FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF MUR # 1283

Date Filmed 4/29/81 Camera No. --- 2

Cameraman DPC

PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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

1. The following service is requested (check one.)
- ☐ Show to whom and date delivered..... ___ ¢
- ☐ Show to whom, date and address of delivery... ___ ¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered..... ___ ¢
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery. $ ___

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Madeleine Littman

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	645046	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. C. Da Conida

DATE OF DELIVERY 4/2/81

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

1283 Chedford

☆GPO : 1979-288-648

PS Form 3811, Apr. 1977

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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

1. The following service is requested (check one).
- ☐ Show to whom and date delivered ___ ¢
- ☐ Show to whom, date, and address of delivery ___ ¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered ___ ¢
- ☐ RESTRICTED DELIVERY
  Show to whom, date, and address of delivery $ ___

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Jonathan Gave Epstein

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	685346	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY CC

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

01 APR 0 A8:39

☆GPO: 1977-0-249-595

1318 Chedford 1283

RECEIVED

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 27, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jonathan Isaac Epstein
6355 Utah Avenue, N.W.
Washington, D.C. 20015

Re: MUR 1283

Dear Mr. Epstein:

The Federal Election Commission has reviewed the allegations of your complaint dated August 28, 1981, and determined that on the basis of the information provided in your complaint and information provided by the Respondent there is no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended (the "Act") has been committed.

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

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

Sincerely,

Charles N. Steele
General Counsel

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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6355 Utah Avenue, N.W.
Washington, D.C. 20015

Re: MUR 1283

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

Sincerely,

Charles N. Steele
General Counsel

JT/dmm 02/04/81

A 3-26-81

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 27, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Magalene Littman, Esquire
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1283

Dear Ms. Littman:

On September 22, 1980, the Commission notified your client, Reader's Digest Association, Inc., of a complaint alleging that Reader's Digest Association, Inc. had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on March 24, 1981, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Madalene Littman, Esquire
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1283

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Sincerely,

Charles N. Steele
General Counsel

JT/dmm 02/04/81

JT
3-26-81

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1283
Reader's Digest Association, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission's Executive Session on March 24, 1981, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 1283:

1. Find no reason to believe Reader's Digest Association, Inc. has violated 2 U.S.C. §441b(a).

2. CLOSE THE FILE.

3. Send the letters attached to the General Counsel's March 12, 1981 report.

Commissioners Aikens, McGarry, Reiche, Thomson, and Tiernan voted affirmatively for the decision; Commissioner Harris dissented.

Attest:

3/24/81

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/JODY CUSTER

DATE: MARCH 17, 1981

SUBJECT: OBJECTION - MUR 1283, First General Counsel's Report; Received in OCS, 3-12-81, 11:02

The above-named document was circulated on a 48 hour vote basis at 4:00, March 12, 1981.

Commissioners Harris and Reiche submitted objections on March 16, 1981 at 12:04 and 2:15 p.m., respectively.

This matter will be placed on the Executive Session Agenda for March 24, 1981.

81040213236

March 12, 1981

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1283

Please have the attached First GC Report distributed to the Commission on a 48 hour tally basis. Thank you.

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

FIRST GENERAL COUNSEL'S REPORT

81 MAR 12 A11: 02

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION: 3-12-81

MUR # 1283
DATE COMPLAINT RECEIVED
BY OGC: 08/28/80
STAFF MEMBER:
Judy Thedford

COMPLAINANT'S NAME: Jonathan Isaac Epstein

RESPONDENT'S NAME: Reader's Digest Association, Inc.

RELEVANT STATUTE: 2 U.S.C. § 441b(a)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

The complainant alleges that Reader's Digest Association Inc. ("RDA"), a corporate entity, violated 2 U.S.C. § 441b and 11 C.F.R. § 114.2 by making an expenditure, and possibly a contribution, in connection with the November 1980 Congressional elections (Attachment I). The complainant states that an RDA ad appearing in the August 27, 1980 Washington Post expressly advocates the election of all Republicans and all Democrats to Congress and clearly identifies those candidates whose election or defeat is being sought. Specifically, the complainant refers to two sections in the ad titled "Why You Should Vote Republican" and "Why You Should Vote Democratic" which contain excerpts from articles appearing in the September Reader's Digest by Congressman Wright and Congressman Kemp. Each section is alleged to expressly advocate the election and defeat of clearly identified candidates, in one section the election of Republicans and the defeat of Democrats is expressly advocated while the opposite appears in the other section. Thus, the complainant alleges a violation of 11 C.F.R. § 109 in that RAD, a corporation, has made a prohibited independent expenditure.

The complainant also noted that 11 C.F.R. § 114.2 and 2 U.S.C. § 441b contain a prohibition of an "expenditure made in connection with..." Complainant stated this is a broad definition which encompasses more than a prohibition of independent expenditures.

Complainant further alleged that if the articles appearing in Reader's Digest, from which the excerpts contained in the ad are from, are viewed as campaign material, the ad constitutes an illegal contribution in accordance with 11 C.F.R. § 109.1(d)(1) and § 114.2.

Furthermore, it is argued that the presence of two quotes from two major parties is not relevant to this matter in that express advocacy relating to the election and defeat of Republicans and Democrats is contained in each section. The opposing messages do not constitute a "no message" but sets forth two distinct messages.

The complainant proposes that if the opposing messages are viewed as balancing out, RDA has only highlighted the two major parties and ignored other parties (i.e. Communist and Libertarian Parties).

Finally, the complainant concludes that the ad does not fall within the First Amendment protection as the ad "seems to represent, on its face, a prohibited lesson in public civics rather than an inducement to buy the periodical".

An amendment was filed by the complainant on September 2, 1980, in which he discussed the inapplicability of the debate regulations to the advertisement at issue (Attachment II).

The complaint and amendment were sent to RDA. A response was received from its counsel, David W. Cohen, on October 8, 1980 (Attachment III).

LEGAL ANALYSIS

The advertisement at issue in the matter had headlines which read, "Which Political Party Should Head The Next Congress?" and "Why Bureaucrats Are Handling Out Unspent Cash So Fast." The headlines were followed by three sections labeled: "Why You Should Vote Republican" followed by excerpts from an article by Congressman Jack Kemp; "Why You Should Vote Democratic" followed by excerpts from an article by Congressman Jim Wright; and lastly, "Washington's Year-End Spending Spree" followed by two quotes from another article in the September issue of Reader's Digest.

Introductory and conclusive paragraphs promoting Reader's Digest were at the beginning and close of the advertisement. At the bottom of the article the name 'Reader's Digest" appeared in large bold print.

The complainant alleges that the advertisement clearly advocates the election or defeat of clearly identified candidates, all Republicans and all Democrats, resulting in an illegal independent expenditure. Counsel for Reader's Digest Association, Inc. responded that " ... the magazine, its articles and any selection from articles appearing in any advertising advocating purchase of the magazine are protected by the First Amendment ..."

The definition of an expenditure in Section 441b(b)(2) includes "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value ... to any candidate, campaign committee, or political party, or political party or organization, in connection with any election.

