the catch phrases listed in Buckley (e.g., "vote for," "support," "reject," etc.) need not be present for there to be express advocacy, the message under analysis must unambiguously advocate the election or defeat of identified candidates. "[S]peech that is merely informative is not covered by the Act." Federal Election Commission v. Furgatch, 807 F.2d 857, 864 (9th Cir.), cert. denied, 484 U.S. 850 (1987); see also, Federal Election Commission v. Colorado Republican Federal Campaign Committee, 839 F. Supp. 1448, 1455 (D. Colo. 1993).

There is no doubt in the public's mind as to where USTL stands on the issue of term limits. Contrary to the DCCC's assertion, the identity and announced position of a speaker is irrelevant to the "express advocacy" analysis. See, Federal Election Commission v. Survival Education Fund, Inc., CCH Fed. Election Campaign Fin. Guide ¶ 9343 (S.D.N.Y. 1994) (hostility to positions of candidates does not constitute express advocacy); FEC v. Colorado Republican Fed. Campaign, supra at 1456 (statement that was critical of Democratic candidate and that was issued by Republican Committee did not amount to express advocacy).

In determining whether a communication to the general public constitutes "express advocacy," the Commission and the courts must focus on the communication itself and determine whether the communication "unambiguously" urges its recipients to vote for or against a clearly identified candidate. USTL's communications do not qualify as "express advocacy" under that test. They merely inform the electorate as to the candidates' positions and urge the public to encourage the candidates to maintain or change their positions in regard to term limits.

Unlike the proposed advertisements in Advisory Opinion 1992-23, USTL's communications do not portray any candidate's past activities as being scandalous or improper. More importantly, USTL's communications concentrate on the issues of interest to USTL and urge the electorate to contact the candidates in an effort to effect the candidates' positions on those issues. The Commission's decision in Advisory Opinion 1992-23 placed significant reliance on the fact that the proposed advertisements did not address or stimulate discussion and debate on the issues raised: "These ads encourage no action in connection with the issues mentioned (such as urging the Congressman to vote for or against specific bills)." USTL's

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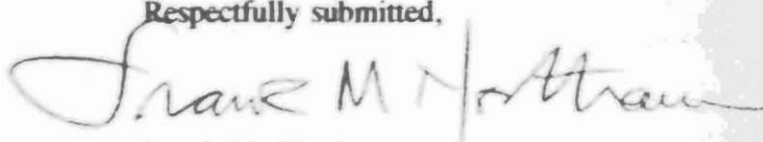
communications, on the other hand, encourage the candidates and the electorate to engage in meaningful discussion concerning the issue of term limits.

Were the Commission to embrace the arguments of the DCCC that USTL's communications amount to "express advocacy" (subject to regulation under the FECA), then no organization (be it profit or non-profit) would be able to announce to the public the positions of candidates on any issue, without having to comply with reporting and other requirements under the FECA. Would the Commission entertain a complaint against an organization that announced that one candidate was in favor of saving the spotted-owl in the Northwest and that the other candidate was opposed, or that one candidate opposed Most Favored Nation status for China and the other was in favor of granting MFN status to China? Surely not.

As the Supreme Court has noted, issues of public concern become inextricably combined with electoral campaigns and the public has a need to know where the candidates stand on those issues. For that reason, the Supreme Court expressly excluded "issue advocacy" and informational communications from the coverage of the FECA.

Despite the DCCC's protestations, USTL's communications do not qualify as "express advocacy" and the general counsel, therefore, should recommend that the DCCC's complaint be dismissed.

Respectfully submitted,



Frank M. Northam

FMN/gjt

cc: Paul Jacob

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July 22, 1994

Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3975

Dear Mr. Noble:

This letter is the response of Americans for Tax Reform, Inc., ("ATR"), and its Executive Director, to the complaint filed by the Democratic Congressional Campaign Committee ("DCCC") in MUR 3975. ATR urges the Federal Election Commission ("FEC") to dismiss the complaint against ATR as facially inadequate and improperly brought under FEC regulations. Alternatively, ATR urges the Commission to find no reason to believe ATR has violated the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"), 2 U.S.C. § 431 et seq. ATR's communications complained of in this matter represent precisely the type of issue advocacy that courts and the Commission recognize to not be electoral advocacy and, therefore, outside the jurisdiction of the Act.

PROCEDURAL ISSUES

1. *DCCC'S complaint is deficient under FEC regulations and improperly brought against ATR.*

By letter of May 19, 1994, the DCCC filed a complaint with the FEC against an organization called U.S. Term Limits. The complaint alleged that group had violated the FECA by its activity undertaken with respect to a special election for Congress in the 6th District of Oklahoma held on May 10, 1994.

The DCCC subsequently sent a letter to the FEC, dated June 10, 1994, purporting to be a "supplement" to its "initial complaint." This second letter again focused on U.S. Term Limits, this time for its activity with respect to the special election for Congress in the 2nd District of Kentucky held on May 24, 1994. The letter also included unspecific allegations about ATR's issue advocacy activity conducted during the same time period (and allegations regarding activity of another group not named in the original complaint). Your office has characterized this second DCCC letter as an "amendment" to the complaint in MUR 3975.

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The Commission's regulations require that a complaint brought before the FEC "... contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction ..." 11 CFR 111.4(d)(3). The "supplement" to the DCCC's complaint in MUR 3975, however, refers only tangentially, and in the most vague and general terms, to ATR issue advocacy activity. The DCCC's June letter fails to recite specific facts about ATR's actions, instead relying without explication upon brief mention of ATR in news clippings, and makes no effort to identify how ATR's activity constitutes specific violations of the FECA. The letter makes general characterizations about separate and distinct activity by different organizations and lumps them together into broad claims of a "pattern" of allegedly improper activity.

ATR strongly objects to the casualness and lack of specificity with which the DCCC has brought these allegations against ATR. As described below, the facts about ATR's issue advocacy activity during the time of the Kentucky election bear no resemblance to the offhand and obscure characterizations contained in the DCCC's June letter. The complaint is facially inadequate and entirely inaccurate. ATR urges the Commission to demand at least minimal respect for the requirements of its regulations regarding specificity of complaints and to dismiss the DCCC's supplementary allegations against ATR in this matter.

Moreover, the allegations against ATR are not properly brought as an amendment to the complaint in MUR 3975. The supplement to DCCC's complaint improperly mixes together separate and distinct activity by unconnected groups in two different election periods in two states. The complaint makes no assertion these groups' actions were coordinated. In fact, ATR has consistently engaged in issue advocacy activity independently and without any coordination with other organizations outside of the tax reform area.

The Commission should dismiss the complaint against ATR on the basis of its factual inadequacy or, based on the facts and substantive reasons set forth by ATR below, find there is no reason to believe ATR has violated the FECA. Should this case go forward, however, ATR requests the allegations against ATR be severed from the complaint in MUR 3975 and reviewed apart from allegations about any other groups engaged in separate and distinct activity in different election circumstances. Despite the DCCC's excited rhetoric about a "pattern" of activity or broad reference to "similar tactics," the only common link between the activity of ATR and U.S. Term Limits or other groups are constitutional issues of free speech -- and the complainant. ATR should not be forced to

ride along in MUR 3975 at an enforcement pace set by other respondents with whom ATR has no legal connection and for whom it bears no responsibility. ATR should not be joined in this MUR.

2. *ATR's Executive Director is improperly named as a respondent.*

ATR objects to the identification of its Executive Director as a respondent in MUR 3975 in the letter from the Office of the General Counsel of June 22, 1994, notifying ATR of the complaint. The complainant does not allege individual liability by any person associated with ATR and, to the extent specific assertions of fact can be derived from the complaint, no facts are presented to suggest any personal responsibility apart from organizational activity.

Naming this individual a respondent is arbitrary and improper as a matter of administrative law. It is not supported by any provision of the FECA or the Commission's regulations. If naming this ATR staff person as a respondent is meant to be analogous to your policy of naming the treasurer of a political committee under the FECA, application of this analogy is inappropriate and without any legal foundation in this case. ATR requests your office send a letter correcting this mistake, and that you omit mention of this individual as a respondent in any further reports or communications regarding this matter.

FACTUAL SETTING

1. *ATR is an issue advocacy organization of long standing.*

Americans for Tax Reform was incorporated in July 1985 in the District of Columbia as a non-profit membership corporation, and is a tax exempt organization under Section 501(c)(4) of the Internal Revenue Code. ATR was established to promote lower marginal tax rates and, at its inception, to specifically support legislation leading to the Tax Reform Act of 1986.

Throughout its existence, ATR has strongly advocated limiting or reducing taxation levels and has opposed increased taxes arising from proposed legislation. Towards this purpose, ATR has engaged in programs to educate the public about tax issues and about the positions on tax issues of public officeholders and candidates for public office. ATR has sought to mobilize public support for its tax-related issue positions and encourage citizens to express their opinion on tax issues to officeholders and candidates. ATR has published studies of information about taxes and public policy, and communicates to the public through news releases and advertising.

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ATR is not affiliated with, or controlled or funded by, any political or partisan organization. ATR does not coordinate its activities with any such group, but does cooperate with other issue advocacy organizations involved in tax reform issues, particularly groups at the state and local level. ATR always conducts its issue advocacy activity in a strictly non-partisan manner. ATR does not engage in advocacy of the election or defeat of any candidates for public office at either the state or federal level.

2. *ATR engaged in issue advocacy during the Kentucky election.*

Contrary to the assertion of the DCCC's June letter, ATR was not engaged in a "shadow campaign" on behalf of any candidates in Kentucky or anywhere else. ATR's mission is issue advocacy and is intentionally and routinely conducted in an open and public manner. Among other strategies for promoting its issue positions, ATR asks candidates across the nation to sign pledges indicating they oppose certain taxes or expensive government programs, or support tax-reducing measures, and informs the public through press releases and paid media about these issues and which candidates do or do not sign the pledges.

In advance of the Kentucky special election, ATR requested the candidates running for Congress to sign a Taxpayer Protection Pledge opposing increases in income taxes, and a pledge opposing enactment of a national value-added tax (VAT). (Attachment A: ATR's press release announcing the request.) ATR also requested the candidates sign a pledge to oppose certain elements of proposed health care legislation (Attachment B: health care pledge). Both the Republican and Democratic candidates eventually signed the first two pledges, and ATR announced this result through a press release, but the Democratic candidate declined to sign the health care pledge, which ATR also announced. (Attachment C: Democratic candidate Joe Prather's signed pledges; Attachment D: ATR's press release regarding the first two pledges and a letter to Prather from ATR; Attachment E: ATR's press release regarding the health care pledge).

Then, in the period preceding the election, ATR spent approximately \$3000 to run radio messages drawing attention to candidate Prather's refusal to sign the health care pledge. (Attachment F: radio script). This expenditure is clearly the object of the DCCC's displeasure. A fair and careful reading of this radio script makes clear, however, that ATR was engaged in issue advocacy and not electoral advocacy. The advertisement does not expressly advocate the election or defeat of any candidate, or encourage any particular vote or election-related conduct. The

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message explicitly asks listeners to contact candidate Prather and urge him to adopt ATR's issue position and sign the health care pledge.

The original complaint in MUR 3975 focuses on activity by U.S. Term Limits in the Oklahoma special election. The supplement adds allegations against ATR for activity in Kentucky, but does not address ATR's prior issue advocacy during the time of the Oklahoma special election. It is useful to contrast the two circumstances, however, to demonstrate the pure issue advocacy purpose of ATR's strategy. In Oklahoma, both candidates ultimately signed all three pledges. ATR (in cooperation with the Oklahoma Taxpayer's Union) financed radio advertising congratulating both candidates for their signing of the health care pledge. Thus, ATR's purpose is not electoral advocacy, or even to punish those candidates who do not sign anti-tax pledges, but rather to focus attention and gain public support for ATR's issue positions.

By necessity, this particular strategy for issue advocacy takes place during an election period. This approach undeniably puts political pressure on candidates, which is ATR's purpose. It is not conducted as a means of influencing election outcomes, however, but to influence candidates to adopt ATR's point of view (or be prepared to explain their opposition). This strategy has proved historically, including in elections in 1994, to succeed in making candidates for public office declare themselves on these important tax issues. ATR's efforts to encourage support for its policy positions from candidates, and ATR's communications to the public on these issues, represent the essence of constitutionally protected issue advocacy speech. As discussed below, the courts and the FEC have recognized this type of speech must be permitted to be expressed during election as well as non-election periods, so long as it does not cross over into express advocacy of the election or defeat of candidates. ATR's communications do not cross that line and, thus, are not subject to FECA regulation or restriction.

SUBSTANTIVE ISSUES

1. Judicial precedent recognizes ATR's issue advocacy speech to be constitutionally protected and outside FECA jurisdiction.

To the extent specific allegations of violations of the FECA can be discerned from the DCCC's letters, it appears the gravamen of the charges is that ATR's expenditures in Kentucky for radio messages about candidates' positions on tax issues and calling upon citizens to express their opinion about these issues constituted

impermissible corporate spending for election-influencing purposes under 2 U.S.C. § 441b. The full weight of judicial precedent regarding the reach of the FECA and the constitutional constraints upon any restrictions upon issue advocacy, however, demonstrates ATR's issue advocacy activity cannot be construed as electoral advocacy within the regulatory jurisdiction of the FECA.

The U.S. Supreme Court laid the foundation for constitutional analysis of the FECA in Buckley v. Valeo, 424 U.S. 1 (1976). In reviewing a section of the Act that would have limited independent expenditures, the Court observed:

[T]he distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various issues, but campaigns themselves generate issues of public interest.

Id., 424 U.S. at 42. The Court then determined:

... [I]n order to preserve the provision against invalidation on vagueness grounds, [it] must be construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office.

Id., 424 U.S. at 44.

Subsequently, the Court specifically held "an expenditure must constitute 'express advocacy' in order to be subject to the prohibition of § 441b." Massachusetts Citizens for Life, Inc. ("MCFL"), 479 U.S. 238, 249 (1986). The Court said of its prior decision: "Buckley adopted the 'express advocacy' requirement to distinguish discussion of issues and candidates from more pointed exhortations to vote for particular persons." Id.

The Commission has frequently cited with approval the analysis of FEC v. Furgatch, 807 F.2d 857 (9th Cir. 1987), in seeking to apply the express advocacy standard. The language of that case's essential holding is critical:

We conclude that speech need not include any of the words listed in Buckley to be express advocacy under the Act, but it must, when read as a whole, and with limited reference to

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external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate. This standard can be broken into three main components. First, even if it is not presented in the clearest, most explicit language, speech is "express" for present purposes if its message is unmistakable and unambiguous, suggestive of only one plausible meaning. Second, speech may only be termed "advocacy" if it presents a clear plea for action, and thus speech that is merely informative is not covered by the Act. Finally, it must be clear what action is advocated. Speech cannot be "express advocacy of the election or defeat of a clearly identified candidate" when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action.

We emphasize that if any reasonable alternative reading of speech can be suggested, it cannot be express advocacy subject to the Act's disclosure requirements. This is necessary to prevent a chill on forms of speech other than the campaign advertising regulated by the Act.

807 F.2d at 864.

In making its brief substantive argument, the DCCC's June letter relies upon a quotation from FEC v. Central Long Island Tax Reform Immediately Committee et al. ("CLITRIM"), 616 F.2d 397 (2d Cir. 1980). Ironically, the first part of the quotation virtually anticipates, approvingly, the issue advocacy message used by ATR in Kentucky:

The CLITRIM Bulletin of Fall, 1976, contains nothing which could rationally be termed express advocacy. The nearest it comes to expressly calling for action of any sort is its exhortation that "[i]f your Representative consistently votes for measures that increase taxes, let him know how you feel. And thank him when he votes for lower taxes." Neither this nor the voting chart calls for anyone's election or defeat.

616 F.2d at 53. The second part of the quoted passage includes the court's description of those things the CLITRIM pamphlet did not do, including that it did not make reference to "the existence of an election or the act of voting in any election." *Id.* It is obvious, however, the court was simply describing how the CLITRIM pamphlet did not permit any interpretation that it contained even an impliedly electoral message. It represents an "even if" argument: even if the court had accepted the FEC's assertion that

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advocacy need not be express, but could be implied (a position the court identified as "totally meritless"), CLITRIM's pamphlet would not remotely cross the line into electoral advocacy. Id.

The passage quoted from CLITRIM, as well as the reasoning of the full opinion (including its reliance upon Buckley), does not support the implication the court's discussion created a list of items the mere mention of which, by themselves, convert issue advocacy to electoral advocacy. Subsequent judicial precedent and the FEC's own interpretation make clear a discussion of issues and candidate positions during the time of an election, otherwise lacking any words advocating the election or defeat of any candidates, does not become electoral advocacy simply by mentioning the existence of an election -- particularly, as here, where the issue advocacy message explicitly urges citizens to encourage particular candidates to adopt the group's issue position (but does not urge any particular voting behavior by citizens). See, e.g., MUR 2582 (1988) and MUR 3090 (1991), both involving general public advertising by the issue advocacy group Common Cause as a means of lobbying for campaign finance reform, which identified particular candidates as deserving public pressure on the issue and were (in MUR 3090) directed to their home districts. See also FEC v. National Organization for Women ("NOW"), 713 F.Supp 428 (D.D.C. 1989), in which the court held expenditures by an incorporated membership organization for public communications criticizing candidates for their views on issues of importance to the group did not come within the jurisdiction of the FECA.

2. *ATR's issue advocacy communications would not constitute "express advocacy" under the Commission's proposed "MCFL" regulations governing corporate political speech*

The Commission is engaged in an important rulemaking process that seeks to bring the Commission's regulations into conformity with judicial application of the "express advocacy" standard for determining when communications to the public by corporations and labor organizations are election-influencing and, therefore, subject to the prohibition of 2 U.S.C. § 441b. This revising of FEC regulations pertaining to Section 441b is commonly known as the "MCFL rulemaking" because of that decision's significant impact on the Commission's enforcement of Section 441b.

Your office prepared a Memorandum for the Commission dated February 8, 1994, providing a summary of public comments and draft final rules regarding the MCFL rulemaking (Agenda Document #94-11).

