4 JUN 1976

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

Honorable Peter A. Peyser
U. S. House of Representatives
Washington, D. C. 20515

Re: MUR 120 (76)

Dear Mr. Peyser:

This letter is in response to yours of April 8, 1976, in which you allege that the National Republican Senatorial Committee has violated its own criteria and in so doing, has also violated §433 of the Federal Election Campaign Act of 1971, as amended (the Act) by failing to provide a contribution for your campaign in the New York State Republican Senatorial primary.

I apologize for our delay in notifying you of this matter; however, pending reconstitution the Commission was unable to take action in compliance matters. I have carefully reviewed your allegations and have concluded that neither §433 nor any other provision of the Act require a committee to set out the criteria to which you allude. Accordingly, it does not seem to me that the Commission has authority over this matter. In addition, there is no evidence that the National Republican Senatorial Committee has ever filed the criteria to which you allude with the Secretary of the Senate. Upon my recommendation, the Commission has decided to close its files in this matter.

Should additional information come to your attention which you believe to be within the jurisdiction of the Commission, please feel free to contact me again. The attorney who is assigned to this case is Gloria Sulton (telephone no. 202/382-4041).

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

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DATE AND TIME OF TRANSMITTAL: MAY 26 1976

NO. MUR 120 (76)

REC'D: 4/9/76

FEDERAL ELECTION COMMISSION
Washington, D. C.

Complainant's Name: Peter A. Peyser, M. C. (notarized)

Respondent's Name: National Republican Senatorial Committee

Relevant Statute: 2 U.S.C. §433

Internal Reports Checked: Registration Statement of Respondent, as well as subsequent reports.

Federal Agencies Checked: None

SUMMARY OF ALLEGATION

Complainant alleges that respondent established a list of 5 criteria in determining whether to provide funds to Republican Senate challengers in the primary contest; that he met those criteria but was refused a contribution; that the failure of the respondent to honor its own criteria in making contributions deceives contributors to the National Republican Senatorial Committee who rely upon the information provided pursuant to 2 U.S.C. §433.

PRELIMINARY LEGAL ANALYSIS

Neither §433 nor any other provision of the Federal Election Campaign Act of 1971, as amended, require a Committee to list the criteria to which complainant alludes. Furthermore, there is no suggestion in the legislative history of the Act that a listing of such criteria was ever contemplated. Finally, it should be noted that the five criteria mentioned by Congressman Peyser are not noted in the registration statement or any subsequent reports filed by the respondent.

RECOMMENDATION

Close file. Send attached letter.

Date of Next Commission Review:

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

Honorable Peter A. Peyser
U. S. House of Representatives
Washington, D. C. 20515

Re: MUR 120 (76)

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Should additional information come to your attention which you believe to be within the jurisdiction of the Commission, please feel free to contact me again. The attorney who is assigned to this case is Gloria Sulton (Telephone No. 202-382-4041).

Sincerely yours,

John G. Murphy, Jr.
General Counsel

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PETER A. PEYSER
23RD DISTRICT, NEW YORK

COMMITTEE ON
AGRICULTURE
FAMILY FARMS SUBCOMMITTEE

COMMITTEE ON
EDUCATION AND LABOR
SELECT EDUCATION SUBCOMMITTEE
MANPOWER, COMPENSATION AND
HEALTH AND SAFETY LABOR
SUBCOMMITTEE
NEW YORK STATE CONGRESSIONAL
DELEGATION STEERING COMMITTEE

CC # 127

MUR 120 (76)

Congress of the United States
House of Representatives
Washington, D.C. 20515

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APR 9 P 2:50

April 8, 1976

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

Dear Sirs:

Pursuant to section 437(g) of the Federal Election Campaign Act Amendments of 1974 (2 U.S.C. 437(g)), I am hereby filing a formal complaint against the National Republican Senatorial Committee. Specifically, it my contention that the committee has acted arbitrarily, discriminatorily, and unfairly by denying my request for a primary campaign contribution, the circumstances surrounding which are set forth in the attached material, and that this denial amounts to a deception of the contributors to the committee who rely upon the information provided pursuant to section 433 of the Act (2 U.S.C. 433), and that such deception is in violation of the Act.