In cases similar to the present one, the Commission has viewed such advertisements with a "purpose" standard. Namely, what was or is the purpose of the advertisement (see MURs 296, 1051, and 1235). The Commission has also used a "purpose" standard in certain Advisory Opinions in determining whether a particular activity would be considered a contribution to a candidate or party. AO's 1978-15, 1978-4, 1977-54 and 1977-42.

The ad in this matter appears to alert the public to upcoming articles published in Reader's Digest and to promote Reader's Digest as a magazine. The first paragraph of the ad lets the reader know that the articles will appear in the September 1980 issue of Reader's Digest. "Reader's Digest"is printed in large bold type at the bottom of the ad. The last paragraph of the ad publicizes Reader's Digest by stating, "Reader's Digest can be called America's biggest town meeting. It's a forum for ideas that deeply concern the community at large. Its reporting is cogent, comprehensive, caring. It's provocative, perceptive and - above all - useful in helping people to make decisions on the issues of the day."

Two out of the three articles summarized by RDA in the ad are written by Congressmen of opposing parties, namely, Republican Congressman Jack Kemp and Democratic Congressman Jim Wright. In each section of the advertisement, the Congressman discusses why one should vote for his respective party. RDA does not advocate one view point over the other; the ad merely contains excerpts from articles appearing in the September issue of the magazine.

In sum, it appears the purpose of the advertisement is to sell the magazine by enticing potential readers with excerpts from the articles and to promote Reader's Digest as a magazine which deals with issues of political importance. Accordingly payment for the advertisements does not appear to be an expenditure made in connection with a federal election as defined by 2 U.S.C. § 441b(b)(2).

RECOMMENDATIONS

1. Find no reason to believe Reader's Digest Association, Inc. has violated 2 U.S.C. § 441b(a).

2. Close the file.

3. Send the attached letters.

Attachments
I - Complaint
II - Amendment to Complaint
III - Cohen Response
Proposed Letters (2)

2468

A COMPLAINT

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

Source of Standing: 2 U.S.C. Sec. 437g

80 AUG28 A9:18

1. The Reader's Digest Association, Inc., Pleasantville, N.Y. 10570, has violated Section 114.2 of the Regulations of the Federal Election Commission as well as 2 U.S.C. 441b. Reader's Digest has made, contrary to the law, an expenditure in connection with an election to a political office.

2. This expenditure involved the placing of an advertisement on page 8 of Section D of the August 27, 1980 issue of The Washington Post. The ad, in the form of a page of the newspaper, is attached to this complaint.

3. The ad, based on F.E.C. regulations and the Federal Election Campaign Act, is clearly an expenditure, and possibly a contribution, by a corporation in connection with an election, in this case the November 1980 Congressional elections.

The ad expressly advocates in one section the election of Republicans to fill the seats of Congress, and in a second section the ad expressly advocates the election of Democrats to fill the seats of Congress. At the top of one section is the phrase "Why you should vote Republican" while at the top of another section is the phrase "Why you should vote Democratic." These phrases do seem to represent a communication advocating election or defeat, the definition of "expressly advocating" found in Section 109.1(2) of the Regulations.

The contents of each of the two sections "clearly identify" the candidates whose election or defeat is being sought. The

ATTACHMENT I pg 1

section quoting Representative Kemp suggests that all Republican candidates in the House and Senate elections be supported in November while all Democratic candidates in these elections, and possibly President Carter, be defeated. The section quoting Representative Wright suggests that all Democratic candidates running for Congress in the November elections be supported while their Republican opponents be defeated.

Thus, based on Part 109 of the Regulations, in the instant case, a prohibited independent expenditure has been made "for a communication expressly advocating the election or defeat of a clearly identified candidate" - each and every major party Congressional candidate in the November elections.

At this time, it might be appropriate to note that the prohibition contained in Section 114.2 of the Regulations and 2 U.S.C. 441b encompasses more than a mere prohibition on "independent expenditures"; the Act and the Regulations prohibit any "expenditure <u>in connection with</u>" an election, a broad definition that goes beyond the express advocacy of the election or defeat of a candidate(emphasis added).

It could be argued that Reader's Digest is only presenting the views of spokesmen of the two leading political parties rather than making a prohibited expenditure; unfortunately, this argument is not valid. Quoting a candidate's opinion on who should be supported does not save Reader's Digest from the reach of federal election law. Initially, it should be mentioned that if the articles in Reader's Digest are considered to be campaign materials, the advertisement represents

F pg 2

an illegal contribution under Regulation 109.1(d)(1) and Regulation 114.2. More importantly, if corporations were allowed to quote politically oriented opinions without stating their own views, the prohibition of corporate and union expenditures in connection with an election would be meaningless; a corporation could merely quote somebody's opinion to get around the prohibition.

The fact that the ad contains two quotes from the two major parties is not relevant; the ad expressly advocates the election of Republicans and Democrats. Two separate election advocacies are contained in the ad. The presence of these opposing messages does not represent a no message ad but simply an ad containing two distinct messages. The ad remains a prohibited independent expenditure.

Even if one could balance out the opposing messages, the ad remains a prohibited expenditure in connection with an election, for the ad does indeed discuss the candidates and the issues of the upcoming general election. In addition, the expenditure by Reader's Digest tends to highlight the candidates of the two major parties while ignoring the Congressional candidates of other parties such as the Communist Party, the Libertarian Party, et al. Thus, once again, it should be concluded that the expenditure is in connection with an election.

Lastly, the ad is not simply what might be a first amendment-protected inducement to buy Reader's Digest. Initially, it might be

stated that the Federal Election Commission is charged with enforcing the law as it stands rather than prejudging the constitutionality of the Act and the Regulations. The lay out of the ad in question seems to represent, on its face, a prohibited lesson in public civics rather than an inducement to buy the periodical. The ad, asking in bold print "which political party should lead the next Congress," sets forth in substantial detail the electoral views of two leading politicians. Ought newspaper and magazine corporations, unlike other corporations, be allowed to sponsor extensive electoral views by stating that the views are only intended to get the viewer to buy the periodical in question? Even if the ad in the instant case represents both an inducement to buy and a political statement, the law, as it stands, has been violated.

4. I ask that the Commission seek to restrain Reader's Digest from publishing the ad in question and seek such other relief as the Commission deems appropriate.

To the best of my knowledge, the facts, as I have stated them, are true.

Jonathan Isaac Epstein August 28, 1980

Jonathan Isaac Epstein
6355 Utah Ave., N.W.
Washington, D.C. 20015
202-686-6450

Washington, D. C.

Subscribed and sworn to before me this 28 day of Aug. 1980.

Notary Public

My Commission Expires Nov. 14, 1981

I Pg 4

Which Political Party Should Lead the Next Congress?

Why Bureaucrats Are Handing Out Unspent Cash So Fast

To help readers better understand what is involved in the November elections that will determine the make-up of the 97th Congress, the editors of *Reader's Digest* asked two leading Congressmen to state the case for their respective parties... Each September, the end of the fiscal year heralds a pell-mell rush to *spend* your tax money, often on questionable projects, rather than return it to the Treasury... Exclusive, probing articles in September *Reader's Digest*.