The Memorandum states that proposed changes in the regulations require "[r]evising the definition of express advocacy at 11 CFR 109.1 to provide further guidance on what types of communications constitute express advocacy, in accordance with [Buckley, MCPL and Furgatch]."

Section B in the Discussion part of the Memorandum addresses the "express advocacy" standard and alternatives to defining it in certain circumstances. Subsection (1) states (p. 9):

The alternative definitions took different approaches in describing communications containing "express advocacy," although they both included the list of expressions delineated in Buckley. Under Alternative A-1, express advocacy included suggestions to take actions to affect the result of an election, such as to contribute or to participate in campaign activity. In contrast, Alternative A-2 indicated that express advocacy constitutes an exhortation to support or oppose a clearly identified candidate, and that there must be no other reasonable interpretation of the exhortation other than encouraging the candidate's election or defeat, rather than another type of action on a specific issue ...

The definition of express advocacy included in the attached final rules is largely, but not entirely, based on Alternative A-2 because the Furgatch opinion emphasized the necessity for communications to be susceptible to no other reasonable interpretation but as an exhortation to vote for or against a specific candidate.

Sections (2) and (3) focus on two types of situations that present particular difficulty in recognizing express advocacy. Neither type of hypothetical circumstance applies to ATR's activity, since ATR was engaged in straightforward issue advocacy, but the Memorandum's discussion is instructive.

Section (2) discusses communications containing both issue advocacy and electoral advocacy. Although ATR's radio message in Kentucky (and in Oklahoma) did not contain electoral advocacy, this section is illustrative because it draws a specific distinction applicable to ATR's issue advocacy (p. 10):

Several comments [to the notice of proposed rulemaking] pointed out that the legislative process continues during election periods, and argued that if a legislative issue becomes a campaign issue, the imposition of unduly burdensome requirements on those groups seeking to continue their

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legislative efforts and communicate with their supporters is unconstitutional. These concerns are misplaced, however, because the new rules do not affect pure issue advocacy, such as attempts to create support for specific legislation or purely educational messages. For example, they would not preclude a message made in close proximity to a Presidential election that asked the audience to call the President and urge him to veto a particular bill that has just been passed. However, under these rules it would be express advocacy if the communication urged the audience to vote against the President if the President does not veto the bill in question.

Section (3) discusses communications lacking a call to action of any kind. ATR's radio message in Kentucky contained an explicit call to action for the purpose of furthering ATR's issue advocacy position. Nevertheless, this section of the Memorandum is also illustrative because it draws a distinct and explicit contrast to ATR's communications (p. 11):

The proposed rules also addressed communications that contain no specific call to take action on any issue or to vote for a candidate, but which do discuss a candidate's character, qualifications, or accomplishments, and which are made in close proximity to an election ...

Under Alternative A-2, these types of communications would constitute exhortations [to support or oppose a clearly identified candidate] if made within a specified number of days before an election, and if they do not encourage any type of action on any specific issue ...

This Office recommends revising section 109.1(b)(2)(i)(C) to clarify the types of communications covered by this provision. Thus, they include discussions and comments on a candidate's character, qualifications, or accomplishments, unless these factors are being used to urge action on legislative issues. The attached final rules would treat these communications as express advocacy if made within 90 days of the general election.

Though the Counsel's Memorandum and the Commission's current rulemaking considerations do not have independent legal authority, ATR urges the Commission to take this opportunity to make good on its commitment to draw clear lines pursuant to the express advocacy standard and to make meaningful distinctions. The regulations the Commission is in the midst of drafting are a departure from its past view of the scope of "in connection with" a federal election

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under Section 441b. Implementation of its new regulations will undoubtedly cause the Commission some uneasiness in specific circumstances. Once these rules are in place, however, the Commission cannot hedge and waver when the inevitable consequences of the new rules lead to conclusions in specific situations it would have preferred not to reach.

The facts about ATR's activity are sufficiently clear; further investigation is unnecessary. A decision by the Commission that ATR's specific issue advocacy activity was outside FEC jurisdiction would signal the Commission is prepared to conform to the direction given by recent court decisions. A failure to so decide would suggest application of the objective factors required by the courts and recommended in the Counsel's Memorandum has yet to be genuinely accepted.

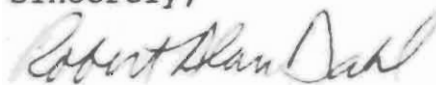
CONCLUSION

As a procedural matter, the DCCC's complaint fails to fully or accurately describe facts about ATR's activity that constitute violations within FEC jurisdiction. It improperly seeks to join ATR in MUR 3975 with other unrelated groups involved in unrelated activity. The DCCC complaint against ATR should be dismissed on these grounds.

As a substantive matter, ATR's issue advocacy complained of in this matter is constitutionally protected speech. ATR did not make expenditures for electoral advocacy purposes. The Commission should find no reason to believe ATR violated the FECA.

The DCCC has requested the Commission provide expedited review of its allegations and injunctive relief, or else prompt dismissal to permit the DCCC to seek judicial remedy. ATR is confident any effort to obtain judicially approved prior restraint to prevent ATR from exercising its First Amendment rights would fail miserably. ATR would encourage the Commission to give the DCCC the dismissal they seek, however -- not because their complaint is so urgent, but because it is so inadequate procedurally and substantively.

Sincerely,



Robert Alan Dahl

Enclosures



AMERICANS FOR TAX REFORM

For Immediate Release
May 12, 1994

Contact: Peter Roff
(202) 785-0266
(703) 548-8684 Eves.

National Taxpayer Advocacy Group Calls Upon Prather, Lewis and Rice To Stand Up for Taxpayers

Washington, D.C. -- Grover G. Norquist, president of Americans for Tax Reform (ATR), a national taxpayers advocacy organization, today asked Kentucky Second Congressional District candidates Joseph Prather, Ron Lewis and James Rice to stand up for the interests of the American taxpayers and sign the Taxpayer Protection Pledge.

The Taxpayer Protection Pledge, offered to all Congressional candidates in every election since 1986, commits signatories to oppose any and all efforts to increase marginal income tax rates and to oppose efforts to reduce or eliminate deductions and credits without reducing tax rates.

A total of 123 members of the House of Representatives and 21 members of the United States Senate have made this pledge to the American people.

"The last two Presidents have hiked taxes on the American people by record amounts. Each time they used the fig leaf of deficit reduction to convince people that these taxes would help make Washington's fiscal problems better. These tax hikes have made the problems worse. If we want to get our fiscal house in order, we have to close the door to more tax hikes. The Taxpayer Protection Pledge is an important part of that effort," Norquist said.

Americans for Tax Reform also asked the candidates to announce their opposition to a national Value Added Tax and to back up that opposition by committing to join the bipartisan Congressional Anti-VAT Caucus if elected.

"One particularly bad idea being floated in Washington is a Value Added Tax -- a hidden tax on goods and services as they move through the production stream, paid by consumers. Those who have the foresight to publicly oppose the VAT now are to be congratulated. They stand with the taxpayers and against the tax and spenders," Norquist added. In Europe, some countries have enacted a VAT at low rates and then, over time, increased the rates as high as 18 or 20%.

Americans for Tax Reform will release the names of candidates who have taken the Taxpayer Protection Pledge and committed against the VAT as they come in.

Americans for Tax Reform is a national taxpayers' advocacy organization that opposes any and all efforts to increase taxes.

Interviews with Grover G. Norquist or other members of ATR staff may be arranged by calling
(202) 785-0266 days, (703) 548-8684 evenings and weekends.

1301 CONNECTICUT AVENUE, N.W. SUITE 444 WASHINGTON, D.C. 20036
PHONE 202-785-0266 FAX 202-785-0261

ATTACHMENT A

9 6 0 4 3 7 6 1 5 5 1

Americans for Tax Reform

Health Care Protection Pledge

I pledge to the taxpayers of _____ that I will vote against any health care legislation that : (1) mandates costs on businesses and/or individuals; (2) rations health care or establishes price controls; (3) increases taxes under any name or guise; or (4) restricts or limits choices that health care consumers now enjoy.

By _____

_____ Date Signed

Witness

Witness

Return Signed Pledges to 1301 Connecticut Avenue, NW, Suite 444, Washington, DC 20036

JOE PRATHER FOR CONGRESS

**P.O. Box 2327
Elizabethtown, KY 42702-2327
(502) 765-2600
Fax (502) 737-2155**

FACSIMILE TRANSMITTAL COVER SHEET

To: Mr. Grover Norquist (202) 795 - 0261
From: Joe Prather

This is Page 1 of 3 pages in this transmission.
Please call us at 502 - 765 - 2600 if you do not receive all pages.

****All information contained in this transmission is confidential and, intended for the person named above only. If you receive this document in error, please call us at the number shown above.**

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96043761534
May 16, 1994
Date:

Mr. Grover Norquist
Citizens Against a National Sales Tax/VAT
1301 Connecticut Avenue, N.W. Suite 440
Washington, D.C. 20036

Dear Mr. Norquist:

I agree with you that the imposition of a Value Added Tax on the American economy would have disastrous consequences.

I share your opposition to the VAT and I want to express that opposition by becoming a member of the Congressional Anti-Value Added Tax Caucus.

I wish you the best of luck in your efforts to stop the VAT and I look forward to working together with you in the future to stop this ruinous tax before it can be enacted. Please feel free to share my commitment with members of your Anti-VAT coalition and members of the national press.

Sincerely,


Candidate for Congress

2nd District, State of Kentucky

Mail to

Grover Norquist/CV
Citizens Against a National Sales Tax/VAT
1301 Connecticut Avenue N.W.
Suite 440
Washington, D.C. 20036

ATTACHMENT C



AMERICANS FOR TAX REFORM

THE TAXPAYER PROTECTION PLEDGE

I, JOSEPH W. PRATHER pledge to the taxpayers of the 2nd
 District of The State of KENTUCKY, and to the American people
 that I will

*ONE, Oppose any effort to increase the marginal income tax rates
 for individuals and/or businesses; and*

*TWO, Oppose any further reduction or elimination of deductions
 and credits, unless matched dollar for dollar by further reducing tax rates.*

Joseph W. Prather
 Signature

May 16, 1994
 Date

[Signature]
 Witness

[Signature]
 Witness

ATTACHMENT C



AMERICANS FOR TAX REFORM

Grover G. Norquist
President

May 17, 1994

Joseph W. Prather
PO Box 2327
Elizabethtown, KY 42702
502-737-2155 (fax)

Dear Mr. Prather:

I returned your call of 9:14 am but you were not available.

We have sent out the attached media advisory, announcing your decision to sign the Taxpayer Protection Pledge and commit against an American VAT.

I still need to know what you intend to do with the Pledge on health care reform.

Please call me or have someone on your staff call me by noon today.

Thank you.

Sincerely,

Grover G. Norquist
President

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AMERICANS FOR TAX REFORM

Grover G. Norquist
President

For Immediate Release
March 17, 1994

Contact : Peter Roff
(202) 785-0266
(703) 548-8684 (Eves.)

MEDIA ADVISORY

Taxpayer Group Announces Prather Joins Lewis; Has Pledged to Oppose Tax Hikes and American VAT

Washington, D.C. -- Grover G. Norquist, president of Americans for Tax Reform, a national taxpayers advocacy organization, today announced that Joe Prather has joined Ron Lewis and signed the *Taxpayer Protection Pledge* against income tax hikes and who have committed to join the *Congressional Anti-VAT Caucus* if elected on Tuesday, May 24.

123 members of the U.S. House and 21 U.S. Senators have taken the Taxpayer Protection Pledge against raising income tax rates. 122 members of Congress are members of the bi-partisan Congressional Anti-VAT Caucus, whose members oppose efforts to put a VAT on the backs of working Americans.

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AMERICANS FOR TAX REFORM

Grover G. Norquist
President

For Immediate Release
May 18, 1994

Contact : Peter Roff
(202) 785-0266
(703) 548-8684

2nd District Candidate Joe Prather Refuses to Make Pledge to Support Pro-Market, Pro-Consumer Health Care Reform

Washington, D.C. -- Grover G. Norquist, president of Americans for Tax Reform, a national taxpayers advocacy organization, announced today that 2nd District Congressional candidate Joe Prather --running in the May 24th special election to fill the U.S. House seat left vacant by the death of Rep. Bill Natcher-- had declined to sign a pledge to oppose key elements of the various government-run health care schemes. The pledge commits signers to oppose and vote against any health care legislation that: 1) mandates costs onto businesses and/or individuals; 2) rations health care or establishes price controls; 3) increases taxes under any name or guise; and 4) restricts or limits choices that health care consumers now enjoy as the several proposals, including those offered by Bill Clinton, Jim Cooper and Pete Stark, now do.

The Pledge has already been signed by candidate Ron Lewis.

"I am concerned that Joe Prather will not commit in writing to oppose the efforts of Bill Clinton, Danny Rostenkowski and Ted Kennedy to raise taxes and expand government in the name of health care reform. ATR recognizes and supports the need for real free market solutions to the current health care problems. We strongly urge Joe Prather to reconsider his position and reject any reform that includes more government control, higher costs, higher taxes, fewer choices and less quality health care for Kentucky and the nation," Norquist said.

"While changes are needed in the present health care system --like helping those who cannot get insurance, protecting insurance if a job is lost, and keeping health care costs affordable-- we certainly don't need more government and higher taxes which will lead to lost jobs, fewer choices, rationing of medical services and loss of personal privacy - all of which will result if a plan similar to the Clinton proposal is passed," Norquist added.

Ron Lewis, Joe Prather and James Rice were all asked to take the health care pledge on May 12.

To arrange an interview with Mr. Norquist or other ATR staff, call Peter Roff at (202) 785-0266.

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AMERICANS FOR TAX REFORM

Grover C. Norquist
President

Kentucky Radio Ad
Air dates -- May 22, 23, 24

On Tuesday, May 24, Second District Kentuckians will choose who will be their voice in the critical debates on health care reform in Washington. Bill Clinton has put forward a plan that mandates costs on businesses, establishes price controls that will lead to rationing, limits choices that health care consumers now enjoy and, under many names and guises, raises taxes.

Ron Lewis has signed a pledge to vote against any such plan that adds up to more government. But... Joe Prather won't. So you need to call Joe Prather. You need to call him now at (502) 765-2600 and urge him to support a pro-market, pro-consumer health care reform. Urge him to say 'no' to higher taxes, mandates, price controls, and restricted health care choices. Urge him to sign the health care reform pledge. Because his vote could be critical, so is your phone call. (502) 765-2600.

A message paid for by Americans for Tax Reform.

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

JUL 20 3 16 PM '94

SENSITIVE
JUL 26 1994

FIRST GENERAL COUNSEL'S REPORT

EXECUTIVE SESSION

MUR 3975

DATE COMPLAINT FILED: May 19 and June 10, 1994

DATE OF NOTIFICATION: May 26 and June 22, 1994

DATE ACTIVATED: July 12, 1994

STAFF MEMBER: Xavier K. McDonnell

COMPLAINANTS: Democratic Congressional Campaign Committee

RESPONDENTS: U.S. Term Limits
U.S. Term Limits Voter Education Fund
Christian Coalition
Americans for Tax Reform
Lucas for Congress, and
C.A. Wheeler, as Treasurer

RELEVANT STATUTES: 2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441a(a)
2 U.S.C. § 441b(a)
2 U.S.C. § 441d(a)
11 C.F.R. § 109.1

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by a complaint and amendment submitted by the Democratic Congressional Campaign Committee ("DCCC" or "complainant") alleging violations of the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act") by U.S. Term Limits ("USTL" and/or its "Fund"). It also contains allegations against the Christian Coalition, Americans for Tax Reform ("AFTR"), Lucas for Congress, and C.A. Wheeler, as treasurer.

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II. FACTUAL AND LEGAL ANALYSIS

A. EVALUATION UNDER PRIORITY SYSTEM

In accordance with the Commission's instructions at the Executive Session of July 12, 1994, the Office of General Counsel has rated this matter using the priority system criteria.

As for the impact that this matter will have on enforcement staff, we conclude below that a substantial investigation will be required to address the substance of this MUR. Moreover, as explained below, absent the Commission deciding to seek extraordinary relief, it does not appear likely that this matter will be settled or that civil suit may be filed prior to election day on November 8, 1994.

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B. SUMMARY OF COMPLAINT AND RESPONSES

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Complainants assert that USTL is a corporation making expenditures in violation of Section 441b. The complaint alternatively alleges that USTL is a "political committee" which has failed to register with the Commission and file disclosure reports. The complaint notes that USTL appears to be coordinating with candidates through its "voters' contracts" program. Thus, the complaint alleges, even if USTL were exempt from the Section 441b prohibitions under the MCFL exemption with respect to corporate independent expenditures, it has still violated the prohibition by making corporate contributions to candidates. Complainants request expedited review of this matter. Although the specific facts in the complaint relate only to Oklahoma and Kentucky, complainant notes that USTL has asserted its intent to engage in a nationwide campaign through election day, November 8, 1994.

USTL identifies itself as a nonprofit tax exempt organization formed for the purpose of advocating the establishment of term limits for elected officials at all levels of government. Attachment 1 at page 1. USTL does not deny that it is a corporation.³ USTL's news release states that the activities which are the subject of this matter were paid for by USTL's Voter Education Fund ("Fund"). However, the Fund is not registered with the Commission and USTL does not provide any information about its Fund, or the source of the funds used to pay

3. This Office was informed by the corporate division of the District of Columbia that USTL is a registered corporation.

for the activities at issue in this matter.

In its response USTL provides a general explanation of its "Voter Education" program. It states that it has a "voters' contract" which it intends to send to "every congressional candidate nationwide." See Attachment 1 at 1; Attachment 2 at 2. Candidates are asked to sign the "voters' contract" and thereby commit themselves to legislation in support of term limits. In conjunction with the "voters' contract," USTL advises voters and the general public of the federal candidates' positions on term limits through radio advertisements and direct mail.

With respect to the two special elections which are the subject of the complaint, USTL indicates that it engaged in three types of activities. First, it sent its "voters' contracts" to the candidates and requested that they sign and return them. See Attachment 2 at 2. Second, it created and aired radio advertisements informing listeners of the candidates' positions on term limits. The script for its ad, entitled "Some Things are Clear," was attached to the complaint. The text reads:
Some things are clear.