In support of my contention, I am enclosing a statement summarizing the background and chronology of the events involved in this action, copies of the correspondence between myself and the National Republican Senatorial Committee, and memoranda supporting my complaint. I will be happy to furnish the Commission with any additional data upon request.

I appreciate your consideration of this matter.

Sincerely,

Peter A. Peyser
Member of Congress

THIS STATIONERY PRINTED ON PAPER MADE WITH RECYCLED FIBERS

ESTABLISHING TWO SETS OF CRITERIA
FOR
PRIMARY CHALLENGES IS DISCRIMINATORY AND UNFAIR

In a memorandum sent to my office on February 4, 1976, five points were enumerated as the criteria used by the National Republican Senatorial Committee to provide financial assistance to Republican Senate challengers in the primaries. Those criteria are:

1. Must be a declared candidate.
2. Must have raised 10% of primary budget either from contributions or personal funds.
3. No strings attached to candidacy.
4. Pledge to support Republican nominee after primary.
5. Pledge not to run as a third party candidate against Republican nominee.

However, it is now the position of the committee that a primary challenger to an incumbent Senator who is a member of the Republican conference will be denied funds even if he qualifies under all the above. This is discriminatory and unfair. Moreover, the committee apparently will waive the criteria in the case of an incumbent.

Therefore, the committee has in effect a double standard that discriminates arbitrarily in favor of incumbents, while publicly professing to afford financial assistance to Republican Senate challengers in the primaries. It is submitted that the committee is under no obligation to provide any financial assistance in a primary campaign. However, once the committee chooses to do so and establishes guidelines pursuant to which it will make such contributuions, then the committee has an equitable and moral obligation to abide by that criteria.

If the committee only follows the above stated criteria in situations where there is no Republican incumbent and two Republicans are challenging each other, what policy is being served that would not be equally served by following the same procedure where there is an incumbent? If both challengers meet the criteria, then providing assistance ostensibly will help assure that the best candidate will win. If one fails to meet any of the criteria and one does meet the criteria, then the committee will be supporting the candidate that has the best Republican credentials and allegiance to the Party, and hence the best interests of the party will be served. Obviously, from a policy standpoint the same policies will be served by applying identical standards in the situation where there is an incumbent. To apply a double standard frustrates whatever policy is served by supporting primary candidates at all and is thus discriminatory and unfair, and should be abolished.

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CONTRIBUTING TO A CANDIDATE WHO DOES NOT MEET THE CRITERIA FRUSTRATES THE PROFESSED PURPOSE OF THE COMMITTEE

The establishment of a five point criteria pursuant to which contributions from the Republican Senatorial Committee will be made is obviously designed to establish minimum Republican credentials and allegiance to the party. Such criteria serve to protect contributors to the committee who would not want to see their campaign contributions used against the Republican candidate in the general election.

However, the effect of the double standard established by the National Republican Senatorial Committee is to frustrate the protection afforded by the criteria. If the committee makes a contribution to a candidate who refuses to pledge to support the Republican nominee after the primary or who refuses to pledge not to run as a third party candidate against the Republican nominee, then the committee runs the risk of providing assistance to a candidate who may not be the nominee and who will use that assistance to challenge the nominee.

If the criteria is designed to protect the best interests of the party and contributors to the party, then how are those interests being protected by waiving the criteria in the case of a challenge to an incumbent? If the criteria serve a valid and legitimate purpose, why is not the same valid and legitimate purpose served if the challenge is to an incumbent? The possibility still exists that the money, which is contributed for the purpose of electing the Republican nominee in the general election, may be used by a defeated primary candidate to challenge the Republican nominee, thus subverting the desires of the contributors to the committee. Certainly, the interests of the National Republican Senatorial Committee are not being served in that situation. Why does the committee not afford itself the protection against such a situation occuring in the case of an incumbent? If the criteria serve the best interests of the party and the contributors in one circumstance, then they must serve the same interests in both.

Therefore, it can only be concluded that for the committee to contribute to a candidate who fails to meet its own criteria frustrates the professed purposes of the committee, be that candidate an incumbent Senator or not.