Why You Should Vote Republican

Excerpts from the article by Rep. Jack Kemp (R., N.Y.), speaking for the GOP in September *Reader's Digest*:

"Like President Carter, the Democrats in Congress have long believed that through massive federal spending and budget deficits they could give us prosperity. In fact, they have saddled the nation with the highest peacetime inflation in history."

"Our Democratic leaders *still* do not understand that unemployment is no cure for inflation. They have produced monetary policies that have depreciated the 1967 dollar to 41 cents."

"In America we have excessively taxed workers, savers, growth and production, while we have subsidized leisure, consumption, welfare and debt."

"America needs significant across-the-board cuts in all income-tax rates to stimulate individual enterprise."

"We need to weed out useless regulations that hold back national productivity. We need a sound monetary standard to stop inflation. Above all, we need a bold program to create private-enterprise jobs."

"The Democrats in Congress have presided over America's military and industrial decline. For this they should be held accountable."

"We need a change in Washington—a change that can occur only if we remove from Congress its stagnant Democratic leadership. We need new ideas to stimulate opportunities—ideas that will come only from a new Republican majority".

Why You Should Vote Democratic

Some of the key points made by Rep. Jim Wright (D., Texas), in support of the Democrats:

"Some people will tell you we should elect a Republican Congress because the country has problems—inflation, unemployment, energy, international crises. But that is the very reason we need a Democratic Congress."

"Republicans in general believe in a 'trickle down' theory—that if you shower enough blessings on those at the top of the economic pyramid, some of the benefit is bound to trickle down to those at the bottom."

"When Social Security was being created, when housing guarantees were inaugurated, when Congress launched Medicare, hospital programs, the Interstate Highway System, school construction, mass transit, flood insurance and economic-development programs—a majority of the House Republicans has consistently voted 'no.'"

"Recently they've been calling for more defense dollars. In June we presented the first balanced budget in 12 years, and included the biggest annual dollar increase for military readiness since World War II. How did the Republicans vote? They voted 'no.'"

"You can't reduce the government's income without first reducing outgo, unless you want a big deficit."

"Maybe that is the most exalted mission for the Democratic Congress—not to tease the public with unrealistic expectations but, as Adlai Stevenson said, to talk sense to the American people."

Washington's Year-End Spending Spree

Hurry up and spend!

That seems to be the slogan of the season as government agencies fear that funds unspent this year will be funds unbudgeted by Congress next year.

Just two examples, quoted in *The Digest* this month, of these last-minute orgies of wastefulness:

- In one fiscal year, the Community Services Administration awarded 64 percent of its contracts in the last week.
- The Veterans Administration, in the final week of fiscal 1979, dispensed five contracts totaling $3 million—without competitive bids.

There are countless other instances of this kind of promiscuous eleventh-hour spending. So many, in fact, that civil-service overtime costs rise sharply during this season as employees log extra hours shoveling out the money.

And it's *our* money.

Americans who are appalled by this annual spending spree are urged to let the President, Congress—and candidates for office—know that we want sound management, with managers held accountable for the efficiency of the organizations they direct.

Reader's Digest can be called America's biggest town meeting. It's a forum for ideas that deeply concern the community at large. Its reporting is current, comprehensive, caring. It's provocative, perceptive and—above all—useful in helping people to make decisions on the issues of the day.

Reader's Digest

E pg 5.

Epstein v. Reader's Digest,
filed August 28, 1980

Additional Material With Respect to Regulations 110.13 and 114.4(e)(2)

The above mentioned Regulations do not save Reader's Digest from the reach of federal election law. Initially, one might point out that "the main purpose of these regulations is to create a narrow exemption from the provisions of the Federal Election Campaign Act." 44 Federal Register 76734(Dec. 27, 1979)(emphasis added).

One should question whether a debate in the magazine has been held, for Representatives Kemp and Wright are not electoral opponents. Regulation 110.13(b) requires that the debate "not promote one candidate over another." Because Representatives Kemp and Wright are not electoral opponents, it might be difficult for Reader's Digest to promote one over the other, perhaps resulting in the conclusion that the Regulations were only meant to apply to electoral opponent debates.

The main reason that the Regulations do not apply to the present situation is that the political statements contained in the advertisement is not a cost "incurred in staging non-partisan public candidate debates," a requirement of Regulation 114.4(e)(2). The costs incurred in staging the debate are composed of the printing costs of publishing Reader's Digest, any sums paid for the two articles, and any funds spent for inducement to buy advertising, not the cost of making a lengthy political statement in the Washington Post.

Reader's Digest could have simply advertised that its

80 SEP 2 P3:32

ATTACHMENT II pg 1

September issue contained a debate between the two men; instead, Reader's Digest selected parts of each article, placed these quotations in an advertisment, and turned its inducement to buy ad into a political ad containing two distinct electoral advocacies. These two distinct messages in the ad do not themselves represent a substantially edited debate; the debate is in the magazine.

If one does conceive of such an ad as a cost incurred in staging a debate, one must ask what's to prevent Reader's Digest from only telling Representative Kemp's side of the issues and urging the reader to buy the magazine to find out the other side.

Jonathan Isaac Epstein

Jonathan Isaac Epstein
6355 Utah Ave., N.W.
Washington, D.C. 20015

Subscribed and signed before me on September 2, 1980:

Francine C. Rosch

My Commission Expires June 30, 1981

80 SEP 2 P2:46

GENERAL COUNSEL
RECEIVED

II pg 2

The Ord 910509

80 OCT 14 A10:53

WARSHAVSKY, HOFFMAN & COHEN
30 ROCKEFELLER PLAZA
NEW YORK, N.Y. 10112

STEPHEN D. HOFFMAN
SUZANNE M. WARSHAVSKY
DAVID W. COHEN

TELEPHONE (212) 247-0350

October 8, 1980

80 OCT 14 A11:20

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

Re: Epstein v. The Reader's Digest Association, Inc. MUR 1283 (80)

Dear Ms. Thedford:

We are the attorneys for The Reader's Digest Association, Inc. ("RDA") in the above entitled matter and this letter will constitute the formal response of my client to the complaint. The time to respond was extended by the Commission to and including October 8, 1980.

First, the complaint in this action challenges an advertisement which appeared in the Washington Post of August 27, 1980 for the September 1980 issue of Reader's Digest magazine. The advertisement contains a substantial quotation from an article which appears in that issue. The complaint challenges the advertisement, but not the article, as a prohibited "expenditure in connection with an election to a political office." It is our position that the magazine, its articles and any selection from articles appearing in any advertising advocating purchase of the magazine are all protected by the First Amendment to the United States Constitution, a privilege which is expressly incorporated into the Federal Election Campaign Act of 1971, as amended (the "Act").

In addition, it is quite clear that the article, as well as the advertisement, merely purports to present the overall views of the Republican and Democratic parties through two spokesmen. As the advertisement states, the views were presented "to help readers better understand what is involved in the November elections that will determine the make-up of the 97th Congress". At most, this amounts to "staging non-partisan public candidate debates", which is clearly permissible under the Act and Title 11 of the Code of Federal Regulations, §114.4(e)(2).