Only one candidate for Congress in the sixth district is for term limits for career politicians...
Frank Lucas sides with the vast majority of us. Lucas supports term limits and a true citizen legislature.
The other candidate, Dan Webber sides with the career politicians and opposes term limits. Lucas for term limits.
Webber opposed to term limits.
Help convince both candidates to support term limits.
Paid for by U.S. Term Limits.

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See Attachment 3 at page 1. No documents related to the radio ads or their costs were provided by USTL.

The third activity USTL undertook was preparing and distributing mailings to voters in the particular election districts advising them as to whether the candidates signed the "voters' contract." USTL acknowledges that it requested that recipients contact the candidates opposed to term limits and urge them to change their position. On the other hand, USTL urged recipients to contact and thank the candidates who supported term limits. No copies of the mailings were provided by USTL.

Although USTL does not provide any information about the cost or breadth of distribution of the mailings, its news release, which was provided with the complaint, states that USTL's efforts include a 50,000 piece mailing to "registered voters" in Oklahoma, and that the program would cost upwards of \$30,000. Attachment 3 at page 2. In a separate news story involving the Kentucky congressional election between Ron Lewis and Joe Prather which was held on May 24, 1994, Mr. Jacobs from USTL reported that it "would spend \$20,000" making Joe Prather, a candidate who opposed limits on congressional terms, a target of an ad campaign. See Attachment 3 at pages 3 and 12.

Not included in USTL's description of its activities was the previously mentioned news release. The news release is dated May 4, 1994, and entitled "Frank Lucas Signs Voters' Contract/Webber Refuses to Support Term Limits." In that news release, Mr. Jacob of USTL is quoted:

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The voters of Oklahoma's sixth district have a clear choice. They can vote for Frank Lucas, a true term limit supporter, or vote for a former congressional staffer dedicated to a career in Congress and opposed to term limits....It is imperative that the voters know who will act on this crucial issue when they reach Washington, and who will join the incumbent politician club....Our polling shows that 78 percent of the registered voters in the sixth district want a constitutional amendment for term limits....If they want term limits, then they need to know that only Frank Lucas has taken a pro-term limit stand.
Attachment 3 at page 2.

C. APPLICABLE LAW

The FECA and Commission regulations prohibit a corporation from making contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b). Corporate expenditures that are not made in coordination with a candidate or political organization are prohibited if they "expressly advocate" the election or defeat of a clearly identified candidate. See Federal Election Commission v. Massachusetts Citizens for Life ("MCFL"), 479 U.S. 238 (1986); see also Faucher v. Federal Commission, 928 F.2d 468, 470 (1st Cir.) cert. denied, 112 S.Ct. 79 (1991).⁴

In Buckley v. Valeo, 424 U.S. 1 (1976) the Supreme Court provided some examples of speech that constitutes "express advocacy," i.e., "vote for" or "elect." Id. at 44, n. 52. The

4. The Court also exempted a narrow class of corporations from the prohibitions of Section 441b regarding independent expenditures. To qualify for the exemption, an incorporated entity must have three essential features: (1) it must be formed for the express purpose of promoting political ideas; (2) it must have no shareholders or persons affiliated so as to have a claim on assets or earnings; and (3) it must not be established by a business corporation or labor union and it must have a policy of not accepting contributions from such entities. Id. at 264.

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Court, however, subsequently held that such magic words are not required for a finding of express advocacy. MCFL, 479 U.S. at 249-250. In MCFL, the Court found express advocacy in a newsletter that compared candidates' views on one particular issue, noting that the speech provided "in effect" an explicit directive and thus went "beyond issue advocacy to express electoral activity." Id. at 249. As the MCFL Court stated, "The fact that [the] message is marginally less direct than 'vote for Smith' does not change its essential nature." Id.

In FEC v. Furgatch, 807 F.2d 857, 862-864 (9th Cir.) cert. denied, 484 U.S. 850 (1987), the Ninth Circuit held that a negative ad about Jimmy Carter placed three days before the general election saying "Don't Let him do it," expressly advocated his defeat. In reaching its decision, the Furgatch court noted that limiting a finding of express advocacy to speech that contained the "magic words" of Buckley would preserve the First Amendment right of unfettered expression only at the expense of eviscerating the Act. Furgatch, 807 F.2d at 863. The court reasoned that the Act could be easily circumvented by those who would craft communications directed to elect or defeat a clearly identified candidate without the "magic words." Id.

Corporate expenditures that are made in coordination with a candidate constitute prohibited in-kind contributions regardless of whether they contain express advocacy. The Commission's regulations define "made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate" to mean any "arrangement,

coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication." 11 C.F.R. § 109.1(b)(4)(i).⁵

Under the Act, a political committee is defined as any committee, club, association, or other group of persons, including a corporation, which receives contributions aggregating in excess of \$1,000 or makes expenditures in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4). Pursuant to 2 U.S.C. § 433(a) a political committee must file a statement of organization within ten days after becoming a political committee within the meaning of 2 U.S.C. § 431(4). The treasurer of each political committee must file disclosure reports in accordance with Section 434 of the Act. The Act requires that every person other than a political committee who makes independent expenditures in an aggregate amount or value in excess of \$250 during a calendar year to file a statement containing specific information. See 2 U.S.C. § 434(c).

The term "contribution" is defined in the Act to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i). Similarly,

5. The Commission's regulations provide that there is a presumption that expenditures are coordinated if they are:

(A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made; or

(B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent. 11 C.F.R. §§ 109.1(b)(4)(i)(A), (B).

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the term "expenditure" includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(9)(A)(i).

Communications that expressly advocate the election of clearly identified candidates must contain disclaimers as provided in Section 441d(a).

D. ANALYSIS OF ACTIVITIES

(i) Voters Contract

USTL acknowledges sending its "voters' contract" to each Congressional candidate nationwide. The "voters' contract" requests that the candidate sign, in the presence of a witness, a written contract agreeing to three specific measures supporting term limits. See Attachment 2 at page 2. Although a copy of the cover letter that USTL initially sends to each campaign has not been provided, this Office has reviewed a copy of the "voters' contract" and a follow-up letter apparently sent to candidates who did not sign and/or return the "voters' contract."⁶

In that follow-up letter, USTL informs the candidate that it is "preparing to notify" "voters" of your state and district that you "refuse to abide by the wishes of the people" by not signing and returning its "voters' contract." Attachment 2. The letter goes on to say that if the candidate signed the contract, USTL would inform the public that he stands with the "will of the people." Moreover, the letter encourages the candidate to call

6. The contract and letter were provided by the complainant in another matter, MUR 4002.

its "Congressional Director, Ron Nehring," at USTL's national offices if the candidate had any questions about the "voters' contract." Attachment 2 at 1. A toll free number, a D.C. number and a FAX number were all provided on USTL's letter to this candidate.

It appears that USTL may have attempted to coordinate with candidates and offered "something of value" to candidates in exchange for their agreeing to the terms of the "voters' contract." Although the extent of particular contacts between USTL and these candidates are unknown, this nationwide "voters' contract" program would appear to open the door for coordination. The follow-up letter, for example, encourages candidates to call and discuss the "voters' contract." In addition, it is not presently known what message USTL conveyed in its initial cover letters to candidates, specifically what, if anything, was offered by USTL in exchange for a candidate's signature agreeing to the "voters' contract." If, for instance, a candidate signed the "voters' contract" after being assured that USTL would then run a radio and/or direct mail campaign regarding his or her election, this would appear to constitute coordination. See 11 C.F.R. § 109.1(b)(4). In sum, this activity by USTL appears directly targeted toward influencing federal elections and raises questions of coordination with the candidates' campaigns.

(ii) Radio Ad

The opening sentence of USTL's radio advertisement entitled "Some Things Are Clear" identifies Frank Lucas and Dan Webber as "candidates" for "Congress in the Sixth District" of Oklahoma.

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The essential theme of the ad is a comparison between the two opposing candidates. See Attachment 3 at 1. The comparison is not merely informative: it leaves no doubt that USTL favors Lucas and opposes Webber. The script of the ad pits one candidate against the other: "Lucas supports term limits and a true citizen legislature" while "the other candidate, Dan Webber, sides with career politicians and opposes them;" Lucas "for" term limits, Webber "opposed." Moreover, the script of the ad makes evident that the "thing" which USTL believes is "clear" is the choice between the two candidates. Indeed, in USTL's "news release" for this same election, its Executive Director Paul Jacob illuminated this point when he paraphrased the script of the ad: "The voters of Oklahoma's sixth district have a clear choice ... they can vote for Frank Lucas, a two term supporter, or vote for a former congressional staffer dedicated to a career in Congress and opposed to term limits." Attachment 3 at 2.

Moreover, this advertisement appears to have been aired just prior to the election. The vendor statement containing the script of the ad is dated April 27, 1994, while the news release announcing Lucas' signing of the "voters' contract" is dated May 4, 1994, just days before the election on May 10.

Attachment 3 at 1-2. When heard or read in context and in its entirety, the message of the ad is unmistakable and unambiguous: elect Lucas and defeat Webber. Accordingly, it appears that USTL's radio ad expressly advocated the election and defeat of

clearly identified candidates.⁷

(iii) Mailings

USTL has not provided any copies of the mailers sent to voters in particular districts, but acknowledges that it distributed mailings advising them of the candidates' positions on term limits, and urging them to contact candidates and convince them to change their position. Attachment 1 at 1-2. Similarly, the mailers purportedly asked voters to contact candidates who signed its "voters' contract" to thank them. One mailer appears to have been sent to 50,000 "registered voters" in Oklahoma. Attachment 3 at 2. The number of mailings sent in connection with the election in Kentucky is not known, yet USTL indicated that it would spend a total of up to \$20,000 in that state, and some portion of that amount was apparently spent on its mailers. Id. at 12.

The mailing was targeted for people who would vote in a specific election and appears to have advocated the election and defeat of clearly identified candidates. Indeed, in AO 1987-7 the

7. This radio ad meets the three part test that the Furgatch court developed to determine whether speech constitutes express advocacy. First, the script, when read as a whole and with reference to external events, is susceptible of no other reasonable interpretation but a request to vote against Webber and for Lucas. Furgatch, 807 F.2d at 864. Second, the request to "convince" the candidates about the necessity of supporting term limits is a clear plea for action. Third, the message of the plea is clear: "convince" the candidates by voting for Lucas and against Webber. This interpretation of the plea is consistent with the facts, especially since the ad appears to have been released in the days just prior to the election, the ad conveyed to the public that Webber had "refused" to sign the "voters' contract," and the ad did not provide information about contacting either candidate. Like the plea "Don't Let him do it," this plea is "vague" but not ambiguous. Id. at 865.

Commission ruled that a proposed program that was strikingly similar to USTL's "voters' contract" would violate Section 441b. There, a corporation proposed sending letters urging recipients to contact candidates in their district before election day, invoking the threat of defeat if they did not change their position on certain issues. AO 1987-7; See also USDC v. FEC 861 F.2d 765 (2nd Cir. 1988) (court held that advisory opinions are not ripe for review). In sum, from the very limited information at hand regarding these mailings, they appear similar to those at issue in AO 1987-7. Accordingly, it appears that USTL's mailings expressly advocated the election and defeat of clearly identified candidates.

(iv) News Release

The USTL "news release" announced the date of the Oklahoma special election, identified the two candidates, indicated that Lucas signed its "voters' contract" while Webber refused, and contained, among other things, the above-quoted language from Mr. Jacob: "The voters of Oklahoma's sixth district have a clear choice. They can vote for Frank Lucas, a true term limit supporter, or vote for a former congressional staffer dedicated to a career in Congress and opposed to term limits." Attachment 3 at 2. It is clear that the news release expressly advocates the election and defeat of clearly identified candidates.⁸

8. Moreover, there is nothing to suggest that the news release by USTL would qualify for the press exemption set forth at 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. § 100.8(b)(2).

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F. CONSEQUENCES OF USTL'S ACTIVITY UNDER FECA

First, as USTL appears to be incorporated and its radio ad, mailings and news release expressly advocate the election and defeat of clearly identified candidates, USTL and/or its Fund appear to have violated Section 441b by making prohibited expenditures. We note, however, that there is no information at hand about the Fund or the source of the moneys used. Moreover, USTL may claim that it and/or its Fund qualify for the MCFL exemption. MCFL, 479 U.S. 238, 264.

Second, the evidence at hand suggests that one of USTL's primary methods of achieving its goal of imposing Congressional term limits consists of direct intervention and involvement in influencing federal elections. Although the evidence at hand relates only to Oklahoma and Kentucky, USTL indicated in its response to the complaint and in its press release that its activities are to continue on a nationwide scale and in every Congressional election. These efforts appear to have already cost USTL/Fund approximately \$50,000. Thus, it appears that USTL and its Fund are a political committee under Section 431(4)(A) which has failed to register and report in violation of 2 U.S.C. §§ 433(a) and 434(a) and (b). In addition, given the nature of USTL's communications, they should have included appropriate Section 441d disclaimers.

On the other hand, if USTL and/or its Fund qualify for the MCFL exemption and it is not a "political committee," it would have still violated the Act by failing to disclose its independent

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expenditures in statements filed in accordance with Section 434(c) and to include disclaimers as required by Section 441d(a). Finally, our investigation would need to examine the facts surrounding USTL's "voters' contracts" to assess whether USTL coordinated with these candidates, giving rise to unreported and perhaps excessive contributions.

As the foregoing analysis shows, this matter is complex, both factually and legally. Although the evidence at hand is weighty, it is limited. USTL's response provides little information. Indeed, its response does not contain any information about the scope of the distribution or the costs of the communications for the two elections at issue, let alone for the rest of its nationwide efforts. USTL has also not provided any of the underlying documents, i.e., those related to the advertisements or mailings. Therefore, resolution of this matter will require investigation. In addition, it is anticipated that USTL may raise the MCFL exemption as a defense, which may broaden the scope of the investigation.

III. REQUEST FOR INJUNCTIVE RELIEF AND DISMISSAL

The complainant requests that the Commission seek injunctive relief under Section 437g to "address both the activities that have occurred to date and those that by the profession of this organization can be expected in other races this year." To date, the Commission has not sought injunctive relief at this stage of the enforcement process. In fact, there is serious question as to whether such a request would be appropriate under the Act. See General Counsel's Memorandum to the Commission dated December 11,

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1992 ("Memorandum"). Moreover, for the reasons discussed below, MUR 3975 does not appear to be the type of matter in which the Commission should test the availability of injunctive relief at this juncture. Thus we recommend that the DCCC's request for injunctive relief and/or dismissal be denied.

Reference to the Commission's power to seek injunctive relief is set forth in two sections of the FECA: Sections 437g(a)(6) and 437d(a)(6). In Section 437g, the Commission is granted the power to seek injunctive relief upon completion of the detailed enforcement process, i.e., at the conclusion of post probable cause conciliation. 2 U.S.C. § 437g(a)(6). As noted in our Memorandum, the legislative history, statutory language, and the very structure of the enforcement scheme demonstrate Congress' intent to keep 437g enforcement matters out of court until the enforcement process is finished. Memorandum at 4.⁹

The power to seek injunctive relief also appears in Section 437d, which lists the Commission's organic powers. See 2 U.S.C. § 437d(a)(6). Although a colorable argument may be made that Section 437d(a)(6) offers an independent basis for the Commission to seek injunctive relief, in our 1992 Memorandum we outlined the limited support and risks of such an approach. See Memorandum at 4-6. As noted therein, where injunctions by agencies have been sought in aid of their enforcement process, the agency's enabling statute has generally set forth specific

9. An exception is Section 437d(b)'s provision for judicial enforcement of subpoenas and orders.

statutory authority within their enforcement process or the agency has additional statutory authority to do so. Memorandum at 5-6. We also concluded that another aid in seeking injunctive relief, the All Writs Act at 28 U.S.C. 1651, has been limited to emergency situations in which the jurisdiction of the court might be imperiled without immediate relief. Id. at 6-7. The situation here does not appear to be that type of emergency.

More importantly, even putting aside whether the Commission has the authority to seek injunctive relief at this point under 437g or independently under 437d, this Office does not believe that MUR 3975 is the case that should be used to test that proposition. A preliminary injunction requires the moving party to show that: 1) it is likely to prevail on the merits; 2) without the injunction the moving party will be irreparably injured; 3) the injunction would not harm other parties; and 4) the injunction is consistent with the public interest. The Nation Magazine v. Department of State, 805 F. Supp. 68, 72 (D.D.C. 1992); citing Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc. 559 F.2d 841, 843 (D.C. Cir. 1977). However, relief may be granted with either a high probability of success or some injury, or vice versa. Cuomo v. United States Nuclear Regulatory Commission, 772 F.2d 972, 978 (D.C. Cir. 1985).

Although this Office believes that USTL's activities may give rise to violations of the Act, obtaining injunctive relief at this time could prove to be difficult. Given the present record, the clearest violation would be USTL's failure to include appropriate Section 441d disclaimers on its materials. Regarding

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the other legal issues, e.g. violations of Sections 441b and 433, it does not appear that there is sufficient information at hand to meet the requirements for obtaining injunctive relief.

Specifically, the source of the funds used to pay for these activities is not clear and USTL may claim it is entitled to the MCFL exemption. With regard to going forward so as to require USTL to register and report immediately as a political committee, the evidence presently available does not establish that USTL's "major purpose" is "to influence political campaigns". MCFL 479 U.S. at 261. Moreover, a court may find even the narrow disclaimer issue problematic as it involves First Amendment concerns. We do not possess any of the documents which USTL might use in future elections (other than the "voters' contract"); indeed, such communications may not even exist. Although there is evidence that USTL might engage in similar violations on a nationwide scale, a court might be hesitant to grant an injunction against future communications without reviewing the specific language and content of those communications, especially since they will be arguably subject to First Amendment protections. See e.g. Faucher v. Federal Election Commission, 743 F. Supp. 64, 70-72 (D. Me. 1990), aff'd 928 F.2d 468 (1st Cir. 1991), cert. denied, 112 S.Ct. 79 (1991).¹⁰

In the context of a request for a preliminary injunction,

10. Limiting the request for injunctive relief to exclude future USTL communications by focusing exclusively on USTL's activities in Oklahoma and Kansas would likely be unsuccessful as well. It would be difficult to establish "irreparable harm" since the elections in those two states are now over.