MAINTAINING A DOUBLE STANDARD FOR CANDIDATES TO RECEIVE CONTRIBUTIONS DECEIVES CONTRIBUTORS TO THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE

Contributors to the National Republican Senatorial Committee do so in order to help elect Republicans to the United States Senate. Consequently, they are primarily interested in providing financial assistance to Republicans who are running in a general election against a Democratic Party opponent.

In the event that their contributions are used to finance Republican primary contests, the contributors have a legitimate right to secure some form of protection that their contributions to one of the primary contestants will not be used against the eventual winner and party nominee. Such protection is afforded by criteria four and five of the committee:

(4) Pledge to support Republican nominee after primary.

(5) Pledge not to run as a third party candidate against the Republican nominee.

If a primary contestant agrees to these and the other criteria and receives a contribution from the committee the contributors have their legitimate concerns protected and the interests of the party are well served.

However, in the event that a candidate does not agree to those criteria and still receives a contribution from the committee, then the rights and concerns of the contributors are not protected. There exists the possibility that their contributions may be used ultimately to finance the campaign of the primary loser who has received a committee contribution against the party nominee. This amounts to deceiving the contributors, and is obviously not in the best interest of the party.

THE DOUBLE STANDARD MAINTAINED BY THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE IS IN EFFECT AN "INCUMBENT PROTECTION POLICY" WHICH DOES NOT SERVE THE LEGITIMATE INTEREST OF THE REPUBLICAN PARTY

The double standard maintained by the National Republican Senatorial Committee is in effect nothing more than a subterfuge to insulate incumbent Senators from primary challenges. Such a policy is decidedly not in the best interest of the party.

The impact of not requiring an incumbent Senator to meet the criteria adopted by the committee for providing financial assistance to Republican Senate challengers in a primary while concurrently denying financial assistance to a Republican challenger who meets the criteria is to have an "incumbent protection policy" financed by deceiving contributors to the committee. This double standard gives the incumbent a financial advantage over his opponent while serving no legitimate interest of the party, and moreover, it fails to protect the committee contributors from having their contributions used to finance a third party campaign against the eventual Republican nominee.

The committee concedes that primary challenges are in the interests of the party by adopting criteria pursuant to which it makes contributions in the primary. It also recognizes the importance of assuring that contributions to the committee will not be used contrary to the general wishes of the contributors, i.e., used to finance third party campaigns against the nominee by the loser in the pimary. Hence, it has adopted criteria four and five, requiring candidates for contributions to pledge to support the party nominee and not run as a third party candidate.

Yet despite these facts, the committee will reject its own standards in the situation where an incumbent Senator is challenged in a primary. It has agreed to contribute to a Senator who does not meet the necessary criteria and it refuses to contribute to a candidate that does meet the criteria. This position does the Republican party an obvious disservice and serves no legitimate party interest.

If primaries are in the best interests of the party, why then are primaries against incumbent Senators not similarly in the best interests of the party, and why should both candidates not be subjected to the same criteria before any contribution is made? Why should the committee contribute to a candidate who does not meet criteria four and five, designed to protect the interests of contributors to the committee, while refusing to contribute to a candidate who meets all the criteria adopted by the committee.

The answer is that the real purpose of having a policy of contributing to candidates in primaries is not, apparently, to serve the interests of the party, but rather, to serve the interests of incumbent Senators whild pretending to serve the interests of the party. Prior to adoption

of the policy of making primary contributions, the committee would not provide aid to either the incumbent or to the challenger. Now, by adopting a discriminatory, unfair, deceptive double standard, the committee has found a way to funnel contributions to an incumbent Senator to help fight a primary challenge.

Such a policy subverts the integrity of the party and deceives contributors to the committee while only serving the interests of the individual incumbent Senator.

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CONCLUSION

Section 433 of the Act (2 U.S.C. 433) is designed to prevent contributors from being deceived by requiring that the committee provide relevant information concerning its organization and purpose. The effect of the action by the National Republican Senatorial Committee, as described in the preceding sections of this memorandum, is to circumvent the protection afforded by section 433 and as such is in violation of the Act.