ATTACHMENT III pg 1

Finally, we fail to understand the complainant's assertion that the advertisement, rather than being an "inducement to buy" Reader's Digest magazine, went further than that and presented "a prohibited lesson in public civics". The advertisement, on its face, does no more than advocate the purchase of Reader's Digest magazine and requires no further interpretation.

Very truly yours,

David W. Cohen

DWC:mm

III 1352

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jonathan Isaac Epstein
6355 Utah Avenue, N.W.
Washington, D.C. 20015

Re: MUR 1283

Dear Mr. Epstein:

The Federal Election Commission has reviewed the allegations of your complaint dated August 28, 1981, and determined that on the basis of the information provided in your complaint and information provided by the Respondent there is no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended (the "Act") has been committed.

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

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

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Madalene Littman, Esquire
Warshavsky, Hoffman & Cohen
30 Rockefeller Plaza
New York, New York 10112

Re: MUR 1283

Dear Ms. Littman:

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The Commission, on , 1981, determined that on the basis of the information in the complaint and information provided by you, there is no reason to believe that a violation of any statute within its jurisdiction has been committed. Accordingly, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1283
Reader's Digest Association, Inc.)

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission's Executive Session on November 3, 1980, do hereby certify that the Commission took the following actions in MUR 1283:

1. Failed by a vote of 3-2 to pass a motion to return the General Counsel's First Report on MUR 1283 to the Office of General Counsel for revision with the request that the staff analyze the question of the standards for determining whether something is an expenditure in connection with an election or as an ad for circulation, and that a review be made of prior decisions on similar cases.

   Commissioners Harris, McGarry, and Reiche voted affirmatively for the motion; Commissioners Aikens and Friedersdorf abstained; Commissioner Tiernan was not present at the time of the vote.

2. Failed by a vote of 2-2 to pass a motion to find no reason to believe that Reader's Digest Association, Inc. violated 2 U.S.C. §441b(a) and close the file.

   Commissioners Aikens and Friedersdorf voted affirmatively for the motion; Commissioners Harris and Reiche dissented; Commissioner McGarry abstained; and Commissioner Tiernan was not present at the time of the vote.

Attest:

11/5/80
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE

FROM: MARJORIE W. EMMONS/MARGARET CHANEY

DATE: OCTOBER 31, 1980

SUBJECT: OBJECTION - MUR 1283 - Expedited First General Counsel's Report dated 10-31-80; Received in OCS 10-31-80, 10:59

The above-named document was circulated on an EXPEDITED basis at 11:30, October 31, 1980.

Commissioner Harris submitted an objection at 12:03, October 31, 1980.

This matter will be discussed in executive session on Monday, November 3, 1980, at 2:00.

October 31, 1980

MEMORANDUM TO: Marjorie W. Emmons

FRM: Elissa T. Garr

SUBJECT: MUR 1283

Please have the attached First GC Report distributed to the Commission on pink paper. Thank you.

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

80 OCT 31 A10: 59

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 10-31-80

MUR 1283
DATE COMPLAINT RECEIVED
BY OGC 8/28/80
STAFF MEMBER
Judy Thedford

COMPLAINANT'S NAME: Jonathan Isaac Epstein

RESPONDENT'S NAME: Reader's Digest Association, Inc.

RELEVANT STATUTE: 2 U.S.C. § 441b

INTERNAL REPORTS CHECKED: N/A

FEDERAL AGENCIES CHECKED: N/A

SUMMARY OF ALLEGATIONS

In a notarized complaint filed by Jonathan Isaac Epstein (Attachment I), it was alleged that Reader's Digest Association, Inc. violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2 by making an expenditure in connection with a federal election. Specifically, the complaint alleges that Reader's Digest Association, Inc. a corporation, placed an advertisement in the August 27, 1980, Washington Post which advocates the election of Republican and Democratic candidates while ignoring candidates associated with the minor parties.

An amendment was filed by the complainant on September 2, 1980, in which he discussed the inapplicability of the debate regulations to the advertisement at issue (Attachment II).

The complaint and the amendment were sent to Reader's Digest Association, Inc. A response was received from its counsel, David W. Cohen, on October 8, 1980.

LEGAL ANALYSIS

The advertisement at issue in the matter had headlines which read, "Which Political Party Should Head The Next Congress?" and "Why Bureaucrats Are Handing Out Unspent Cash So Fast." The headlines were followed by three sections labeled: "Why You Should Vote Republican" followed by excerpts from an article by Congressman Jack Kemp; "Why You Should Vote Democratic" followed by excerpts from an article by Congressman Jim Wright; and lastly, "Washington's Year-End Spending Spree" followed by two quotes from another article in Reader's Digest. Introductory and conclusive paragraphs promoting Reader's Digest were at the beginning and close of the advertisement.

The complainant alleges that these phrases clearly advocate the election or defeat of clearly identified candidates, all republicans and all democrats, resulting in an illegal independent expenditure. Counsel for Reader's Digest Association, Inc. responded that " ... the magazine, its articles and any selection from articles appearing in any advertising advocating purchase of the magazine are protected by the First Amendment ... "

The definition of an expenditure in Section 441b(b)(2) includes "anything of value ... to any political party ... in connection with any election ..." The articles, which the excerpts are from, are exempted from coverage of the Act by the news story/commentary exemption, 2 U.S.C. § 431(9)(B)(i). It is the opinion of the Office of General Counsel that the purpose of the advertisement in the Washington Post was to sell the September 1980 issue of Reader's Digest by presenting excerpts of articles so as to gain prospective buyers' interest and not to influence the 1980 election. Accordingly, the Office of General Counsel is of the opinion that there is not a violation of 2 U.S.C. § 441b(a) by Reader's Digest Association, Inc.

Additionally, in response to the complainant's discussion of the debate regulations, the Explanation and Justification of Regulations on Funding of Federal Candidate Debates clearly states that activity which falls within the news story/commentary exemption is not covered by the debate regulations. (See Federal Register, Vol. 44, No. 249, pg. 76734.)

RECOMMENDATION

It is recommended that the Commission find no reason to believe that Reader's Digest Association, Inc. violated 2 U.S.C. § 441b(a) and close the file.

Attachments:

I - Complaint
II - Amendment to Complaint
III - Response from Counsel

24168

A COMPLAINT

80 AUG28 A 9:13

Source of Standing: 2 U.S.C. Sec. 437g

1. The Reader's Digest Association, Inc., Pleasantville, N.Y. 10570, has violated Section 114.2 of the Regulations of the Federal Election Commission as well as 2 U.S.C. 441b. Reader's Digest has made, contrary to the law, an expenditure in connection with an election to a political office.

2. This expenditure involved the placing of an advertisement on page 8 of Section D of the August 27, 1980 issue of The Washington Post. The ad, in the form of a page of the newspaper, is attached to this complaint.

3. The ad, based on F.E.C. regulations and the Federal Election Campaign Act, is clearly an expenditure, and possibly a contribution, by a corporation in connection with an election, in this case the November 1980 Congressional elections.