USTL's First Amendment arguments might be given serious consideration, especially since political speech is the type that the Supreme Court has held is at the "core of our electoral process and the greatest First Amendment freedoms." Buckley v. Valeo, 424 U.S. at 39. Furthermore, a preliminary injunction would be viewed as prior restraint of speech, which is most disfavored. See Near v. Minnesota, 283 U.S. 713 (1931). As for the public interest, colorable arguments can be made on both sides: while the Supreme Court has found the Act's reporting requirements and the prohibition on corporate and labor union expenditures compelling, issue discussion is viewed in an equally compelling light. Buckley, 424 U.S. 1, 68.

In sum, this Office believes that these communications fall within the purview of the Act. Yet, for the foregoing reasons, we do not recommend that the Commission seek injunctive relief at this time. In regard to the DCCC's alternative request that the Commission dismiss the case without consideration in order to allow court review, dismissal of a case for the sole purpose of allowing a complainant to obtain immediate court review is improper. It would be inappropriate for the Commission to dismiss this case without consideration for the sole purpose of allowing the DCCC to bring a civil action in its own right. Therefore, this Office recommends that the Commission deny the DCCC's request to dismiss the case.

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IV. CONCLUSION

Given all of the foregoing, it does not appear likely that this matter will be settled or ready for suit by election day, November 8, 1994, unless the Commission decides to seek preliminary injunctive relief.¹¹ For the foregoing reasons, this Office submits that such relief would not be appropriate in this case. Accordingly, this Office does not believe that other ongoing matters should be put aside to expedite MUR 3975. Therefore, we do not make any recommendations regarding findings of reason to believe at this time.

V. RECOMMENDATIONS

1. Deny the DCCC's request that the Commission seek injunctive relief or a restraining order.
2. Deny the DCCC's request to dismiss the case.
3. Approve the appropriate letter.

7/20/94
Date


Lawrence M. Noble
General Counsel

Attachments

1. USTL's response
2. Voters' contract
3. USTL's script, news release, etc.

11. At the Executive Session on July 12, 1994, this Office indicated that if no investigation was necessary, the civil suit could be filed, at the earliest, just before election day November 8, 1994. Given the foregoing analysis and the need for investigation, that timeline is no longer feasible. We also note that the underlying legal issues appear to test the boundaries of the statute. Indeed, some of these activities are remarkably similar to those proposed in AO 1987-7, an opinion issued to a corporation represented by the same counsel that represents USTL in this matter.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3975
U.S. Term Limits;)
U.S. Term Limits Voter)
Education Fund;)
Christian Coalition;)
Americans for Tax Reform;)
Lucas for Congress, and)
C.A. Wheeler, as Treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on July 26, 1994, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3975:

1. Deny the DCCC's request that the Commission seek injunctive relief or a restraining order.
2. Deny the DCCC's request to dismiss the case.
3. Approve the appropriate letter.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

7-26-94
Date

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JULY 27, 1994

Robert F. Bauer, Esquire
Judy Corley, Esquire
Perkins Cole
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 3975
U.S. Term Limits, et al

Dear Mr. Bauer and Ms. Corley:

On July 26, 1994, the Federal Election Commission denied the request of your client the Democratic Congressional Campaign Committee for injunctive relief in the above-captioned matter. By same date, the Commission denied your client's request to dismiss MUR 3975. You will be notified as soon as the Commission takes final action on your client's complaint.

Sincerely,

A handwritten signature in dark ink, appearing to read "L. Lerner", is positioned above the typed name.

Lois G. Lerner
Associate General Counsel

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-0600 • FACSIMILE (202) 434-1690

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FEDERAL ELECTION
COMMISSION
ADMIN.

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August 19, 1994

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

Re: MUR 3975

Dear Commissioners:

In May 1994, the Democratic Congressional Campaign Committee filed a complaint against U.S. Term Limits. This complaint was supplemented in June 1994, adding several additional respondents. This letter contains further supplementary information about the illegal activities of U.S. Term Limits in connection with federal elections.

As the DCCC noted in its earlier complaints, U.S. Term Limits has stated clearly that it intends to be involved in influencing federal elections around the country during 1994. Evidence provided with this complaint shows that illegal activity has now begun in Idaho.

In a July 7, 1994 Wall Street Journal article (copy attached), two U.S. Term Limits employees are quoted as pledging the organization's support for the Republican party candidate, Helen Chenoweth, in the race for the House of Representatives in the 1st Congressional District of Idaho:

Another Chenoweth backer is Beau Parent, who heads Idahoans for Term Limits. While he is furious that GOP leaders here blocked a convention endorsement of his issue - a reflection of the party's electoral success - he nonetheless notes, "it will not diminish our support of Helen Chenoweth." She vows to serve no more than three terms, while Rep. LaRocco opposes term limits.

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OFFICE OF GENERAL
COUNSEL

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[04031-0044/DA942270.051]

Ron Nehring, who came to the [Idaho Republican Party] convention from Washington on behalf of U.S. Term Limits, said Mrs. Chenoweth likely would benefit from the same tactics that helped elect House Republicans in recent special elections in Kentucky and Oklahoma. In each place, term-limits backers spent tens of thousands of dollars on radio and newspaper ads and mailings. "We're prepared to do all those things in Idaho," says Mr. Nehring.

Emphasis added. See also July 17, 1994 Idaho Statesman guest opinion (copy attached) written by Mr. Parent. ("By keeping pressure on Congress through grass roots campaigns like Idaho's and by electing individuals like Helen Chenoweth (who had signed the voter's contract calling for a congressional constitutional amendment establishing federal term limits, we will achieve congressional term limits in all 50 states.")

Any effort by the organizations to hide behind the independent expenditure provisions of the Act is unavailing given that U.S. Term Limits coordinated a press conference with the Chenoweth campaign. Mrs. Chenoweth even publicly thanked Beau Parent for coordinating with her campaign on the term limits initiative at a debate sponsored by the Perot group, United We Stand.

If it has ever not been clear, these statements confirm that the organization's intent is to influence the election of Republican candidates to federal office and its expenditures are designed to fulfill that intent.¹ To this end, U.S. Term Limits, by its own admission has already spent thousands of dollars, funds that have not been raised subject to the federal campaign laws source restrictions, contribution limits or reporting requirements.

DCCC has set out in its previous submissions the legal standard that must be applied to these activities. In the

¹It is interesting to note that both U.S. Term Limits employees were attending the Republican Party Convention. There is no evidence that either made any effort to attend the Democratic Party Convention.

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Furgatch case, the court required the Commission to look beyond the specific language within the four corners of a communication and to consider any communication "as a whole, with limited reference to external events." Federal Election Commission v. Furgatch, 807 F.2d 857, 864 (9th Cir.), cert. denied, 108 S. Ct. 151 (1987). Bland communications (e.g., Candidate X is for term limits.) alone may well qualify as issue advocacy. Repeated public pronouncements of an intent to use these same communications to influence the election of Candidate X -- public pronouncements in the midst of an election campaign in which Candidate X is participating -- constitute "external events" that cannot be ignored.

Under these standards, the DCCC has made out the case that U.S. Term Limits has violated the Federal Election Campaign Act and the Federal Election Commission regulations implementing that Act. The organization has now admitted its intent to undertake the same illegal activities in the Idaho election (and, without doubt, in other states as well).

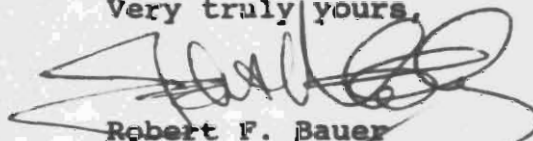
Commission refusal to stop these illegal activities promptly, before the very election on which such activities are intended to have a direct impact, would mock the enforcement provisions of the law. Thousands of dollars are being spent to benefit a candidate for federal office without any enforcement by the Commission at all. The FEC has made much recently of its efforts to streamline its enforcement procedures and to make those procedures more effective. Yet U.S. Term Limits is continuing its efforts to elect Republican candidates without making any effort to comply with the campaign laws.

The Commission cannot afford to resolve this matter two, three, four years from now, long after the impact of the illegal activities has made its mark. Larger and larger civil penalties imposed years after the violation are of little comfort to a losing candidate who played by the rules.

August 19, 1994
Page 4

Effective enforcement of the law must allow for the prompt enforcement of the rules against those who would willfully ignore them.

Very truly yours,


Robert F. Bauer
Judith L. Corley
Counsel for DCCC

SUBSCRIBED AND

SWORN TO BEFORE ME

this 19th day of August, 1994.

My commission expires Feb. 28, 1998.

Donna M. Lenhart
Notary Public

Donna M. Lenhart
Notary Public, District of Columbia
My Commission Expires Feb. 28, 1998

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A14 THE WALL STREET JOURNAL THURSDAY, JULY 7, 1994

POLITICS & POLICY

Idaho Race Illustrates Type of GOP Conservative Seen as Potentially Vulnerable by Democrats

By JACKIE CALMES

Staff Reporter of THE WALL STREET JOURNAL
LEWISTON, Idaho — Amid the storm clouds Democrats face this election year, they point to ultraconservative GOP candidates like Helen Chenoweth as the silver lining.

Even Republicans privately say that the same stances that so endear Mrs. Chenoweth to far-right supporters — against gays and abortion rights, for home-schooling and private-school vouchers — will hurt her among moderate voters in this November's matchup with two-term Democratic Rep. Larry LaRocco. As Republicans met at this inland port for their recent state convention, Rep. LaRocco's radio ads already taunted, to the sound of a ticking timepiece, that Mrs. Chenoweth "wants to turn back the clock in Idaho."

But a look at the race suggests Democrats can't be complacent about such candidates. In the GOP primary, the 56-year-old Mrs. Chenoweth drew on support from an energized base of conservative activists and religious-right groups to swamp two favored rivals. In states as far-flung as Oregon, California, Texas, Nebraska, Minnesota, Indiana and Pennsylvania, conservatives this year also tapped the increasingly active far right to score victories over more moderate rivals in GOP primaries and caucuses.

The grassroots support that such Republicans employed to win their primaries will be evident in the fall, with a get-out-



Helen Chenoweth

the vote potential that could offset disaffection among moderate voters. "If the 'right candidate' couldn't even win the primary, maybe they weren't the right candidate after all," argues Rep. Bill Paxton of New York, chairman of the House Republicans' campaign arm. Meanwhile, groups that don't share the whole conservative agenda latch on to any vehicle for change.

Yet the potential vulnerability of such Republicans is about the only encouraging word for Democrats in this midterm election year, when the president's party typically suffers net losses. "It is a godsend to us," says Democratic Rep. Vic Fazio, the head of House Democrats' campaign organization, who cites his own victory in 1992 over a champion of California's religious right.

Prime Test

The LaRocco-Chenoweth race here is a prime test of whether these far-right candidates can swim in the mainstream. Even in conservative Idaho, the 46-year-old Rep. LaRocco couldn't be happier about Ms. Chenoweth's upset win. "Her positions are so extreme, so far right, it gives me plenty of running room in the middle."

A pro-abortion-rights moderate and scrappy campaigner, he wasted no time spotlighting his rival's more controversial stands. After the radio spot, a news release last week further set the tone. Its headline: "Chenoweth supports out-of-state extremist agenda."

"He's trying to demonize me," she says of Mr. LaRocco. "My challenge is not to be on the defensive."

And, as is clear in similar contests, Mrs. Chenoweth and the groups that back her are showing a pragmatic sophistication about winning elections. They are muffling debate on contentious issues

they care about and stressing instead mainstream topics such as taxes and crime.

The hottest topic among Idaho's social issue conservatives, for example, is the push for an antigay rights initiative on the fall ballot. But at the GOP convention here, not a word about the matter went into this year's platform — and conservatives didn't object. "The honest truth? That initiative could do bad things to us," says Randy Smith, the state party chairman. "A lot of people in Idaho won't vote for that kind of crap." And if it is linked to the GOP, he adds, "they might not vote for our candidates either."

Meanwhile, Mrs. Chenoweth, a Boise natural resources consultant, stresses her pro-business stances on timber and mining issues, hoping to appeal both to company leaders and to the Democratic-leaning loggers and miners in this northern panhandle. "Natural resource issues are a wedge into the Western family values," she says. An engaging campaigner, she even left the convention one night to assail federal policies at a hearing in a nearby logging town.

She attacks Rep. LaRocco, who has sought to balance industry and environmental interests, as an accomplice in what Republicans generally are calling Mr. Clinton's "War on the West," a slap at proposals to raise fees for mining, ranching and logging on federal lands. At the same time, she plays down social issues, despite a background that includes helping to found the conservative Idaho Family Forum. She says she has given no thought to a federal antiabortion law, though she once backed a state version. And the

antigay initiative, she says, "is not a big issue in my campaign."

Such comments don't trouble her committed backers. "We're so confident of the people we plan to elect and their firm stance on the issues we care about," says Jennifer Welch, who represented the Idaho Christian Coalition at the state convention. "At this point in the game, it's wiser to lay low and just elect them."

Electing Mrs. Chenoweth is likewise a top priority for Kelly Walton, an independent contractor who has bankrolled the drive for the antigay rights initiative as a way to mobilize the Idaho Citizens Alliance — an offshoot of the Oregon Citizens Alliance he also helped found. "We worked our tails off for her" in the primary, he says.

Blitz With Voter Guides

Again this fall, the Citizens Alliance, Christian Coalition and Idaho Family Forum will organize churches and pass out voter guides. About 200,000 voter guides went out in the state of 1.1 million in the two weeks before the May primary, organizers say several times that many will be distributed before November. Mr. Walton personally blitzed the state by car, attending as many as six meetings a day, and leaving voter guides at churches and taverns alike.

Another Chenoweth backer is Beau Parent, who heads Idahoans for Term Limits. While he is furious that GOP leaders here blocked a convention endorsement of his issue — a reflection of the party's electoral success — he nonetheless notes, "it will not diminish our support of Helen Chenoweth." She vows to serve no more than three terms, while Rep. LaRocco opposes term limits.

Ron Nehring, who came to the convention from Washington on behalf of U.S. Term Limits, said Mrs. Chenoweth likely would benefit from the same tactics that helped elect House Republicans in recent special elections in Kentucky and

Oklahoma. In each place, term limit backers spent tens of thousands of dollars on radio and news paper ads and mailings. "We're prepared to do all those things" in Idaho, says Mr. Nehring.

Platt Thompson of Boise, the Idaho director for Ross Perot's United We Stand organization, sees a similar role for his group. He says he will poll members, but predicts they will support Mrs. Chenoweth. Members "just want someone who goes [to Congress] and presses the 'no' button a lot," he says. "She hits the right note."

The question, GOP leaders concede, is whether Rep. LaRocco's attacks on Mrs. Chenoweth's more conservative views will offset her highly organized backing. In the primary, "she ran the best organized campaign I've seen in this state in years," says Mr. Smith, the state GOP chairman. Still, "if LaRocco defines her, we're going to have some trouble."



Larry LaRocco

unfair advantage

By Beau Perent

The 1994 Term Limit Initiative is the most dramatic piece of citizen legislation reforming government to come before the people of Idaho. The initiative puts Idahoans back in charge of their government.

The election process heavily favors the incumbent. Free use of radio and television studios, press conference rooms readily available, year-round fundraising events, and other financial and media perks have tilted the ballot box (43 out of 48 incumbents in Idaho won their primary bids in May).



Beau Perent

Term limits will level the playing field in running for political office. The initiative will establish ballot access restrictions limiting a multi-term incumbent's name from appearing on the ballot after a specified time period.

Idaho's attorney general and secretary of state agree that nothing in the initiative prohibits any individual from running for any office at any time. For example, if a state office holder desires to run for the same office after he or she has served eight of the previous 16 years, they could as a write-in candidate.

Term limits encourage greater participation in government, from school district trustees to U.S. Congress. As the hurdle of challenging an entrenched incumbent is lowered, more people will get involved and run for office.

With more people involved, the field and expertise from which we elect our representatives will broaden, thereby increasing the knowledge and expertise of our elected officials. I can't think of a better place to start getting more people involved than at the school district level, where the control to shape our children's future is second only to the home and church.

Term limits work in small towns where "the man with the snow plow gets elected mayor." If no one else wants the job, the incumbent can write his name on the ballot, re-electing himself term after term with just one vote.

More term limits to come

Term limits are the cornerstone of all political reform to come.

It is often said the only way to vote one's conscience is to have one foot out the door. Term limits will free elected officials from worrying how their votes will influence their campaign coffers and allow them to vote on the true merits of an issue.

Idaho's attorney general has proclaimed term limits at the state, county, municipal and school district level to be constitutional. Case law and history support his position and the constitutionality of state imposed congressional term limits. Article I, Section 4 of the U.S. Constitution provides power to states to control "The Times, Places and Manner of holding Elections."

National trend concerning

Idahoans are not alone as they stand in the gap for the reform term limits will bring. More than 20 million people in 15 states established all federal term limits, limiting 25 percent of Congress. At year end, nearly 60 percent of Congress will be term limited. By keeping pressure on Congress through support state campaigns like Idaho's, and by electing individuals like Helen Chenoweth (who has signed the voter's contract calling for a constitutional constitutional amendment establishing federal term limits), we will achieve congressional term limits in all 50 states.

President Trump said term limits "would go a long way toward ending cronyism and corruption — both in the offices of Congress." Term limits break the current seniority and patronage system, a vice at all levels of government. With term limits, effort and ability will be rewarded.

The people of Idaho will make their voices

Term limits ^{5/5/44}
needed to re-
serve citizen ^{life}
statesman ^{5/5}

BOISE, ID.,—Helen Chenoweth, Idaho first congressional district candidate held a news conference at the State House to pledge her support of the "Initiative Term Limits". In a prepared statement delivered beside the memorial to General George Washington she said, "It was George Washington who best understood the role of the 'citizen statesman'. As our first President, Washington heard the concerns of the citizenry who feared a 'presidential Monarchy'. By declining to run for the third term, George Washington invented term limits."