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FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
RETURN TO GENERAL COUNSEL

STATE [illegible] OF HONORABLE PETER A. PEYSER

This morning I am filing a formal complaint with the Federal Election Commission, a complaint with the Fair Campaign Practice Committee and a complaint with Mary Louise Smith, chairperson of the National Republican Party, charging that the National Republican Senatorial Committee has acted arbitrarily, discriminatorily and unfairly in denying my request for financial assistance in my primary campaign against Senator Buckley. In order to better understand this situation, I will review the background of this case.

When the January 10, 1976 campaign reports were filed with the Federal Election Commission, it came to my attention that the National Republican Senatorial Committee had made a contribution of $5,000 on October 24, 1975 to the campaign of Senator Buckley. Since I am challenging Senator Buckley for the Republican Senatorial nomination in September, I inquired from the committee what criteria they used to make their contributions. In response, the committee replied that the following five points were the criteria that they used " to provide financial assistance to Republican Senate challengers in the primaries":

1. Must be a declared candidate.
2. Must have raised 10% of primary budget either from contributions or personal funds.
3. No strings attached to candidacy.
4. Pledge to support Republican nominee after primary.
5. Pledge not to run as a third-party candidate against the Republican nominee.

I complied with the five criteria, and on February 10, 1976 I formally applied for an identical $5,000 contribution.

On March 11, 1976, I received a letter from Senator Stevens, the Chairman of the committee informing me that my request had been denied.

I believe that the committee made a wrong decision, becuause the effect of the decision was to contribute to a candidate who does not meet the criteria they set forth while denying a contribution to a candidate who does meet their standards. Accordingly, I wrote a letter to every Republican Senator, informing them of the committee action and asking that the committee reconsider.

Moreover, I discussed this matter with Sen. Hugh Scott, the Minority Leader and an ex-officio member of the committee, Congressman John Rhodes, the House Minority Leader, Congressman John Anderson, the Chairman of the House Republican Conference, and Congressman Hamilton Fish. I reviewed the entire situation with them and asked them to discuss this matter with both Senator Stevens and Senator Buckley, in order to arrive at a fair resolution of my request. Unfortunately, despite their attempt to work out a solution, the committee refused to reverse the decision and informed me on March 24, 1976 that it will not contribute any amount to my campaign.

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As a result of this decision, I am today filing a formal complaint with the Federal Elections Commission, alleging that the Republican Senatorial Committee has violated its own criteria in making this contribution to Senator Buckley and denying my request. Moreover, I am filing a complaint with the Fair Campaign Practices Committee and with Chairperson Mary Louise Smith of the Republican National Committee. In the event no action is taken by these organizations , I am prepared to make an appeal to President Ford, as the titular head of the party, to intervene in the best interest of the party.

The repercussions of the committee action for the Republican Party will certainly be severe. Obviously, inherently unfair action of contributing money to a candidate who does not meet the standards set for receipt of the money while denying funds to a candidate who does meet those standards is bound to give the party a black eye. Moreover, the committee

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(continued)

has deceived Republican contributors who gave their money to the committee under the assump-criteria.

I am certain that many of those contributors would never give money to a candidate who would not agree to support the Republican nominee in the event of a primary defeat. Yet this is exactly what Senator Buckley has refused to do. In addition, he intends to run on the Conservative Party line regardless of the outcome of the primary. Hence, the $5,000 contribution of the Republican Senatorial Committee could be used to fund the campaign of the conservative party candidate against the Republican candidate, an outcome not in the best interests of the Republican Party, or its contributors and it is in direct conflict with criteria #4 and #5:

" 4. Pledge to support Republican nominee after primary."

" 5. Pledge not to run as a third-party candidate against the Republican nominee."

I regret having to take these actions, but I believe that the principle of fairness that is involved here dictates that I fight the committee decision. If the committee action stands, it will be a severe blow to the Republican Party at a time when the party is struggling to regain its lost status. I believe that it is up to every fair minded Republican to protest this outrageous decision, and I intend to take every route possible to get that message across to the public.

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U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

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WASHINGTON, D.C. 20515
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Peter A. Peyser
M.C.

Federal Election Commission
1325 K Street, NW
Washington, DC 20463