The ad expressly advocates in one section the election of Republicans to fill the seats of Congress, and in a second section the ad expressly advocates the election of Democrats to fill the seats of Congress. At the top of one section is the phrase "Why you should vote Republican" while at the top of another section is the phrase "Why you should vote Democratic." These phrases do seem to represent a communication advocating election or defeat, the definition of "expressly advocating" found in Section 109.1(2) of the Regulations.

The contents of each of the two sections "clearly identify" the candidates whose election or defeat is being sought. The

ATTACHMENT I pg 1

section quoting Representative Kemp suggests that all Republican candidates in the House and Senate elections be supported in November while all Democratic candidates in these elections, and possibly President Carter, be defeated. The section quoting Representative Wright suggests that all Democratic candidates running for Congress in the November elections be supported while their Republican opponents be defeated.

Thus, based on Part 109 of the Regulations, in the instant case, a prohibited independent expenditure has been made "for a communication expressly advocating the election or defeat of a clearly identified candidate" - each and every major party Congressional candidate in the November elections.

At this time, it might be appropriate to note that the prohibition contained in Section 114.2 of the Regulations and 2 U.S.C. 441b encompasses more than a mere prohibition on "independent expenditures"; the Act and the Regulations prohibit any "expenditure <u>in connection with</u>" an election, a broad definition that goes beyond the express advocacy of the election or defeat of a candidate(emphasis added).

It could be argued that Reader's Digest is only presenting the views of spokesmen of the two leading political parties rather than making a prohibited expenditure; unfortunately, this argument is not valid. Quoting a candidate's opinion on who should be supported does not save Reader's Digest from the reach of federal election law. Initially, it should be mentioned that if the articles in Reader's Digest are considered to be campaign materials, the advertisement represents

an illegal contribution under Regulation 109.1(d)(1) and Regulation 114.2. More importantly, if corporations were allowed to quote politically oriented opinions without stating their own views, the prohibition of corporate and union expenditures in connection with an election would be meaningless; a corporation could merely quote somebody's opinion to get around the prohibition.

The fact that the ad contains two quotes from the two major parties is not relevant; the ad expressly advocates the election of Republicans and Democrats. Two separate election advocacies are contained in the ad. The presence of these opposing messages does not represent a no message ad but simply an ad containing two distinct messages. The ad remains a prohibited independent expenditure.

Even if one could balance out the opposing messages, the ad remains a prohibited expenditure in connection with an election, for the ad does indeed discuss the candidates and the issues of the upcoming general election. In addition, the expenditure by Reader's Digest tends to highlight the candidates of the two major parties while ignoring the Congressional candidates of other parties such as the Communist Party, the Libertarian Party, et al. Thus, once again, it should be concluded that the expenditure is in connection with an election.

Lastly, the ad is not simply what might be a first amendment-protected inducement to buy Reader's Digest. Initially, it might be

stated that the Federal Election Commission is charged with enforcing the law as it stands rather than prejudging the constitutionality of the Act and the Regulations. The lay out of the ad in question seems to represent, on its face, a prohibited lesson in public civics rather than an inducement to buy the periodical. The ad, asking in bold print "which political party should lead the next Congress," sets forth in substantial detail the electoral views of two leading politicians. Ought newspaper and magazine corporations, unlike other corporations, be allowed to sponsor extensive electoral views by stating that the views are only intended to get the viewer to buy the periodical in question? Even if the ad in the instant case represents both an inducement to buy and a political statement, the law, as it stands, has been violated.

4. I ask that the Commission seek to restrain Reader's Digest from publishing the ad in question and seek such other relief as the Commission deems appropriate.

To the best of my knowledge, the facts, as I have stated them, are true.

Jonathan Isaac Epstein August 28, 1980

Jonathan Isaac Epstein
6355 Utah Ave., N.W.
Washington, D.C. 20015
202-686-6450

Washington, D. C.

Subscribed and sworn to before me this 28 day of Aug. 1980.

Notary Public

My Commission Expires Nov. 14, 1981

I pg 4

Epstein v. Reader's Digest,
filed August 28, 1980

Additional Material With Respect to Regulations 110.13 and 114.4(e)(2)

The above mentioned Regulations do not save Reader's Digest from the reach of federal election law. Initially, one might point out that "the main purpose of these regulations is to create a narrow exemption from the provisions of the Federal Election Campaign Act." 44 Federal Register 76734(Dec. 27, 1979)(emphasis added).

One should question whether a debate in the magazine has been held, for Representatives Kemp and Wright are not electoral opponents. Regulation 110.13(b) requires that the debate "not promote one candidate over another." Because Representatives Kemp and Wright are not electoral opponents, it might be difficult for Reader's Digest to promote one over the other, perhaps resulting in the conclusion that the Regulations were only meant to apply to electoral opponent debates.

The main reason that the Regulations do not apply to the present situation is that the political statements contained in the advertisement is not a cost "incurred in staging non-partisan public candidate debates," a requirement of Regulation 114.4(e)(2). The costs incurred in staging the debate are composed of the printing costs of publishing Reader's Digest, any sums paid for the two articles, and any funds spent for inducement to buy advertising, not the cost of making a lengthy political statement in the Washington Post.

Reader's Digest could have simply advertised that its

80 SEP 2 P3:32

ATTACHMENT I pg 1

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If one does conceive of such an ad as a cost incurred in staging a debate, one must ask what's to prevent Reader's Digest from only telling Representative Kemp's side of the issues and urging the reader to buy the magazine to find out the other side.

Jonathan Isaac Epstein

Jonathan Isaac Epstein
6355 Utah Ave., N.W.
Washington, D.C. 20015

Subscribed and signed before me on September 2, 1980:

Francine C Resek

My Commission Expires June 30, 1981

30 SEP 2 P2:46

II pg 2

Which Political Party Should Lead the Next Congress?

Why Bureaucrats Are Handing Out Unspent Cash So Fast

To help readers better understand what is involved in the November elections that will determine the make-up of the 97th Congress, the editors of *Reader's Digest* asked two leading Congressmen to state the case for their respective parties... Each September, the end of the fiscal year heralds a pell-mell rush to *spend* your tax money, often on questionable projects, rather than return it to the Treasury... Exclusive, probing articles in September *Reader's Digest*.

Why You Should Vote Republican

Excerpts from the article by Rep. Jack Kemp (R., N.Y.), speaking for the GOP in September *Reader's Digest*:

"Like President Carter, the Democrats in Congress have long believed that through massive federal spending and budget deficits they could give us prosperity. In fact, they have saddled the nation with the highest peacetime inflation in history."

"Our Democratic leaders *still* do not understand that unemployment is no cure for inflation. They have produced monetary policies that have depreciated the 1967 dollar to 41 cents."

"In America we have excessively taxed workers, savers, growth and production, while we have subsidized leisure, consumption, welfare and debt."

"America needs significant across-the-board cuts in all income-tax rates to stimulate individual enterprise."

"We need to weed out useless regulations that hold back national productivity. We need a sound monetary standard to stop inflation. Above all, we need a bold program to create private-enterprise jobs."

"The Democrats in Congress have presided over America's military and industrial decline. For this they should be held accountable."