"Now we see the rise of a 'Congressional Monarchy' in our nation. America is ruled by a class of professional politicians whose motivations lie less in directing the nation than in administering a system of political self-preservation," Chenoweth said. "Understandable, our people yearn for change."

Chenoweth made this pledge. "I pledge today to work to return the power to the people. As a candidate, I pledge to serve a season in Congress and return to lead a life under the same laws that are imposed upon the people." The initiative calls for a member of the U.S. House of Representatives to be limited to serving six years.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

SEPTEMBER 8, 1994

Robert F. Bauer, Esq.
Judith L. Corley, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 3975

Dear Mr. Bauer and Ms. Corley:

This letter acknowledges receipt on August 19, 1994, of the amendment to the complaint you filed on May 19, 1994. The respondent(s) will be sent copies of the amendment. You will be notified as soon as the Federal Election Commission takes final action on your complaint.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

96043761599



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

SEPTEMBER 8, 1994

Wayne Crow, Treasurer
Chenoweth for Congress Committee
P.O. Box 897
Boise, ID 83701

RE: MUR 3975

Dear Mr. Crow:

The Federal Election Commission received an amendment to a complaint which indicates that the Chenoweth for Congress Committee ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the amendment, the original complaint, and a previously submitted amendment to the complaint are enclosed. We have numbered this matter MUR 3975. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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Wayne Crow, Treasurer
Chenoweth for Congress Committee
Page 2

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

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosures

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

96043761601



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

SEPTEMBER 8, 1994

Frank M. Northam, Esq.
Webster, Chamberlain & Beam
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20008

RE: MUR 3975
U.S. Term Limits and
Paul Jacob, as Executive
Director

Dear Mr. Northam:

On May 26, 1994, your clients, U.S. Term Limits and Paul Jacob, as Executive Director, were notified that the Federal Election Commission received a complaint from the Democratic Congressional Campaign Committee ("DCCC") alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time, your clients were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On June 10, 1994, the Federal Election Commission received additional information from the complainant. At that time, your clients were given a copy of the additional information.

On August 19, 1994, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. As this new information is considered an amendment to the original complaint, you are hereby afforded an additional 15 days in which to respond to the allegations.

If you have any questions, please contact Joan McNery at (202) 219-3400.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure

96043761602

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

In the Matter of)

) MURs 3975 & 4002
)

Apr 6 3 37 PM '95

GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 3975

DATE COMPLAINT FILED: May 19, June 10
and August 19, 1994

DATE OF NOTIFICATION: May 26, June 22
and September 8, 1994

DATE ACTIVATED: November 30, 1994

STAFF MEMBER: Xavier K. McDonnell

COMPLAINANT: Democratic Congressional Campaign Committee

RESPONDENTS: U.S. Term Limits
U.S. Term Limits Voter Education Fund
Americans for Tax Reform
Christian Coalition
Lucas for Congress and
C. A. Wheeler, as Treasurer
Chenoweth for Congress Committee and
Wayne Crow, as Treasurer

MUR 4002

DATE COMPLAINT FILED: June 30, 1994

DATE OF NOTIFICATION: July 12, 1994

DATE ACTIVATED: November 30, 1994

STAFF MEMBER: Xavier K. McDonnell

COMPLAINANT: William White

RESPONDENTS: U.S. Term Limits
U.S. Term Limits Voter Education Fund

RELEVANT STATUTES: 2 U.S.C. § 431(17)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441a(a)
2 U.S.C. § 441b(a)
2 U.S.C. § 441d(a)
11 C.F.R. § 109.1

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

96043761603

I. BACKGROUND

In MUR 3975, the Democratic Congressional Campaign Committee ("DCCC") alleges that U.S. Term Limits ("USTL" and/or its "Fund") violated the statute through its "voters' contract" program.¹ In an amendment to its complaint, the DCCC made similar allegations against Americans For Tax Reform ("AFTR") and the Christian Coalition (Coalition). Two candidate committees were also notified of the complaint in MUR 3975. In MUR 4002, William White alleges violations of the statute by USTL, also with respect to its "voters' contract" program.

II. APPLICABLE LAW

The FECA and Commission regulations prohibit a corporation from using its general treasury funds to make contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b). Corporate expenditures that are not made in coordination with a candidate or political organization are prohibited if they "expressly advocate" the election or defeat of a clearly identified candidate. See Federal Election Commission v. Massachusetts Citizens for Life ("MCFL"),

1. On July 26, 1994, the Commission denied the DCCC's request that it either seek injunctive relief to prevent USTL from carrying on its "voters' contract" efforts and related activities prior to the 1994 elections or dismiss this matter so that it could proceed to district court. In our First General Counsel's Report recommending that the Commission deny DCCC's requests, we did not make any recommendations regarding findings of reason to believe. See First General Counsel's Report, dated July 20, 1994 ("FGCR"). Therefore, although this report may not technically be the First General Counsel's Report in MUR 3975, it is the first report in which this Office makes reason-to-believe recommendations in either of these matters (MUR 3975 or MUR 4002).

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479 U.S. 238 (1986).²

In Buckley v. Valeo, 424 U.S. 1 (1976) the Supreme Court provided some examples of speech that constitutes "express advocacy," i.e., "vote for" or "elect." Id. at 44, n. 52. In MCFL, the Court found express advocacy in a newsletter that compared candidates' views on one particular issue, noting that the speech provided "in effect" an explicit directive and thus went "beyond issue advocacy to express electoral activity." Id. at 249. The Court stated that: "The fact that [the] message is marginally less direct than 'vote for Smith' does not change its essential nature." Id. Thus "magic words" are not required for a finding of express advocacy. MCFL, 479 U.S. at 249-250.

In FEC v. Furgatch, 807 F.2d 857, 862-864 (9th Cir.) cert. denied, 484 U.S. 850 (1987), the Ninth Circuit held that a negative ad about Jimmy Carter placed three days before the general election saying "Don't Let him do it," expressly advocated his defeat. In reaching its decision, the Furgatch court noted that limiting a finding of express advocacy to speech that contained the "magic words" of Buckley would preserve the First Amendment right of unfettered expression only at the expense of eviscerating the Act. Furgatch, 807 F.2d at 863. The court

2. In MCFL, the Court also exempted a narrow class of corporations from the prohibitions of Section 441b regarding independent expenditures. To qualify for the exemption, an incorporated entity must have three essential features: (1) it must be formed for the express purpose of promoting political ideas; (2) it must have no shareholders or persons affiliated so as to have a claim on assets or earnings; and (3) it must not be established by a business corporation or labor union and it must have a policy of not accepting contributions from such entities. MCFL, 479 U.S. at 264.

reasoned that the Act could be easily circumvented by those who would craft communications directed to elect or defeat a clearly identified candidate without the "magic words." Id.

Corporate expenditures that are made in coordination with a candidate constitute prohibited in-kind contributions regardless of whether they contain "express advocacy." The Commission's regulations define "made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate" to mean any "arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication." 11 C.F.R. § 109.1(b)(4)(i).³

In a prior enforcement matter, the Commission found reason to believe that a corporation violated Section 441b(a) by coordinating the timing and distribution of press conferences it had arranged with candidates who had signed its "voters' pledges." See Matter Under Review ("MUR") 2269.⁴ In Advisory Opinion ("AO")

3. The Commission's regulations provide that there is a presumption that expenditures are coordinated if they are: (A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made; or (B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent. 11 C.F.R. §§ 109.1(b)(4)(i)(A), (B).

4. The respondent in MUR 2269 was AFTR, which is also a respondent in MUR 3975. MUR 2269 dealt with AFTR's "voters' pledges" for the 1986 elections, and was settled through a conciliation agreement which contained an admission of the Section 441b(a) violation and a \$1,000 civil penalty.

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1987-7 the Commission ruled that a corporation would violate Section 441b(a) if it sent letters urging recipients to contact candidates in their district before election day, invoking the threat of defeat if they did not change their position on certain issues.

Under the Act, a political committee is defined as any committee, club, association, or other group of persons, including a corporation, which receives contributions aggregating in excess of \$1,000 or makes expenditures in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4). The Supreme Court has concluded that "[t]o fulfill the purposes of the Act [political committees] need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." Buckley, 424 U.S. at 79; MCFL, 479 U.S. at 252, n.6; see also AO 1994-25; Akins v. FEC, No. 92-1864 (D.D.C. March 30, 1994). Pursuant to 2 U.S.C. § 433(a) a political committee must file a statement of organization within ten days after becoming a political committee within the meaning of 2 U.S.C. § 431(4). The treasurer of each political committee must file disclosure reports in accordance with Section 434 of the Act. The Act requires that every person other than a political committee who makes independent expenditures in an aggregate amount or value in excess of \$250 during a calendar year file a statement containing specific information, as set forth in 2 U.S.C. § 434(c).

The term "contribution" is defined in the Act to include any gift, subscription, loan, advance, or deposit of money or anything

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of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i). Similarly, the term "expenditure" includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(9)(A)(i). Communications that expressly advocate the election of clearly identified candidates must contain disclaimers as provided in Section 441d(a).

III. FACTUAL AND LEGAL ANALYSIS

A. U.S. TERM LIMITS (USTL)

i. Summary of Complaint and Responses

Complainants assert that USTL is a corporation making expenditures in violation of Section 441b. The complaint alternatively alleges that USTL is a "political committee" which has failed to register with the Commission and file disclosure reports. The complaint notes that USTL appears to be coordinating with candidates through its "voters' contract" program. Thus, the complaint alleges, even if USTL were exempt from the Section 441b prohibition under the MCFL exemption with respect to corporate independent expenditures, it has still violated the Act by making corporate contributions to candidates. The complaint and amendments focus on elections held in Oklahoma, Kentucky, Pennsylvania and Idaho.

USTL identifies itself as a nonprofit tax exempt organization formed for the purpose of advocating the establishment of term limits for elected officials at all levels

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of government. See FGCR, dated July 20, 1994, Attachment 1. USTL operates its voters' contract program on a nationwide basis. USTL does not deny that it is a corporation.⁵ USTL's news release indicates that its efforts were paid for by USTL's Voter Education Fund ("Fund"). However, the Fund is not registered with the Commission and USTL does not provide any information about its Fund, or the source of the funds used to pay for the activities at issue in this matter.

USTL provides a general explanation of its activities. First, it created "voters' contracts" which it acknowledged were distributed to "every congressional candidate nationwide." Second, it created and aired radio advertisements indicating whether clearly identified candidates had signed its "voters' contracts." Third, USTL created and distributed mailings to voters in specific Congressional districts and/or states advising them as to whether the particular candidates signed the "voters' contract," and urging voters to contact such candidates. Fourth, USTL issued press releases indicating whether clearly identified candidates signed its voters' contracts.⁶

USTL denies coordinating with candidates through its voters' contracts. It also contends that the mailings and radio advertisements which it distributed in conjunction with its voters' contract are constitutionally-protected issue discussion

5. This Office was informed by the corporate division of the District of Columbia that USTL is a registered corporation.

6. USTL also appears to have taken polls in particular Congressional voting districts regarding term limits. See Attachment 1 at 2.

and do not "expressly advocate" the election or defeat of candidates. Therefore, USTL requests that the Commission dismiss MUR 3975 and MUR 4002.

(ii) Analysis

(a) USTL's Voters' Contracts

USTL indicates that it sent its voters' contracts to candidates nationwide. It did not provide a copy of its initial letter to candidates or any of its voters' contracts. However, a copy of one voters' contract was provided by the complainant in MUR 4002. The contract, in essence, provides that if the candidate is elected, he or she will take three specific measures in support of enacting or advancing Congressional term limits. See Attachment 1 at 4.

The complainant in MUR 4002 also provided a copy of a follow-up letter he had received from USTL. Attachment 1 at 5. In that letter, USTL's Executive Director Paul Jacob states that signing the "voters' contract" would give the candidate the "opportunity to publicly declare" his support for term limits. Id. Moreover, Jacob states that the corporation is "preparing to notify" "voters" of your state and district that you "refuse to abide by the wishes of the people" by not signing and returning its "voters' contract." Id. The letter goes on to say that if the candidate signed the contract, USTL would inform the public that he stands with the "will of the people." The letter encourages the candidate to call its "Congressional Director, Ron Nehring," at USTL's national offices if the candidate had any questions about the "voters' contract." Id. A toll free number, a D.C.

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number and a FAX number were all provided on USTL's letter to this candidate.

Certain aspects of USTL's voters' contract efforts appear permissible. USTL was permitted to contact these candidates to determine their position on the issue of Congressional term limits, and to release information disclosing its "findings." See generally AO 1993-18, citing 11 C.F.R. §§ 114.4(b), (c) and (d). In addition, as USTL's states in its response, there is nothing in the FECA "which prohibits an organization from urging federal candidates to take a position on issues of the general public." Attachment 3 at 2.

On the other hand, some aspects of USTL's voters' contracts raise questions. Although the extent of particular contacts between USTL and these candidates are unknown, this nationwide "voters' contract" program would appear to open the door for coordination. For example, in the follow-up letter provided, USTL encouraged a candidate to call its offices to discuss the voters' contract, and even provided a toll free number. It also warned this candidate that it would "notify" voters whether or not he signed its contract. Yet there is presently no information indicating whether USTL informed candidates about the specifics of its campaign, i.e., radio ads, mailings, media advisories. More importantly, there is no information relating to whether USTL may have agreed to run radio ads and/or direct mail campaigns on behalf of a candidate in exchange for a signature on its "voters' contracts." Such activity would appear to constitute the making and acceptance of an in-kind contribution regardless of whether

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the particular communications contained express advocacy. Similarly, it is unclear whether USTL may have arranged with candidates the timing or distribution of the release of its communications to voters. As noted, in MUR 2269 the Commission found that arranging the timing and distribution of press announcements constituted coordination. In sum, this activity by USTL appears directly targeted toward influencing federal elections and raises questions of coordination with the candidates' campaigns. Given the foregoing, it appears that more information should be obtained regarding the nature and content of USTL's contacts with candidates.

(b) USTL's Radio Ad

The script for one of USTL's radio ads, aired in Oklahoma, was attached to the complaint. The text provides:

Some things are clear.
Only one candidate for Congress in the sixth district is
for term limits for career politicians...
Frank Lucas sides with the vast majority of us.
Lucas supports term limits and a true citizen
legislature.
The other candidate, Dan Webber, sides with the career
politicians and opposes term limits.
Lucas for term limits.
Webber opposed to term limits.
Help convince both candidates to support term limits.
Paid for by U.S. Term Limits.

See Attachment 1 at page 1.

The above-quoted ad clearly identifies Messrs. Lucas and Webber as candidates for a specific federal election. In addition, it appears to have been aired just prior to the election in Oklahoma's sixth district, an election which USTL references in

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the ad itself.⁷ The script of the ad pits one candidate against the other: "Lucas supports term limits and a true citizen legislature" while "the other candidate, Dan Webber, sides with career politicians and opposes them;" Lucas "for" term limits, Webber "opposed." The theme of this ad is the comparison between the candidates. The message of the ad is not merely informative; USTL clearly shows that it favors Lucas and opposes Webber.⁸ This speech "cannot be regarded as a mere discussion of public issues that by their nature raise the names of certain politicians." MCFL, 479 U.S. at 249. It may be "marginally less direct than" vote against Webber, but this "does not change its essential nature." Id. The ad "goes beyond issue discussion to express electoral advocacy." Id.⁹ In sum, when heard or read in context

7. The date when the radio ad was aired was not yet provided. However, the vendor statement containing the script of the ad is dated April 27, 1994, while the news release announcing Lucas' signing of the "voters' contract" is dated May 4, 1994, just days before the Special General election on May 10. Attachment 1 at 1-2.

8. It is evident that the "thing" which USTL believes is "clear" is the choice between the two candidates on election day. Indeed, in USTL's "news release" for this same election, its Executive Director Paul Jacob illuminated this point when he paraphrased the script of the ad: "The voters of Oklahoma's sixth district have a clear choice ... they can vote for Frank Lucas, a two term supporter, or vote for a former congressional staffer dedicated to a career in Congress and opposed to term limits." Attachment 1 at 2 (emphasis added).

9. This radio ad also meets the three part test that the Furgatch court developed to determine whether speech constitutes express advocacy. First, the script, when read as a whole and with reference to external events, is susceptible of no other reasonable interpretation but a request to vote against Webber and for Lucas. Furgatch, 807 F.2d at 864. Second, the request to "convince" the candidates about the necessity of supporting term limits is a clear plea for action. Third, the message of the plea is clear: "convince" the candidates by voting for Lucas and

and in its entirety, the message of the ad is unmistakable and unambiguous: elect Lucas and defeat Webber. Accordingly, it appears that USTL's radio ad expressly advocated the election and defeat of "clearly identified candidates."¹⁰

(c) USTL's Mailings

USTL has not provided any copies of the mailings (or mailers) it sent to voters in particular districts. Yet it acknowledges that it distributed mailings advising recipients of the candidates' positions on term limits, and urging them to contact candidates and convince them to change their position if they had not signed its contract. The mailers also purportedly

(Footnote 9 continued from previous page)
against Webber. This interpretation of the plea is consistent with the facts, especially since the ad appears to have been released in the days just prior to the election, the ad conveyed to the public that Webber had "refused" to sign the "voters' contract," and the ad did not provide information about contacting either candidate. Like the plea "Don't Let him do it," this plea is "vague" but not "ambiguous." Id. at 865.

We further note that USTL's ad in many ways resembles the newsletter at issue in MCPL, which the Supreme Court found constitutes express advocacy. That newsletter presented each clearly identified candidate's position on abortion, made clear that the group was "pro-life," and stated: "vote pro-life." MCPL, 479 U.S. at 249-250.

10. There is information suggesting that USTL created and aired similar advertisements in connection with other federal elections. For example, a press report indicates that USTL ran another advertisement in Oklahoma: stating: "Tuesday you'll be able to vote for term limits for career Congressman-state question 662. And in Tuesday's Democratic runoff for Congress between Virgil Cooper and Mike Synar, the difference on term limits is clear. Cooper supports the people's initiative for term limits and has signed the term limits voter protection pledge. Synar opposes the people's initiative and refuses to sign. Cooper supports term limits. Synar opposes the people's initiative for term limits. Paid for by the U.S. Term Limits Voter Education Fund." Attachment 5.