"We need a change in Washington—a change that can occur only if we remove from Congress its stagnant Democratic leadership. We need new ideas to stimulate opportunities—ideas that will come only from a new Republican majority."

Why You Should Vote Democratic

Some of the key points made by Rep. Jim Wright (D., Texas), in support of the Democrats:

"Some people will tell you we should elect a Republican Congress because the country has problems—inflation, unemployment, energy, international crises. But that is the very reason we need a Democratic Congress."

"Republicans in general believe in a 'trickle down' theory—that if you shower enough blessings on those at the top of the economic pyramid, some of the benefit is bound to trickle down to those at the bottom."

"When Social Security was being created, when housing guarantees were inaugurated, when Congress launched Medicare, hospital programs, the Interstate Highway System, school construction, mass transit, flood insurance and economic-development programs—a majority of the House Republicans has consistently voted 'no.'"

"Recently they've been calling for more defense dollars. In June we presented the first balanced budget in 12 years, and included the biggest annual dollar *increase* for military readiness since World War II. How did the Republicans vote? They voted 'no.'"

"You can't reduce the government's income without first reducing outgo, unless you want a big deficit."

"Maybe that is the most exalted mission for the Democratic Congress—not to tease the public with unrealistic expectations but, as Adlai Stevenson said, to 'talk sense to the American people.'"

Washington's Year-End Spending Spree

Hurry up and spend!

That seems to be the slogan of the season as government agencies fear that funds unspent this year will be funds unbudgeted by Congress next year.

Just two examples, quoted in *The Digest* this month, of these last-minute orgies of wastefulness:

- In one fiscal year, the Community Services Administration awarded 64 percent of its contracts in the last week.
- The Veterans Administration, in the final week of fiscal 1979, dispensed five contracts totaling $3 million—without competitive bids.

There are countless other instances of this kind of promiscuous eleventh-hour spending. So many, in fact, that civil-service overtime costs rise sharply during this season as employees log extra hours shoveling out the money.

And it's *our* money.

Americans who are appalled by this annual spending spree are urged to let the President, Congress—and candidates for office—know that we want sound management, with managers held accountable for the efficiency of the organizations they direct.

***Reader's Digest* can be called America's biggest town meeting. It's a forum for ideas that deeply concern the community at large. Its reporting is cogent, comprehensive, caring. It's provocative, perceptive and—above all—useful in helping people to make decisions on the issues of the day.**

Reader's Digest

If you'd like reprints of any of the articles described above write Reprint Manager, Reader's Digest, Pleasantville

Thedford 910509

80 OCT 14 A10:53

WARSHAVSKY, HOFFMAN & COHEN
30 ROCKEFELLER PLAZA
NEW YORK, N. Y. 10112

STEPHEN D. HOFFMAN
SUZANNE M. WARSHAVSKY
DAVID W. COHEN

TELEPHONE (212) 247-0350

October 8, 1980

80 OCT 14 A11:20

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

Re: Epstein v. The Reader's Digest Association, Inc. MUR 1283 (80)

Dear Ms. Thedford:

We are the attorneys for The Reader's Digest Association, Inc. ("RDA") in the above entitled matter and this letter will constitute the formal response of my client to the complaint. The time to respond was extended by the Commission to and including October 8, 1980.

First, the complaint in this action challenges an advertisement which appeared in the Washington Post of August 27, 1980 for the September 1980 issue of Reader's Digest magazine. The advertisement contains a substantial quotation from an article which appears in that issue. The complaint challenges the advertisement, but not the article, as a prohibited "expenditure in connection with an election to a political office." It is our position that the magazine, its articles and any selection from articles appearing in any advertising advocating purchase of the magazine are all protected by the First Amendment to the United States Constitution, a privilege which is expressly incorporated into the Federal Election Campaign Act of 1971, as amended (the "Act").

In addition, it is quite clear that the article, as well as the advertisement, merely purports to present the overall views of the Republican and Democratic parties through two spokesmen. As the advertisement states, the views were presented "to help readers better understand what is involved in the November elections that will determine the make-up of the 97th Congress". At most, this amounts to "staging non-partisan public candidate debates", which is clearly permissible under the Act and Title 11 of the Code of Federal Regulations, §114.4(e)(2).

ATTACHMENT III p3

Finally, we fail to understand the complainant's assertion that the advertisement, rather than being an "inducement to buy" Reader's Digest magazine, went further than that and presented "a prohibited lesson in public civics". The advertisement, on its face, does no more than advocate the purchase of Reader's Digest magazine and requires no further interpretation.

Very truly yours,

David W. Cohen

DWC:mm

910359

THE READER'S DIGEST ASSOCIATION, INC.

200 Park Avenue · New York, N.Y. 10017

80 SEP 30 PM 12:07

LEGAL DEPARTMENT
Ava K. Doppelt
Martha J. C. Farquhar
David Otis Fuller, Jr.
William Barnabas McHenry
Marjorie Weiner Normand

Writer's Direct Dial
212-972-6180

September 25, 1980

Federal Election Commission
Washington, D.C. 20463

Attention: Judy Thedford, Esq.

Re: Epstein v. Reader's Digest
MUR 1283

Dear Madam or Sir:

This will confirm my conversation with Ms. Thedford in which we agreed that a reply in this matter must be mailed on or before October 8, 1980.

The firm of Messrs. Warshavsky, Hoffman & Cohen, 30 Rockefeller Center, New York, NY 10020 (212) 247-0350 will be representing us in this matter. Will you kindly send all further correspondence concerning this to that firm to the attention of Madalene Littman, Esq.

Very truly yours,

David Otis Fuller, Jr.

David Otis Fuller, Jr.

DOFjr/as

cc: Madalene Littman, Esq.

910-[illegible]

RECEIVED

80 OCT 14 A10:53

WARSHAVSKY, HOFFMAN & COHEN
30 ROCKEFELLER PLAZA
NEW YORK, N.Y. 10112

STEPHEN D. HOFFMAN
SUZANNE M. WARSHAVSKY
DAVID W. COHEN

TELEPHONE (212) 247-0350

October 8, 1980

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

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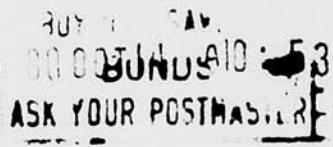
Very truly yours,

David W. Cohen

DWC:mm

WARSHAVSKY, HOFFMAN & COHEN
30 ROCKEFELLER PLAZA
NEW YORK, N.Y. 10112



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

Reader's Digest
LEGAL DEPARTMENT
200 Park Avenue
New York, N.Y. 10017

Federal Election Commission
Washington, D.C. 20463

Attention: Judy Thedford, Esq.

80 SEP 30 P12:07

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 17, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reader's Digest Assoc., Inc.
Pleasantville, NY 10570

Re: MUR 1283

Dear Madam or Sir:

Enclosed please find an additional letter submitted to the Commission on September 2, 1980 by the complainant in this matter.

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

If you have any questions, please contact Judy Thedford at 202/523-4057.

Sincerely,

Charles N. Steele

1

8 1 0 4 0 2 1 3 2 7 3

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

1. The following service is requested (check one).
☐ Show to whom and date delivered ..... ¢
☐ Show to whom, date, and address of delivery ..... ¢
☐ RESTRICTED DELIVERY
Show to whom and date delivered ..... ¢
☐ RESTRICTED DELIVERY
Show to whom, date, and address of delivery $
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: Reader's Digest Assoc Inc Pleasantville, NY 10570

3. ARTICLE DESCRIPTION:
REGISTERED NO | CERTIFIED NO 855046 | INSURED NO

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY | POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: | CLERK'S INITIALS

1283 Thedford

PLEASANTVILLE, NY USPO 22 1980

☆GPO 1977-0-249-595

PS Form 3811, Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

Epstein v. Reader's Digest,
filed August 28, 1980

Additional Material With Respect to Regulations 110.13 and 114.4(e)(2)

The above mentioned Regulations do not save Reader's Digest from the reach of federal election law. Initially, one might point out that "the main purpose of these regulations is to create a narrow exemption from the provisions of the Federal Election Campaign Act." 44 Federal Register 76734(Dec. 27, 1979)(emphasis added).

One should question whether a debate in the magazine has been held, for Representatives Kemp and Wright are not electoral opponents. Regulation 110.13(b) requires that the debate "not promote one candidate over another." Because Representatives Kemp and Wright are not electoral opponents, it might be difficult for Reader's Digest to promote one over the other, perhaps resulting in the conclusion that the Regulations were only meant to apply to electoral opponent debates.

The main reason that the Regulations do not apply to the present situation is that the political statement contained in the advertisement is not a cost "incurred in staging non-partisan public candidate debates," a requirement of Regulation 114.4(e)(2). The costs incurred in staging the debate are composed of the printing costs of publishing Reader's Digest, any sums paid for the two articles, and any funds spent for inducement to buy advertising, not the cost of making a lengthy political statement in the Washington Post.

Reader's Digest could have simply advertised that its

80 SEP 2 P 3: 32

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If one does conceive of such an ad as a cost incurred in staging a debate, one must ask what's to prevent Reader's Digest from only telling Representative Kemp's side of the issues and urging the reader to buy the magazine to find out the other side.

Jonathan Isaac Epstein

Jonathan Isaac Epstein
6355 Utah Ave., N.W.
Washington, D.C. 20015

Subscribed and signed before me on September 2, 1980:

Francine E. Resek

My Commission Expires June 30, 1981

30 SEP 2 P2:46

GCC # 2512

Epstein v. Reader's Digest,
filed August 28, 1980

Additional Material With Respect to Regulations 110.13 and 114.4(e)(2)

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Jonathan Isaac Epstein

Jonathan Isaac Epstein
6355 Utah Ave., N.W.
Washington, D.C. 20015

Subscribed and signed before me on September 2, 1980:

Francine E. Pesek
My Commission Expires June 30, 1981

80 SEP 2 P2:46

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

September 2, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reader's Digest Association, Inc.
Pleasantville, New York
10570

Re: MUR 1283

Dear Sir or Madam:

This letter is to notify you that on August 28, 1980 the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of this complaint is enclosed. We have numbered this matter MUR 1283. Please refer to this number in all future correspondence.

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

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

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

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

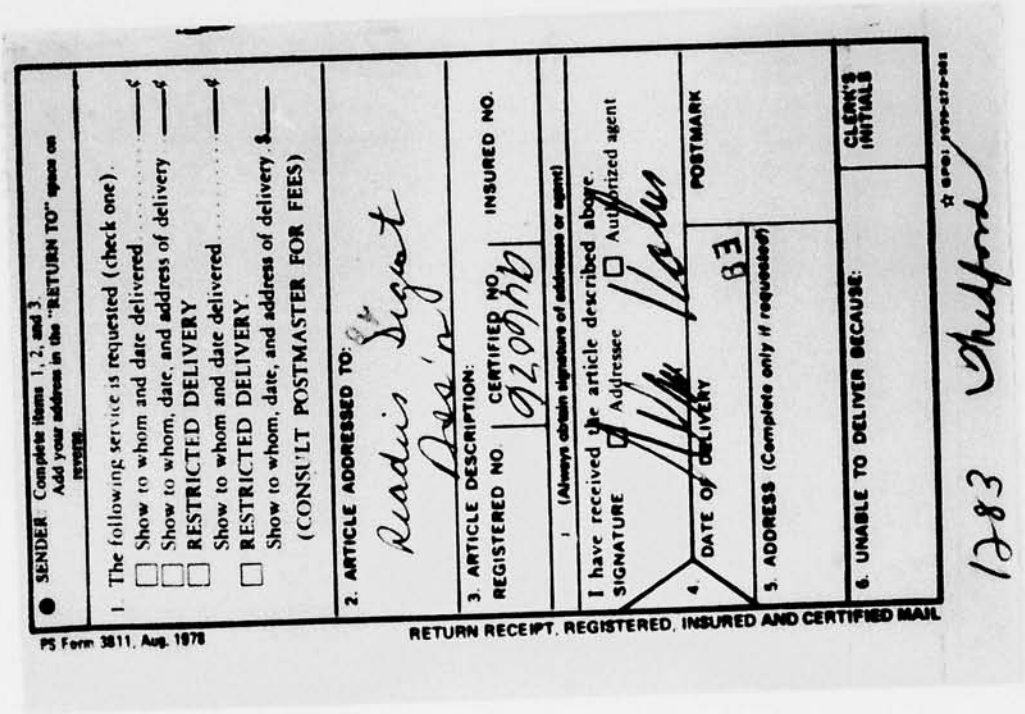
If you have any questions, please contact Judy Thedford, the staff member assigned to this matter at (202) 523-4057. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

Enclosure

1. Complaint
2. Procedures


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

1. The following service is requested (check one).
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☐ Show to whom, date, and address of delivery ..... ¢
☐ RESTRICTED DELIVERY
Show to whom and date delivered ..... ¢
☐ RESTRICTED DELIVERY.
Show to whom, date, and address of delivery $
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: Readers Digest Ass'n

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. 92,097,76 | INSURED NO.