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asked voters to contact candidates who signed its "voters' contract" to thank them.

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Since neither the complainants nor USTL provided copies of this mailing, it is unclear what was stated therein. However, it appears that they were targeted for people who would vote in particular elections. It also appears that the mailings may be similar to those at issue in AO 1987-7. There, a corporation proposed sending letters urging recipients to contact candidates in their district before election day, invoking the threat of defeat if they did not change their position on certain issues. The Commission ruled that the proposed program in AO 1987-7 would violate Section 441b; See also USDC v. FEC 861 F.2d 765 (2d Cir. 1988) (court held that advisory opinions are not ripe for review). In sum, from the limited information at hand, it appears that USTL's mailings may have expressly advocated the election and defeat of clearly identified candidates. As for the scope of the mailers, at this point it appears that such a mailing was sent to 50,000 "registered voters" in Oklahoma, and that a number of mailings were also apparently sent in connection with an election in Kentucky. See Attachment 1 at 3.

(d) USTL's News Release

USTL's news release, dated May 4, 1994, is entitled "Frank Lucas Signs Voters' Contract/Webber Refuses to Support Term Limits." In that news release, Mr. Jacob of USTL is quoted:

The voters of Oklahoma's sixth district have a clear choice.... They can vote for Frank Lucas, a true term limit supporter, or vote for a former congressional staffer dedicated to a career in Congress and opposed to term limits.... It is imperative that the voters

know who will act on this crucial issue when they reach Washington, and who will join the incumbent politician club....Our polling shows that 78 percent of the registered voters in the sixth district want a constitutional amendment for term limits....If they want term limits, then they need to know that only Frank Lucas has taken a pro-term limit stand.

Attachment 1 at 2.

USTL's "news release" identified the two candidates and the district which they each hoped to represent. The opening sentence of the news release (not quoted above) even sets forth the date of the election (May 10, 1994). Attachment 1 at 2. Moreover, the news release explicitly states that the voters will have a choice between Lucas and Webber. In fact, much of the script is about voting, and is devoted to informing voters that Lucas, not Webber, is the right candidate. It thus appears that the news release expressly advocates the election and defeat of "clearly identified candidates."¹¹

(iii) Consequences of USTL's Activities

As noted at the outset of this Report, the complainant DCCC set forth alternative theories regarding USTL's activities. First, it alleged that USTL made prohibited corporate expenditures and/or contributions. Second, it alternatively alleged that USTL is an unregistered "political committee." We believe that the information presently available is sufficient to make initial findings in support of either of the DCCC's theories. As for the Section 441b violation, USTL is incorporated, and it has neither claimed nor shown that it is entitled to the MCFL exemption.

11. At this point, nothing is known about the circulation of this communication, or the costs involved.

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USTL's radio ad, mailings and news release appear to expressly advocate the election and defeat of clearly identified candidates. Moreover, there is some question as to whether USTL may have coordinated with candidates through its voters' contract program.

The information at hand is also sufficient for the Commission to find reason to believe regarding the DCCC's alternative allegation that USTL is operating a "political committee." In particular, it appears that one of USTL's primary methods of achieving its goal of imposing Congressional term limits is through direct intervention and involvement in federal elections, i.e., through its voters' contracts, election advertisements, press releases and mailings. In fact, USTL states that it sent its voters' contracts to every federal candidate nationwide. These efforts cost USTL at least \$50,000. Thus, there is evidence suggesting that a "major purpose" of USTL is to influence federal elections, making it a "political committee." If so, it was required to register and report pursuant to 2 U.S.C. §§ 433(a) and 434(a) and (b).

In light of the above, this Office recommends that the Commission deny USTL's request that it dismiss this matter. Instead, we recommend that the Commission find reason to believe that USTL and/or its Fund violated 2 U.S.C. § 441b(a), or in the alternative, 2 U.S.C. §§ 433(a) and 434(a) and (b). In addition, as USTL's communications expressly advocated the election and defeat of clearly identified candidates, they should have included complete and appropriate Section 441d disclaimers. Yet the radio ad appears to have contained only one half of a disclaimer, while

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the media advisories did not contain any disclaimers at all. Accordingly, this Office recommends that the Commission find reason to believe that USTL and/or its Fund violated 2 U.S.C. § 441d(a).¹²

B. AMERICANS FOR TAX REFORM (AFTR)

(i) Summary of Complaint and Response

In MUR 3975, DCCC alleges that AFTR is engaging in tactics "designed to influence federal elections without complying with source restrictions, contribution limits and disclosure requirements" of the statute. See Amendment to the complaint dated June 10, 1994, at page 1. DCCC enclosed newspaper articles referencing AFTR "voters' pledge" campaign in Kentucky.

AFTR identifies itself as a non-profit membership organization established to promote lower marginal tax rates. It indicates that it engages in a number of programs to educate the public about taxes. See AFTR's response to the complaint in MUR 3975, circulated to the Commission by request on August 1, 1994. In particular, the information at hand indicates that AFTR created and distributed two pledges in connection with the election in Kentucky's Second District on May 24, 1994. Attachment 2 at 2-3. One was a "Taxpayer Protection Pledge," and the other a

12. Discovery will help clarify which of DCCC's theories is most appropriate. We note, however, that even if USTL qualified for the MCFL exemption and it is not a "political committee," there would still appear to be violations here. Specifically, as it appears that these communications "expressly advocated" the election and defeat of candidates, USTL would have still violated the Act by failing to disclose its independent expenditures in statements filed in accordance with Section 434(c) and to include disclaimers as required by Section 441d(a).

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"Health Care Protection Pledge." Id. 1994. AFTR indicates that it created and distributed such pledges with respect to other elections across the nation. Like USTL, AFTR informed potential voters of whether specific candidates signed their pledges through press releases and radio advertisements.

AFTR argues that it engages only in issue advocacy and does not advocate the election or defeat of clearly identified candidates. Thus, it requests that the Commission dismiss MUR 3975.¹³

(ii) Analysis

(a) AFTR's Voters' Pledge

AFTR's voters' pledge program resembles USTL's voters' contract program. See Attachment 2 at 2-3.¹⁴ In particular, they are similar in concept and design. In addition, the mechanics of AFTR's voters' pledge program appears quite similar to USTL's voters' contract efforts. Specifically, like USTL, AFTR contacted specific federal candidates and urged them to sign its pledges. Also like USTL, AFTR informed candidates that it would notify

13. AFTR also argues that the DCCC's complaint lacks the required specificity of the Commission's regulation at 11 C.F.R. § 111.4(d)(3). That argument lacks merit. The DCCC's amendment to the complaint alleges that AFTR is engaged in activities "designed to influence federal elections without complying with source restrictions, contribution limits and disclosure requirements." In addition, DCCC enclosed news articles in support of its contention that AFTR was involved in specific federal elections. Thus, the complaint contains a "clear and concise recitation of ... facts which describe a violation of" the statute. Id.

14. It appears that AFTR may have actually been the first of the two entities to create this concept, apparently having operated its voters' pledge campaign since the 1986 election cycle. See MUR 2269.

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voters in their district whether or not they signed its voters' protection pledge.

AFTR also created and aired radio ads and media advisories in conjunction with its pledges. In its follow-up letter, AFTR's Grover Norquist informed candidate Joe Prather that he had returned his "call" and that AFTR had "sent out" an attached media advisory announcing Prather's decision to sign AFTR's Taxpayer Protection Pledge. Attachment 2 at 4. Mr. Norquist also told the candidate Prather that he needed to hear from him by "noon today," about the pledge on health care reform.

As we have previously stated, AFTR's voters' pledge efforts were the subject of MUR 2269, a matter which was settled through conciliation. See supra footnote 4. In that matter, the Commission found reason to believe that AFTR violated Section 441b(a) by coordinating with candidates the timing and distribution of press releases related to its voters' pledges. With respect to the contacts related to the voters' pledges at issue in this matter, they would appear to have opened the door for coordination. Given the limited information at hand it is presently unclear whether AFTR may have arranged with candidates the content, timing or distribution of its advertisements, media advisories and mailings. In light of the foregoing, including the existence of a similar prior enforcement action involving these same respondents, an investigation into AFTR's contacts with candidates appears warranted.

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(b) AFTR's Radio Advertisement

AFTR has provided a copy of the script to a radio advertisement it apparently aired in connection with the Kentucky Congressional race between Messrs. Prather and Lewis. According to the document AFTR produced, the advertisement was to air May 22, 23, and 24. The radio ad stated:

On Tuesday, May 24, Second District Kentuckians will choose who will be their voice in the critical debates on health care reform in Washington. Bill Clinton has put forward a plan that mandates costs on businesses, establishes price controls that will lead to rationing, limits choices that health care consumers now enjoy and, under many names and guises, raises taxes.

Ron Lewis has signed a pledge to vote against any such plan that adds up to more government. But ... Joe Prather won't. So you need to call Joe Prather. You need to call him now at (502) 765-2600 and urge him to support a pro-market, pro-consumer health care reform..... Because his vote could be critical, so is your phone call (502) 765-2600. A message paid for by Americans for by Tax Reform.

Attachment 2 at 9.

The ad identifies the Congressional office sought by Messrs. Prather and Lewis, and it identifies them both as candidates for the same election. The ad also provides the date of the election. The communication focuses on the choice between the candidates on election day, specifically indicating that voters "will choose" who will be their voice on May 24, 1994. The ad discusses a specific health care plan, explains AFTR's opposition to that plan, and exhorts listeners to attempt to persuade Prather to sign its health care pledge, twice providing his campaign's phone number. The ad aired in the days just prior

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to the election, it cast Prather's refusal to sign AFTR's pledge in a negative light, and it focused on the choice that listeners were to make on election day. Given these factors, we believe that this ad is election-influencing and constitutes express advocacy.

c) AFTR's Media Advisories

AFTR released two media advisories in connection with the Kentucky election between Messrs. Prather and Lewis. Both advisories were related to whether the candidates had signed AFTR's voters' pledges. In its first media advisory, AFTR indicated that both Prather and Lewis had signed its "Taxpayer Protection Pledge."¹⁵ The advisory specifically states that: "Joe Prather has joined Ron Lewis and signed the Taxpayer Protection Pledge against income tax hikes and (sic) who have committed to join the Congressional Anti-VAT Caucus if elected on Tuesday, May 24." Attachment 2 at 5. This advisory does not favor one candidate over the other. It does not indicate that voters will have to choose between one of the two candidates. In fact, the advisory only references the election once, and that is in the context of whether the candidates would join a specific caucus if they were elected. In short, this media advisory does not appear

15. The advisory itself is dated March 17, 1994, but this appears to be a typographical error. Attachment 2 at 5. It appears that it should have been dated "May" 17, 1994. We base this observation on the following information. AFTR states in another media advisory that it first asked the candidates to sign this pledge on May 12, 1994. In addition, in his letter to Prather dated May 17, 1994, Norquist had just enclosed this advisory. Finally, the congressman for whose seat these candidates ran, the late William Natcher, was still in office on March 17, 1994.

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to be federal election influencing, or to expressly advocate the election or defeat of either candidate. Instead, it appears to be permissible issue discussion.

AFTR's second media advisory for this Kentucky race goes further, however. That advisory, dated May 18, 1994, is entitled "2d District Candidate Joe Prather Refuses to Makes (sic) Pledge to Support Pro-Market, Pro-Consumer Health Care Reform."

Attachment 2 at 8. The advisory opens by stating: "2d District Congressional candidate Joe Prather-running in the May 24th special election to fill the U.S. House seat... has declined to sign" AFTR's health care pledge, which the media advisory then describes. Id. In the following paragraph, which consists of a single sentence, AFTR states: "The pledge has already been signed by candidate Ron Lewis." Id. AFTR's Executive Director goes on to say: "I am concerned that Joe Prather will not commit in writing to oppose the efforts of Bill Clinton, Danny Rostenkowski and Ted Kennedy to raise taxes and expand government in the name of health care reform." Id.

This media advisory identifies Messrs. Prather and Lewis as candidates for a specific office and it sets forth the date of the election. It also makes clear that AFTR opposes the election of Prather because he has "refused" to sign AFTR's pledge. It further indicates that Lewis had already signed such a pledge, thus signaling support for him. Finally, it appears that the advisory was released less than one week prior to the election. Given the foregoing, we believe that AFTR's advisory is as an expression of support for Lewis and opposition to Prather. As

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such, this Office believes this advisory expressly advocates the election of Lewis and the defeat of Prather.

(iii) Consequences of AFTR's activities

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The complainant DCCC set forth alternative allegations regarding AFTR's activities. The allegations suggested that AFTR either made prohibited corporate expenditures and/or contributions or was operating an unregistered political committee. AFTR is incorporated and the communications at hand appear to expressly advocate the election and defeat of clearly identified candidates. In any event, through its voters' pledges AFTR had contacts with federal candidates which raise questions of possible coordination. These questions are similar to those posed in MUR 2269, a prior matter involving these same respondents in which the Commission found a Section 441b violation. In addition, it appears that one of AFTR's primary methods of achieving its goals is through direct intervention in federal elections, and that the activities at issue cost at least \$1,000. Thus, there is evidence suggesting that a "major purpose" of AFTR is to influence federal elections, making it a "political committee" under the Act. See 2 U.S.C. § 433(a).

In short, the information presently available is sufficient for the Commission to make alternative findings regarding AFTR's activities and communications. Given the foregoing, this Office recommends that the Commission find reason to believe that AFTR violated 2 U.S.C. § 441b(a), or in the alternative 2 U.S.C. §§ 433(a) and 434(a) and (b). In addition, given that some of the previously discussed communications by AFTR, such as the radio ad,

expressly advocated the election and defeat of clearly identified candidates but did not contain a complete disclaimer, or, in the case of the media advisories did not contain any disclaimers at all, this Office recommends that the Commission find reason to believe that AFTR violated 2 U.S.C. § 441d(a).¹⁶

C. CHRISTIAN COALITION

DCCC charges that the Christian Coalition is engaging in tactics designed to influence federal elections without complying with source restrictions, contribution limits and disclosure requirements. News articles indicate that Christian Coalition distributed a flier describing the positions of the candidates in the Kentucky special election of May 24, 1994. One article states that the total cost of the Coalition's efforts in Kentucky, which included calls to evangelical voters, was estimated to be \$10,000.

The Coalition asserts that the amendment to the complaint does not contain any specific information about its communications in Kentucky. See Response of the Coalition, circulated to the Commission by request on August 1, 1994. It further notes that the news articles make clear that its flier did not advocate the election of Lewis, the candidate which its voter guide was alleged to have favored. The Coalition also notes that the news article made clear that its get-out-the-vote phone calls did not mention any candidates. It therefore requests that the Commission dismiss

16. Respondents argue that there is no evidence AFTR's President Grover Norquist violated the FECA. At this point we make no recommendations regarding Mr. Norquist or USTL's Paul Jacob. After the investigation, if applicable, we will make any appropriation recommendations regarding those individuals.

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the complaint in MUR 3975 as it pertains to it.

D. CANDIDATE COMMITTEES

The complaint in MUR 3975 indicates that candidates were in contact with USTL and AFTR. Two candidate committees were notified of the complaint and/or amendments in MUR 3975: Lucas for Congress (Kentucky) and Chenoweth for Congress (Idaho). Only Lucas for Congress responded to the complaint, asserting that it signed USTL's voters contract but that such activity does not constitute a contribution. See Attachment 4. Given that the information relating to the contacts between USTL, AFTR and these candidates is presently limited, this Office recommends that the Commission take no action against them at this time.

E. ADMINISTRATIVE MATTERS

As the above analysis shows, the allegations in these complaints relate to a number of different respondents. For

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purposes of administrative efficiency, we believe that these allegations as they relate to different respondents should be treated as separate matters. Accordingly, we recommend that the Commission sever the respondents USTL and AFTR from MUR 3975, and open two separate MURS with respect to them. In addition, we recommend merging MUR 4002, which involves USTL, with the new MUR which shall be opened with respect to that organization. Finally, the Christian Coalition shall remain as respondents in MUR 3975

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IV. DISCOVERY PLAN

Our investigation will focus on learning about the electoral activities of USTL and AFTR. It will include obtaining information about the structure of these organizations, as well as their media efforts, mailings, contacts with candidates and sources of funding. Attached for the Commission's approval are subpoenas for documents and interrogatories. Past experience has proven that such cases can be resource intensive, especially where, as here, the activities appear to have been undertaken on a nationwide basis. Accordingly, throughout this investigation this Office will evaluate the use of its resources and apprise the Commission on a regular basis.

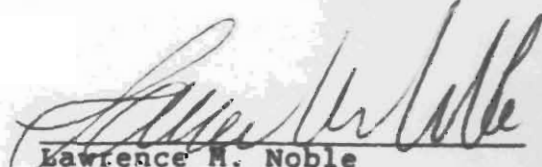
V. RECOMMENDATIONS

1. Deny the requests of U.S. Term Limits, Americans For Tax Reform and Christian Coalition to dismiss MUR 3975, and the request of U.S. Term Limits to dismiss MUR 4002.
2. Sever the allegations against U.S. Term Limits from MUR 3975, and open a separate MUR with respect to them.
3. Merge MUR 4002 into the new MUR which shall be opened

with respect to U.S. Term Limits.

4. Find reason to believe that U.S. Term Limits and/or U.S. Term Limits Voter Education Fund violated 2 U.S.C. § 441b(a), or, in the alternative, 2 U.S.C. §§ 433(a) and 434(a) and (b).
5. Find reason to believe that U.S. Term Limits and/or U.S. Term Limits Voter Education Fund violated 2 U.S.C. § 441d(a).
6. Sever the allegations against Americans for Tax Reform from MUR 3975, and open a new MUR with respect to them.
7. Find reason to believe that Americans for Tax Reform violated 2 U.S.C. § 441b(a), or, in the alternative, 2 U.S.C. §§ 433(a) and 434(a) and (b).
8. Find reason to believe that Americans for Tax Reform violated 2 U.S.C. § 441d(a).
9. Take no action at this time against Lucas for Congress and C. A. Wheeler, a treasurer, Chenoweth for Congress Committee and Wayne Crow, as treasurer.
10. Approve the attached factual and legal analysis, subpoenas and interrogatories, and the appropriate letters.

96043761628
Date


Lawrence M. Noble
General Counsel

Attachments:

1. USTL radio script, voters' contract, etc.¹⁸
2. AFTR's radio script, voters' pledge, etc.
3. USTL's response to MUR 4002
4. Response of Lucas for Congress
5. News Article
6. Factual and Legal Analysis
7. Subpoenas and Interrogatories

18. The responses of USTL, AFTR and the Coalition are not attached. As noted above, the response of USTL was submitted to the Commission with our First General Counsel's Report, dated July 20, 1994. The responses of AFTR and the Coalition were provided to the Commission by request on August 1, 1994.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. ENMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: APRIL 12, 1995

SUBJECT: MURS 3975 & 4002 - GENERAL COUNSEL'S REPORT
DATED APRIL 6, 1995.

The above-captioned document was circulated to the
Commission on Friday, April 7, 1995 at 12:00.

Objection(s) have been received from the
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u>XXX</u>
Commissioner McDonald	<u> </u>
Commissioner McGarry	<u> </u>
Commissioner Potter	<u> </u>
Commissioner Thomas	<u> </u>

This matter will be placed on the meeting agenda
for Tuesday, April 18, 1995.

Please notify us who will represent your Division before
the Commission on this matter.

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**NURS 3975
AND 4002**

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4204

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on April 18, 1995, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions with respect to MUR 3975 and MUR 4002:

1. Deny the requests of U.S. Term Limits, Americans for Tax Reform and Christian Coalition to dismiss MUR 3975, and the request of U.S. Term Limits to dismiss MUR 4002.
2. Sever the allegations against U.S. Term Limits from MUR 3975, and open a separate MUR with respect to them.
3. Merge MUR 4002 into the new MUR which shall be opened with respect to U.S. Term Limits.

(continued)

4. Find reason to believe that U.S. Term Limits and/or U.S. Term Limits Voter Education Fund violated 2 U.S.C. § 441b(a), or, in the alternative, 2 U.S.C. §§ 433(a) and 434(a) and (b).
5. Find reason to believe that U.S. Term Limits and/or U.S. Term Limits Voter Education Fund violated 2 U.S.C. § 441d(a).
6. Sever the allegations against Americans for Tax Reform from MUR 3975, and open a new MUR (4204) with respect to them.
7. Find reason to believe that Americans for Tax Reform violated 2 U.S.C. § 441b(a), or, in the alternative, 2 U.S.C. §§ 433(a) and 434(a) and (b).
8. Find reason to believe that Americans for Tax Reform violated 2 U.S.C. § 441(a).
9. Take no action at this time against Lucas for Congress and C. A. Wheeler, as treasurer, Chenoweth for Congress Committee and Wayne Crow, as treasurer.

Commissioners McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioners Aikens and Elliott dissented.

Attest:

4-20-95
Date

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

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SENSITIVE

EXECUTIVE SESSION

APR 25 1995

SUBMITTED LATE

MEMORANDUM

April 24, 1995

TO: The Commission

From: Lawrence M. Noble
General Counsel

SUBJECT: Revised Factual and Legal Analyses for MUR 3975
U.S. Term Limits ("USTL") and Americans for Tax Reform
("AFTR")

I. BACKGROUND

At the Executive Session of April 18, 1995, the Commission made numerous reason to believe findings in the above-captioned matter. The Commission also directed this Office to draft two sets of factual and legal analyses ("F&Ls") in this matter for discussion at the Executive Session of April 25, 1995.

Attached for the Commission's consideration are two sets of revised F&Ls for USTL and AFTR.

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II. RECOMMENDATIONS

1. Approve the factual and legal analyses set forth in Attachment 1 of this Memorandum.

2. Approve the factual and legal analyses set forth in Attachment 2 of this Memorandum.

3. Approve the subpoenas and interrogatories attached to the First General Counsel's Report dated April 6, 1995, and the appropriate letters.

Attachments:

1. Factual and Legal Analyses
2. Factual and Legal Analyses

Staff Assigned: Xavier McDonnell

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

U.S. Term Limits;
U.S. Term Limits Voter Education Fund;
Americans for Tax Reform;
Christian Coalition;
Lucas for Congress and C. A. Wheeler,
as Treasurer;
Chenoweth for Congress Committee and
Wayne Crow, as Treasurer

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) MURS 3975
) AND 4002
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CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the
Federal Election Commission executive session on April 25,
1995, do hereby certify that the Commission took the
following actions with respect to MURS 3975 and 4002:

1. Failed in a vote of 3-2 to pass a motion
to approve the factual and legal analyses
set forth in Attachment 1 of the General
Counsel's April 24, 1995 memorandum.

Commissioners McDonald, McGarry, and Thomas
voted affirmatively for the motion;
Commissioners Aikens and Potter dissented;
Commissioner Elliott was not present.

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2. Decided by a vote of 4-1 to approve the factual and legal analyses set forth in Attachment 2 of the General Counsel's April 24, 1995 memorandum

Commissioners McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner Aikens dissented; Commissioner Elliott was not present.

3. Decided by by a vote of 5-0 to rescind the April 18, 1995 decision to find reason to believe that Americans for Tax Reform violated 2 U.S.C. § 441(a).

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

Attest:

4-25-95
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

April 25, 1995

TO: The Commission
From: Lawrence M. Noble
General Counsel
Subject: MUR 3975

I. BACKGROUND

A review of the audiotape of today's Executive Session indicates that the Commission did not vote on recommendation #3 of the General Counsel's Memorandum for MUR 3975, dated April 24, 1995. Therefore, this Office recommends that the Commission approve the following recommendation.

II. RECOMMENDATION

Approve the subpoenas and orders attached to the First General Counsel's Report dated April 6, 1995, and approve the appropriate letters.

Staff Assigned: Xavier McDonnell

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/LISA R. DAVIS *L.R.D.*
COMMISSION SECRETARY

DATE: APRIL 26, 1995

SUBJECT: MUR 3975 - MEMORANDUM TO THE COMMISSION
DATED APRIL 25, 1995.

The above-captioned document was circulated to the
Commission on WEDNESDAY, APRIL 26, 1995 at 11:00 a.m.

Objection(s) have been received from the
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>	<u>FOR THE RECORD ONLY!!!</u>
Commissioner Elliott	<u> </u>	
Commissioner McDonald	<u> </u>	
Commissioner McGarry	<u> </u>	
Commissioner Potter	<u> </u>	
Commissioner Thomas	<u> </u>	

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
U.S. Term Limits;) MUR 3975
U.S. Term Limits Voter Education)
Fund;)
Americans for Tax Reform.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 27, 1995, the Commission decided by a vote of 5-1 to approve the subpoenas and orders attached to the First General Counsel's Report dated April 6, 1995, and approve the appropriate letters, as recommended in the General Counsel's Memorandum dated April 25, 1995.

Commissioners Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

Attest:

4-27-95
Date

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

Received in the Secretariat: Tues., April 25, 1995 4:18 p.m.
Circulated to the Commission: Wed., April 26, 1995 11:00 a.m.
Deadline for vote: Thurs., April 27, 1995 4:00 p.m.

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
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SECRETARIAT

In the Matter of

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United States Term Limits)	
Christian Coalition)	
Lucas for Congress)	MUR 4203
and C.A. Wheeler, as treasurer)	MUR 3975
Chenoweth for Congress Committee)	
and Wayne Crow, as treasurer)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

MUR 3975 was generated by a complaint and amendments containing allegations against, *inter alia*, United States Term Limits ("USTL"), the Christian Coalition, Lucas for Congress and the Chenoweth for Congress Committee. On April 18, 1995, the Commission severed USTL from MUR 3975 and created MUR 4203 to address the allegations against USTL.¹ On the same date, the Commission found reason to believe that USTL violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions, or in the alternative, Sections 433 and 434 by operating an un-registered and non-reporting political committee. The Commission's findings were based upon information which suggested that USTL, a nonprofit corporation, may have been coordinating its nationwide voters' contract program, along with its radio ads and news releases, with 1994 Congressional candidates. The Commission also found reason to believe that USTL violated 2 U.S.C. § 441d(a) by expressly advocating the election and defeat of clearly identified candidates through a radio advertisement and news advisory which lacked the required disclaimers.

¹ Americans for Tax Reform ("ATR") was also originally a respondent in MUR 3975, but on April 18, 1995, the Commission severed ATR from MUR 3975 and created MUR 4204. With respect to MUR 4204, a General Counsel's Report is circulating simultaneously with this Report.

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With respect to the respondents which remained in MUR 3975, Christian Coalition, Lucas for Congress and the Chenoweth for Congress Committee and their treasurers, on April 18, 1995, the Commission voted to take no action against them at that time. Section II of this report addresses MUR 4203, and Section III addresses MUR 3975.

II. MUR 4203-USTL

A. USTL's Structure and Activities

The information obtained pursuant to the Commission's Subpoena and Order indicates that USTL is a nonprofit corporation without members which is registered in the District of Columbia. Attachment 1 at 13-37. USTL's Executive Director, Paul Jacob, avers that as of January 1, 1994, USTL has adopted a policy of not accepting contributions from corporations or labor unions. *Id.* at 2; Attachment 3 at 1. Jacob also avers that USTL did not accept any corporate or labor union contributions in 1994, and to the best of his knowledge, it did not receive any such contributions in 1993 either. Attachment 1 at 2; Attachment 3 at 1.

USTL's 1994 income was over 4 million dollars, and its 1993 income totaled almost 3 million. Attachment 1 at 38; Attachment 3 at 5. USTL's 1994 tax return states that its primary tax exempt purpose is "To educate the Public and To Provide Funding with Respect to the Legislation of Term Limits, on a National and State Level." Attachment 3 at 22. USTL's 1994 tax return also indicates that almost 2.5 million dollars of the 4 million received was spent on educating the public through newsletters and special issue mailings, providing funding for state initiative efforts and providing leadership to organize legislation relating to term limits. *Id.* at 6.

During 1994, USTL operated a nationwide "voters' contract" program. The program involved contacting candidates to have them sign USTL's voters' contract through which candidates would promise to support Congressional terms limits. Pursuant to its voters' contract

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program, USTL also released radio ads and media advisories shortly before various 1994 Congressional elections to announce whether certain candidates had signed its contract or had refused to sign. Such communications stated that they were paid for by USTL's Voter Education Fund, which is a "project" of USTL. Attachment 1 at 2.

USTL states that it sent voters' contracts to "all federal candidates." *Id.* at 3. USTL estimates that it spent "no more than \$98,000" on its voters' contract program, which includes an estimated \$5,000 to create and distribute the voters' contracts themselves, \$2,500 to create and distribute news releases, \$53,936 on radio ads and \$28,317 on direct mail. Attachment 1 at 4-5; Attachment 2 at 2. It appears that all of USTL's radio ads and direct mail involving the voters' contracts, which comprises most of the \$98,000 at issue, were for Congressional districts in Oklahoma and Kentucky. Those are districts in the states initially identified in the complaint in this matter.

B. USTL's Contacts with Candidates

As part of the investigation, this Office examined the extent of the contacts between USTL and federal candidates with respect to its voters' contract efforts. USTL states that, with respect to its voters' contracts, it communicated with federal candidates via telephone and mail. Attachment 1 at 6. It also states that it did not communicate with federal candidates regarding the content, timing or distribution of any radio advertisements, news releases or direct mail which contained the name or photograph of any 1994 federal candidate. *Id.* Nothing in USTL's responses or the documents it produced discloses any sharing of campaign related strategic information with candidates.

This Office also informally contacted numerous representatives of federal candidate campaigns. As this Office made these contacts informally, it focused on persons most likely to

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voluntarily provide relevant information: the campaigns of 1994 candidates whom USTL had criticized through its radio ads and/or news advisories. Those contacted included the campaigns of Dave Adkisson, Dave McCurdy, Joe Prather, Dave Perryman, Mike Synar, and Dan Webber. The candidates or campaign representatives contacted by this Office who recalled having contact with USTL indicated that USTL provided them with the pledge and followed up through phone calls and/or letters to them. Such candidates and/or campaign representatives indicated that during such contacts USTL did not suggest that if they did not sign the voters' contract USTL would run ads or release media advisories either in opposition to their candidacy or in support of their opponent

C. USTL's Communications with the Public

i. Radio ads

USTL created and aired various radio ads through which it announced that one clearly identified 1994 Congressional candidate had signed its voters' pledge, while simultaneously announcing that his opponent had refused to sign. Attachment 1 at 4; Attachment 2 at 1. The Commission has previously found that one of these ads, which aired shortly before the 1994 Democratic runoff election between Mike Synar and Virgil Cooper in Oklahoma's 2d district ("Synar-Cooper ad"), constitutes express advocacy. See Factual and Legal Analysis ("F&L") approved by the Commission on April 25, 1995; General Counsel's Report, dated April 6, 1995 ("GCR"), Attachment 5 at 2. The Synar-Cooper radio ad, which cost \$16,855, identified each candidate and contrasted one with the other, specified when the election was to be held, and concluded that the "difference" between the candidates was "clear" with respect to term limits. Id. The Commission also found that USTL violated 2 U.S.C. § 441d(a) with respect to the Synar-Cooper radio ad because it did not state whether it was authorized by any candidate or authorized committee.

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USTL and/or its vendor have produced scripts or tapes of the radio ads it aired in connection with Oklahoma's 4th district runoff between Tully McCoy and Dave Perryman and in Kentucky's 2d Congressional District election between Joe Prather and Ron Lewis. Attachment 4 at 1-2. There appear to have been two scripts/ads for the McCoy-Perryman race and one for the Prather-Lewis race. USTL spent \$9,298 on the McCoy-Perryman radio ad and \$10,678 on the Prather-Lewis ad. The scripts for all three ads are virtually the same as that of the Synar-Cooper ad used in Oklahoma's 2d district and as discussed just above, which the Commission has found constitutes express advocacy. Each script clearly identifies the candidates, indicates that there was an upcoming runoff election between them, provides when that election was to be held and states that with respect to the candidates: "The Difference on Term Limits is Clear." Attachment 4 at 1-2.² Like the Synar-Cooper radio ad already considered by the Commission, the scripts for USTL's McCoy-Perryman and Prather-Lewis radio ads, which are virtually the same, appear to expressly advocate the election and defeat of clearly identified candidates.

USTL also produced a copy of the script for the radio ad that the Commission previously found is federal election-influencing. See F&L approved by the Commission on April 25, 1995. That ad aired in close proximity to the 1994 special election between Dan Webber and Frank Lucas, candidates for Congress in Oklahoma's sixth district. In that radio ad, entitled "Some Things are Clear," both candidates were clearly identified and contrasted; Lucas was praised for siding with the "majority of us" and supporting term limits, while Webber was criticized for siding

² It is unclear whether both of the scripts for the McCoy-Perryman ads were aired. See Attachment 4 at 1-2. Since both scripts contain the language discussed above, for purposes of this analysis it is unnecessary to determine which of the scripts was used in the ad, or whether both were used. With respect to the Prather-Lewis ad, only a copy of the tape itself was produced. A copy of that tape is available in Room 655.

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with "career politicians." The ad, which cost \$7,228, concluded by stating "Help convince both candidates to support term limits." Attachment 4 at 3. Although the Commission found that the Lucas-Webber radio ad was federal election-influencing, it was unable to reach a conclusion as to whether it constituted express advocacy.

In short, the investigation has shown that USTL paid for and aired radio advertisements in connection with three elections which expressly advocated the election and defeat of clearly identified candidates, and a radio advertisement in connection with one election that was federal election influencing. Those radio ads which expressly advocated indicated that they were paid for by USTL (or its project), but not whether they were authorized by any candidate or candidate's committee, as required by Section 441d(a).³

ii. News Releases

The Commission has previously found that one of USTL's news releases constituted express advocacy. That news release indicated, among other things, that there was to be an election in Oklahoma's sixth district, identified each of the candidates running, provided the date of the election and after stating that one supported term limits while the other opposed, asserted that "voters" have a "clear choice." See Attachment 4 at 9. In response to the Commission's subpoena, USTL produced 24 additional news releases. USTL states that it spent no more than \$2,500 in total on the news releases. Attachment 2 at 2.

³ USTL and/or its vendor produced scripts for other ads it aired in 1994 and 1995, but these appear to be issue discussion and do not appear to either expressly advocate the election or defeat of a candidate or be federal election influencing. In addition, USTL created and aired an ad that it indicates was for Oklahoma "statewide." Attachment 2 at 2. Neither USTL or its vendor produced a copy of that ad and thus its content is unclear. That ad cost USTL \$9,875.33.

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Of the 24 news releases produced, four appear to expressly advocate the election and/or defeat of clearly identified candidates. Three of the four news releases are entitled "Voters have 'Clear Choice' Among ... District Congressional Candidates." Attachment 4 at 10-11 (sample). These news releases identify candidates who had signed USTL's pledge "to support the will of the people" and announce in their heading the office sought by each candidate. *Id.* The news releases also contrast such candidates with their opponents, who are labeled "career politicians." *Id.* The fourth news release which appears to expressly advocate is entitled "Lewis Named Term Limits Hero." Attachment 4 at 12. Within this news release Ron Lewis is "praised for support of crucial Congressional reform movement." *Id.* In addition, the press release states that just days before the November 8 election, USTL's Ron Nehring was in that district to "draw attention to the differing stands" taken between Lewis and his named opponent. *Id.*

Although it would appear that these four news releases may have been disseminated pursuant to general "public political advertising" none of these press releases indicated who paid for them or whether they were authorized by any candidate or authorized committee, as would be required by Section 441d(a).