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY | POSTMARK
83

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: | CLERK'S INITIALS

☆ GPO: 1979-272-302

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PS Form 3811, Aug. 1978 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

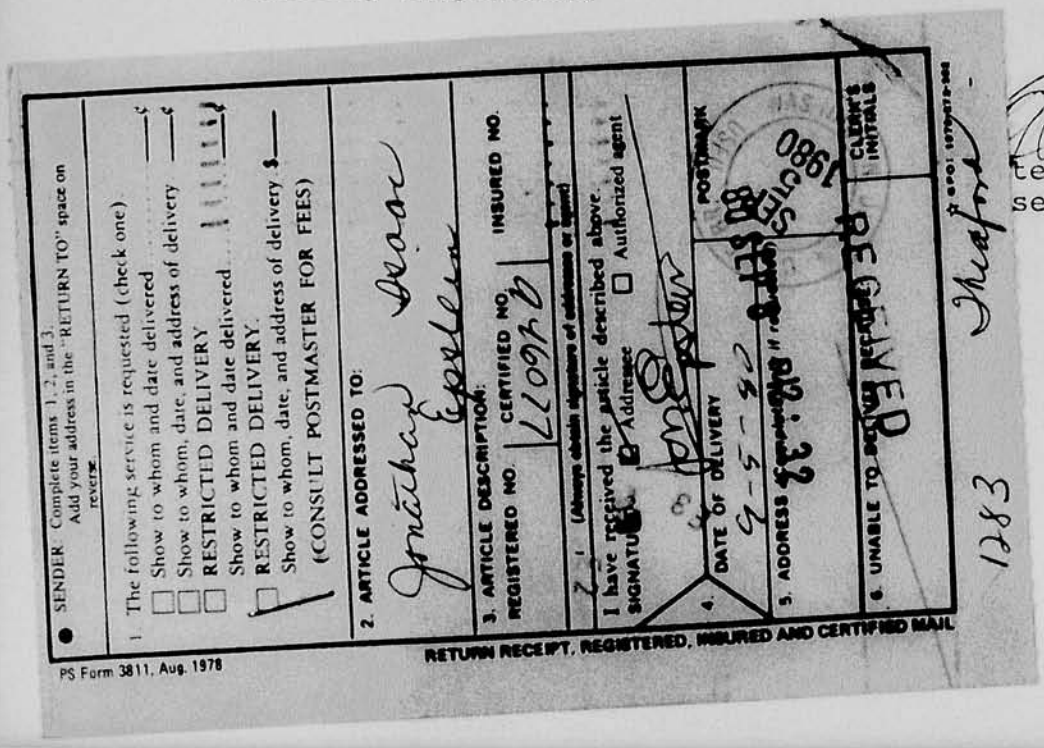
September 2, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jonathan Isaac Epstein
6355 Utah Avenue, N.W.
Washington, D.C. 20015

Dear Mr. Epstein:

This letter is to acknowledge receipt of your complaint of August 28, 1980, against the Reader's Digest Association, Inc., which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondent will be notified of this complaint within 5 days and a recommendation to the Federal Election Commission as to how this matter should be initially handled will be made 15 days after the respondents' notification. You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. For your information, we have attached a brief description of the Commission's procedures for handling complaints.



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A COMPLAINT

Source of Standing: 2 U.S.C. Sec. 437g

80 AUG 28 A 9:18

1. The Reader's Digest Association, Inc., Pleasantville, N.Y. 10570, has violated Section 114.2 of the Regulations of the Federal Election Commission as well as 2 U.S.C. 441b. Reader's Digest has made, contrary to the law, an expenditure in connection with an election to a political office.

2. This expenditure involved the placing of an advertisement on page 8 of Section D of the August 27, 1980 issue of The Washington Post. The ad, in the form of a page of the newspaper, is attached to this complaint.

3. The ad, based on F.E.C. regulations and the Federal Election Campaign Act, is clearly an expenditure, and possibly a contribution, by a corporation in connection with an election, in this case the November 1980 Congressional elections.

The ad expressly advocates in one section the election of Republicans to fill the seats of Congress, and in a second section the ad expressly advocates the election of Democrats to fill the seats of Congress. At the top of one section is the phrase "Why you should vote Republican" while at the top of another section is the phrase "Why you should vote Democratic." These phrases do seem to represent a communication advocating election or defeat, the definition of "expressly advocating" found in Section 109.1(2) of the Regulations.

The contents of each of the two sections "clearly identify" the candidates whose election or defeat is being sought. The

section quoting Representative Kemp suggests that all Republican candidates in the House and Senate elections be supported in November while all Democratic candidates in these elections, and possibly President Carter, be defeated. The section quoting Representative Wright suggests that all Democratic candidates running for Congress in the November elections be supported while their Republican opponents be defeated.

Thus, based on Part 109 of the Regulations, in the instant case, a prohibited independent expenditure has been made "for a communication expressly advocating the election or defeat of a clearly identified candidate" - each and every major party Congressional candidate in the November elections.

At this time, it might be appropriate to note that the prohibition contained in Section 114.2 of the Regulations and 2 U.S.C. 441b encompasses more than a mere prohibition on "independent expenditures"; the Act and the Regulations prohibit any "expenditure <u>in connection with</u>" an election, a broad definition that goes beyond the express advocacy of the election or defeat of a candidate(emphasis added).

It could be argued that Reader's Digest is only presenting the views of spokesmen of the two leading political parties rather than making a prohibited expenditure: unfortunately, this argument is not valid. Quoting a candidate's opinion on who should be supported does not save Reader's Digest from the reach of federal election law. Initially, it should be mentioned that if the articles in Reader's Digest are considered to be campaign materials, the advertisement represents

an illegal contribution under Regulation 109.1(d)(1) and Regulation 114.2. More importantly, if corporations were allowed to quote politically oriented opinions without stating their own views, the prohibition of corporate and union expenditures in connection with an election would be meaningless; a corporation could merely quote somebody's opinion to get around the prohibition.

The fact that the ad contains two quotes from the two major parties is not relevant; the ad expressly advocates the election of Republicans and Democrats. Two separate election advocacies are contained in the ad. The presence of these opposing messages does not represent a no message ad but simply an ad containing two distinct messages. The ad remains a prohibited independent expenditure.

Even if one could balance out the opposing messages, the ad remains a prohibited expenditure in connection with an election, for the ad does indeed discuss the candidates and the issues of the upcoming general election. In addition, the expenditure by Reader's Digest tends to highlight the candidates of the two major parties while ignoring the Congressional candidates of other parties such as the Communist Party, the Libertarian Party, et al. Thus, once again, it should be concluded that the expenditure is in connection with an election.

Lastly, the ad is not simply what might be a first amendment-protected inducement to buy Reader's Digest. Initially, it might be

stated that the Federal Election Commission is charged with enforcing the law as it stands rather than prejudging the constitutionality of the Act and the Regulations. The lay out of the ad in question seems to represent, on its face, a prohibited lesson in public civics rather than an inducement to buy the periodical. The ad, asking in bold print "which political party should lead the next Congress," sets forth in substantial detail the electoral views of two leading politicians. Ought newspaper and magazine corporations, unlike other corporations, be allowed to sponsor extensive electoral views by stating that the views are only intended to get the viewer to buy the periodical in question? Even if the ad in the instant case represents both an inducement to buy and a political statement, the law, as it stands, has been violated.

4. I ask that the Commission seek to restrain Reader's Digest from publishing the ad in question and seek such other relief as the Commission deems appropriate.

To the best of my knowledge, the facts, as I have stated them, are true.

Jonathan Isaac Epstein August 28, 1980

Jonathan Isaac Epstein
6355 Utah Ave., N.W.
Washington, D.C. 20015
202-686-6450

Washington, D. C.

Subscribed and sworn to before me this 28 day of Aug. 1980.

Notary Public

My Commission Expires Nov. 14, 1981

FEDERAL ELECTION COMMISSION

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

THIS IS THE BEGINNING OF MUR # 1283

Date Filmed 4-29-81 Camera No. --- 2

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