Most of the remaining news releases produced are entitled "For Term Limits, Candidates Put Commitment in Writing." Attachment 4 at 14-15. Such news releases clearly identify numerous candidates who had signed USTL's voters' contract. These news releases include the Congressional district that each candidate sought to represent as well as their political party. However, these news releases did not identify the named candidates' opponents or suggest that there was a "clear choice" between the candidates. Thus, such news releases do not appear to expressly advocate the election and defeat of clearly identified candidates.

iii. Direct Mail

USTL created and distributed direct mail in connection with its voters' contract activities in Oklahoma. USTL states that it spent \$28,316.83 on that direct mail. Attachment 1 at 5. The direct mail letter provided by USTL, which is undated, appears to have been issued in connection with the May 10, 1994 special election in Oklahoma's sixth district between Frank. Lewis and Dan Webber, the same election discussed *supra* at page 6. See Attachment 4 at 16-19. In the letter, USTL states that it is "pleased to report that one candidate" in the Sixth district, "Republican Frank Lewis," had signed the contract, but that "unfortunately, the other candidate, Dan Webber, has refused." *Id.* at 16. In the letter, USTL's Mr. Jacob goes on to say that while he hopes that Webber will reconsider his position, he is not surprised that he has refused to sign given that Webber was a six year paid Congressional staffer and "tied to the web of interests" in Congress. *Id.* at 17.

USTL's mailing suggests that recipients call Mr. Webber to demand that he sign the contract immediately and encourages them to have others also call Webber. Webber's phone number was provided on the letter. The letter asks that recipients contact Lucas to thank him for supporting term limits. Enclosed with USTL's letter was an "Oklahoma Candidate Survey" Action Reply, which seeks feedback from recipients on which of the suggested actions have been taken and contains a solicitation for contributions in amounts ranging from \$15-\$100. The letter states that the contributions were to be used to "get the politicians to see the light." *Id.* at 17.

The language in this direct mail is similar to the language that appears in the radio ad that USTL created and aired in connection with the same election between Messrs. Lucas and Webber, which, as discussed *supra* at page 6, the Commission found was federal election influencing but did not expressly advocate Lucas' election or Webber's defeat. Attachment 4 at 4. Like its

Lucas-Webber radio ad, USTL's mailing clearly identifies Webber and Lucas as federal candidates and provides the office for which they are competing. In addition, the script used in both the radio ad and the direct mail praises Lucas and sharply criticizes his opponent Webber. Also like the radio ad, the direct mail suggests that recipients help convince both candidates to support term limits. However, unlike the radio ad, the direct mail provides the phone number for Mr. Webber, the candidate whom USTL wishes to convince to support term limits. As such, although the overall message of the letter is most reasonably read as a plea of electoral support for Lucas and opposition to Webber, respondent's inclusion of the candidate's phone number would permit them to make a colorable argument that this was issue discussion.

D. ANALYSIS

First, there is some indication that USTL may qualify for the exemption carved out of Section 441b(a)'s prohibition on corporate expenditures by the Supreme Court in Federal Election Commission v. Massachusetts Citizens for Life ("MCFL"), 479 U.S. 238, 264 (1986); see also Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990). To qualify for this Section 441b exemption, an incorporated entity must have certain features: (1) it must be formed for the express purpose of promoting political ideas and cannot engage in business activities; (2) it must have no shareholders or persons affiliated so as to have a claim on assets or earnings; (3) it must not be established by a business corporation or labor union, and must have a policy of not accepting donations from such organizations.

From our review of USTL's corporate documents, it appears to have been formed to promote political ideas and cannot engage in business activities, it does not have stockholders or persons affiliated so as to have a claim on its assets or earnings and it was not formed by a business corporation or labor union. See Attachment 1 at 14-37. As noted, Mr. Jacob avers

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that he does not believe that USTL has accepted corporate contributions since 1993. He also avers that USTL has an unwritten policy of not accepting contributions from corporations or labor unions. Thus, although further investigation would be required to determine whether prohibited funds were accepted by USTL during the applicable time period and that USTL meets the other elements of MCFL, at this point it appears that USTL may have qualified for the exemption at the time that it made these expenditures.⁴

Second, the evidence presently at hand demonstrates that USTL had contacts with federal candidates regarding its voters' contracts, but does not establish one way or the other whether USTL coordinated with 1994 Congressional candidates through such efforts. Nothing in the documents produced shows that USTL and any of the candidate committees shared campaign strategy or information related to the content or timing of USTL's public communications. As noted, the candidates contacted by this Office stated that USTL did not suggest that it would release radio ads and/or news releases if they refused to sign its voters' contract.⁵ Nor did the candidates contacted by this Office have any information indicating that their opponents had

⁴ Given our conclusion that USTL may qualify for the MCFL exemption and our final recommendation in this matter, our analysis here does not address the significance of the decision in Federal Election Commission v. Survival Education Fund, Inc., ("SEF"), 65 F.3d 285, 291-293 (2d Cir. 1995) (nonprofit corporation lacking policy against corporate contributions and receiving less than 1% of its revenues from corporations but meeting remaining two parts of MCFL test qualifies for MCFL exemption). Nor do we address the significance of the recent district court decision in Minnesota Citizens Concerned for Life, Inc. v. Federal Election Commission, Mem. Opinion Civ. Action No. 3-95-1147 (D. Minn. April 19, 1996), appeal filed, No. 96-2612 (8th Cir. June 17, 1996) in which a district court invalidated the Commission's 1995 MCFL regulation within that jurisdiction. See 11 C.F.R. § 114.10 (1996).

⁵ As noted, this Office informally contacted candidates who did not sign USTL's contracts. If this Office were to investigate this matter further, it would recommend using formal process to compel responses from those candidates who signed the contracts and appear to have benefited from USTL's radio ads and media advisories.

coordinated with USTL with respect to its radio ads and/or news advisories. Nevertheless, to make any conclusions on this issue, more extensive discovery would be necessary.⁶

Third, nothing in the documents produced shows whether USTL is a "political committee." On the one hand, USTL's efforts appear focused on the enactment of term limits on the state and federal level. USTL has attempted to enact term limits through petitions, state referenda, state and national legislation and a Constitutional Amendment. An example of USTL's efforts is its involvement in litigation defending various Constitutional challenges to term limits. See USTL v. Thornton, 115 S. Ct. 1842 (1995). USTL's documents suggest that it expends most of its time and resources on activities such as "educating" the public through mailings and general advertising. There is no evidence which suggests that USTL shared strategy with candidate campaigns or has accepted funds or any other form of support from specific candidates or party committees. See e.g., MUR 3669 (Christian Coalition). On the other hand, USTL's voters' contract program appears designed to maximize chances that candidates who support term limits will be elected. In short, far more extensive discovery would be necessary to make any conclusions on the question of whether USTL is operating a "political committee."

⁶ Since the time when the activities at issue occurred, the Commission promulgated regulations relating to contacts between candidates and corporations in the context of voter guides and voting records. See 11 C.F.R. § 114.4(c)(4) and (5) (1996); but see Clifton v. FEC, Civ. Action No. 96-66-P-H (D. Me. May 20, 1996), appeal filed No. 96-1812 (1st Cir. 1996) (district court invalidated the Commission's voter guide and voting record regulations). Although contacts with candidates regarding the signing of voters' contracts are not addressed in the Commission's new regulations, such contacts are analogous to those which occur with candidates in the context of voter guides and voting records. However, for the reasons stated above, this Office draws no conclusions regarding whether USTL contacts with candidates constituted coordination with such candidates through its expenditures, i.e., news releases and radio ads.

Fourth, it appears that through at least three radio ads USTL expressly advocated the election and defeat of clearly identified candidates.⁷ In addition, four news releases that USTL has provided in response to the Commission's discovery requests also expressly advocate the election and defeat of clearly identified candidates. The three radio ads in which USTL expressly advocated the election and defeat of clearly identified candidates appear to cost approximately \$36,921. (Synar-Cooper radio - \$16,855, Perryman-McCoy - \$9,298, Prather-Lewis - \$10,768). Each of the radio ads references "Tuesday's" election, which indicates that such ads were to be aired within the days just prior to such elections. Attachment 1 at 4-5; Attachment 2 at 2. In addition, documents provided by USTL's vendor also indicate that the ads were aired in the days just prior to the elections at issue. Attachment 4 at 5-8.

The statute requires that when any person makes an independent expenditure aggregating \$1,000 or more after the 20th day but more than 24 hours prior to any election, such person shall report such expenditure within 24 hours of when it is made. 2 U.S.C. § 434(c)(2). Although the three radio ads expressly advocated the election and defeat of clearly identified candidates and were released within days prior to different elections, there is no evidence that USTL filed the required Section 434(c) statements. Accordingly, this Office recommends that the Commission find reason to believe that USTL violated 2 U.S.C. § 434(c). In addition, as USTL's radio ads constitute "general public advertising," they should have contained disclaimers clearly stating

⁷ As noted, the Commission initially found that two of USTL's communications constituted express advocacy: the Synar-Cooper radio ad and the Lucas-Webber news release. In addition, as discussed *supra* at pages 4-6, at least two additional USTL radio ads are virtually the same as the Synar-Cooper ad: the Perryman-McCoy ad and the Prather-Lewis ad.

whether or not they were authorized by any candidates or authorized committees. See 2 U.S.C. § 441d(a). USTL's radio ads stated who paid for them, but they did not indicate whether or not they were authorized by any candidate or candidate's committee. Thus, it appears that USTL also violated 2 U.S.C. § 441d(a).⁸

In summary, the evidence presently available indicates that USTL may qualify for the MCFL exemption. The evidence at hand does not establish whether USTL coordinated its radio ads and news releases with candidates and thereby making prohibited or excessive and unreported contributions. In addition, at this point it is unclear whether USTL is a "political committee." To further investigate these complex issues would require far more extensive formal discovery, including issuing subpoenas for depositions to numerous personnel of USTL as well as the candidates and candidate committees who benefited from USTL's radio ads and news releases. To conduct a thorough investigation might also require that we obtain telephone records for calls between USTL and such candidate committees, which may be the only way to determine the extent and duration of the contacts. In light of the lack of information presently at hand to support the allegations and in keeping with the Commission priorities and limited resources, this Office recommends that the Commission find reason to believe that USTL violated 2 U.S.C. § 434(c) and 441d(a) but exercise its prosecutorial discretion and take no further action and close the file in this matter. Heckler v. Chaney, 470 U.S. 821 (1985). An admonishment will be sent.

⁸ None of the four news releases at issue, which may have also constituted general public advertising, contained any disclaimer at all. Thus, they also appear to have been in violation of Section 441d(a). However, given that none of the news releases cost \$1,000 or more per election, USTL was not required by Section 434(c) to disclose such payments.

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III. MUR 3975

The complaint in MUR 3975 alleged that the Christian Coalition engaged in "tactics designed to influence federal elections without complying with the source restrictions, contribution limits and disclosure requirements" of the statute. See Amendment to complaint, dated June 10, 1994. An article attached to that amendment to the complaint indicated that the Christian Coalition had distributed a "90,000-copy epistle" describing the positions of 1994 Kentucky 2d district Congressional candidates Joe Prather and Ron Lewis. Id. at Attachment 2, page 9. It was also alleged that the Christian Coalition called about 3,000 of its members in Kentucky and urged them to vote. Id. at 11.

The allegations and types of activities noted in this complaint are precisely the type which are addressed in detail and on a much larger scale in MUR 3669, a matter that has involved an extensive investigation that has absorbed substantial Commission resources and is now in litigation. See FEC v. Christian Coalition, No. 96-CV-01781 (D.D.C. July 30, 1996). Given the foregoing, and in light of priorities and resources, this Office recommends that the Commission exercise its prosecutorial discretion and take no further action against the Christian Coalition and close the file in this matter as it pertains to them. Heckler v. Chaney, 470 U.S. 821 (1985).

Finally, given our recommendations concerning the Christian Coalition, this Office recommends that the Commission also exercise its prosecutorial discretion with respect to the other respondents in this matter, Lucas for Congress, Chenoweth for Congress and the treasurers of those committees, and close the entire file in MUR 3975.

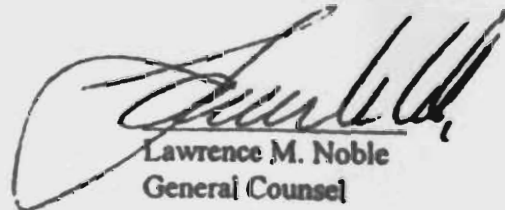
IV. RECOMMENDATIONS

1. Find reason to believe that United States Term Limits violated 2 U.S.C. §§ 434(c) and 441d(a), but take no further action.

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2. Take no action against the Christian Coalition, Lucas for Congress, C.A. Wheeler, as treasurer, Chenoweth for Congress and Wayne Crow, as treasurer.
3. Close the files in MUR 3975 and MUR 4203.
4. Approve the appropriate letters.

9/10/96
Date


Lawrence M. Noble
General Counsel

Attachments:

1. USTL's response of June 26, 1995
2. USTL's response of August 14, 1995
3. USTL's response of February 12, 1996
4. USTL's radio scripts, invoices, news releases and direct mail

Staff Assigned: Xavier K. McDonnell

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ MARY W. DOVE *MWD*
COMMISSION SECRETARY

DATE: SEPTEMBER 16, 1996

SUBJECT: MURs 4203/3975 - GENERAL COUNSEL'S REPORT
DATED SEPTEMBER 10, 1996.

The above-captioned document was circulated to the Commission
on: WEDNESDAY, SEPTEMBER 11, 1996 4:00 P.M.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Aikens	<u>xxx</u>
Commissioner Elliott	<u> </u>
Commissioner McDonald	<u> </u>
Commissioner McGarry	<u> </u>
Commissioner Potter	<u> </u>
Commissioner Thomas	<u>xxx</u>

This matter will be placed on the meeting agenda for:
WEDNESDAY, SEPTEMBER 25, 1996

Please notify us who will represent your Division before the Commission
on this matter. Thank You!

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4203
United States Term Limits;) MUR 3975
Christian Coalition;)
Lucas for Congress and C.A.)
Wheeler, as treasurer;)
Chenoweth for Congress Committee)
and Wayne Crow, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on October 1, 1996, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions with respect to MURS 4203 and 3975:

1. Find reason to believe that United States Term Limits violated 2 U.S.C. §§ 434(c) and 441d(a), but take no further action.
2. Take no action against the Christian Coalition, Lucas for Congress and C.A. Wheeler, as treasurer, Chenoweth for Congress and Wayne Crow, as treasurer
3. Close the files in MUR 3975 and MUR 4203.
4. Approve the appropriate letters as recommended in the General Counsel's September 10, 1996 report.

Commissioners Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

Attest:

10-1-96
Date

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

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

October 4, 1996

Robert F. Bauer, Esquire
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 4203
U.S. Term Limits

MUR 4204
Americans for Tax Reform

MUR 3975
Christian Coalition
Lucas for Congress, and
C.A. Wheeler, as treasurer
Chenoweth for Congress, and
Wayne Crow, as treasurer

Dear Mr. Bauer:

This is in reference to the complaint and amendments which you filed on behalf of the Democratic Campaign Congressional Committee on May 19, June 10 and August 19, 1994. Based upon information provided in the complaint and responses, on April 18, 1995, the Commission found reason to believe that United States Term Limits ("USTL") and Americans for Tax Reform ("ATR") violated 2 U.S.C. § 441b(a), or, in the alternative 2 U.S.C. §§ 433(a) and 434(a) and (b). The Commission also found reason to believe that USTL violated 2 U.S.C. § 441d(a). By same date, the Commission severed the allegations against USTL from MUR 3975 and opened MUR 4203 with respect to it, and severed the allegations against ATR from MUR 3975 and opened MUR 4204 with respect to it.

In MUR 4203, after conducting an investigation into the allegations against USTL, on October 1, 1996, the Commission found reason to believe that USTL violated 2 U.S.C. § 434(c) and 441d(a), but voted to take no further action and closed the file.

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In MUR 3975, on October 1, 1996, the Commission voted to take no action with respect to the Christian Coalition, Lucas for Congress, C.A. Wheeler, as treasurer, Chenoweth for Congress, and Wayne Crow, as treasurer. Thus, on that date the Commission closed the file in MUR 3975.


In MUR 4204, the Commission investigated the activities of ATR, but there was an insufficient number of votes to proceed with that investigation or make additional findings. Accordingly, on October 1, 1996 the Commission voted to close the file in MUR 4204. A Statement of Reasons providing a basis for the Commission's decision in MUR 4204 will follow.

The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8). If you have any questions, please contact Xavier K. McDonnell, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


Lois G. Lerner
Associate General Counsel

Enclosures
General Counsel's Report
Certification

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 4, 1996

Alan Dye, Esquire
Frank M. Northam, Esquire
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

RE: MUR 3975
Christian Coalition

Dear Messrs. Dye and Northam:

On June 10, 1994, the Christian Coalition was notified that the Federal Election Commission had received a complaint alleging possible violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On October 1, 1996, the Commission determined to take no action against the Christian Coalition in this matter and closed the file in MUR 3975.

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

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Xavier K. McDonnell", is written over a horizontal line.

Xavier K. McDonnell
Attorney

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Wayne Crow, Treasurer
Chenoweth for Congress Committee
P.O. Box 897
Boise, Idaho 83701

October 4, 1996

RE: MUR 3975
Chenoweth for Congress Committee
Wayne Crow, as treasurer

Dear Mr. Crow:

By letter dated May 26, 1994, the Chenoweth for Congress Committee and you, as treasurer, were notified that the Federal Election Commission received a complaint alleging the possibility of violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On October 1, 1996, the Commission, after considering the available evidence, determined to take no action against your clients and closed the file in MUR 3975. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Xavier K. McDonnell".

Xavier K. McDonnell
Attorney

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

October 4, 1996

R. David Lightfoot, Esquire
8104 Northwest 112nd
Oklahoma City, Oklahoma 73162

RE: MUR 3975
Lucas for Congress
C.A. Wheeler, as treasurer

Dear Mr. Lightfoot:

By letter dated May 26, 1994, Lucas for Congress and C.A. Wheeler, as treasurer, ("your clients") were notified that the Federal Election Commission received a complaint indicating that they may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

On October 1, 1996, the Commission, after considering the evidence at hand, determined to take no action against your clients and closed the file in MUR 3975. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

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

Sincerely,


Xavier K. McDonnell
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE END OF MUR # 3975

DATE FILMED 11-7-96 CAMERA NO. 1

CAMERAMAN JMD

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