FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 1866

DATE FILMED 11/9/90 CAMERA NO. 4

CAMERAMAN AS

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GCC#S996

Before the Federal Election Commission

COMPLAINT

(Pursuant to Title 2, U.S.C. § 437g and Title 11, CFR Part 110)

TO: GENERAL COUNSEL
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

COMPLAINANTS:

MUR
1866

MURIEL F. SIEBERT
435 East 52nd Street
New York, New York 10028

WHITNEY NORTH SEYMOUR, JR.
100 Park Avenue, Room 2606
New York, New York 10017

RESPONDENTS:

J. DANIEL MAHONEY Chairman
MICHAEL R. LONG, Vice Chairman
SERPHIM R. MALTESE, Executive Vice Chairman
JAMES E. O'DOHERTY, Treasurer, and

NEW YORK STATE CONSERVATIVE PARTY STATE COMMITTEE
45 East 29th Street
New York, New York 10016

VIOLATION ALLEGED:

Knowing and wilful violation of contribution restrictions and limits under Title 2, United States Code, Section 441a, and Title 11, CFR Part 110, in relation to the Primary Election in New York State for Republican Party Nomination for United States Senator, held on September 23, 1982.

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P3:22

Complainants MURIEL F. SIEBERT and WHITNEY NORTH SEYMOUR, JR., state on information and belief as follows:

1. In or about September, 1982, respondents participated in the preparation, printing and mailing of a direct mail piece in support of the candidacy of FLORENCE M. SULLIVAN for the Republican Party nomination for United States Senator in New York in the Primary Election held on September 23, 1982.

2. The Federal Election Campaign Laws do not permit state committees of a political party to make campaign expenditures in a primary election (11 CFR 110.7(b)(1)). A state committee may, however, establish a multi-candidate committee, which is subject to a maximum contribution limit of $5,000. Respondents caused the establishment of a multi-candidate committee (1982 Victory Fund) through which were paid some or all of the printing costs for the Sullivan direct mail piece (i.e. $4,980 -- $20 less than the maximum contribution limit).

3. The Sullivan direct mail piece was sent out under Non-Profit Permit #734, issued to respondent NEW YORK STATE CONSERVATIVE PARTY STATE COMMMITTEE, which permits mailing bulk rate mail at postal rates substantially below those charged to other groups. This mailing was in direct violation of Postal Service regulations as set forth in Domestic Mail Manual, Sections 623.4 and .5, providing that

candidates for elective office may not use the lower non-profit rate allowed to state committees but must pay full and normal bulk rate postage rates.

4. Respondents' unlawful actions constituted an in-kind contribution to SULLIVAN FOR SENATE with a cash value of approximately $25,000.

5. This contribution was never reported to the FEC by either party.

6. The sources of the information which give rise to complainants' belief in the truth of the foregoing statements are contained in documents marked as exhibits and annexed hereto, as follows:

Exhibit A: A copy of the Sullivan pre-Primary direct mail piece which shows that it was issued in respondent state committee's name and mailed under its permit.

Exhibit B: A copy of the U.S. Postal Service's record for the respondent state committee's non-profit permit (obtained through an FOIA request) which shows that $14,475.15 was charged for a mass mailing sent out on September 17, 1982, the only mailing during that month. Dividing such sum by the per piece postal rates shown on the record reveals that a total of 360,799 direct mail pieces were mailed out at the non-profit rate. If the Sullivan Committee had paid the customary bulk mail postage rate in

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effect at that time (10.9), the total cost of the Sullivan mailing would have been $39,327.09. Respondents' actions in unlawfully farming out the state committee's permit therefore resulted in an in-kind contribution of $24,851.94.

Exhibit C: Answers to plaintiffs' interrogatories in Siebert v. Conservative Party, sworn to by the individual respondents contain admissions that printing expenditures of $4,980 were incurred by SULLIVAN FOR SENATE and that the postage for that mailing was paid by the candidate's committee and not by the respondent state committee.

These actions constituted an intentional fraud by respondents to circumvent the limits on expenditures and to conceal the true source of the funds used to pay the postage for the Sullivan mailing, and resulted in a secret and unlawful in-kind contribution of direct mail services to the Sullivan campaign having a cash value of approximately $25,000.

MURIEL F. SIEBERT

Sworn to before me this
6th day of December 1984

Notary Public

KAREN M. MULLER
NOTARY PUBLIC, State of New York
No. 31-4884095
Qualified in New York County
Commission Expires March 30, 1986

WHITNEY NORTH SEYMOUR, JR.

Sworn to before me this
21st day of November, 1984

Notary Public

TONI M. COLELLA
Notary Public, State of New York
No. 24-4777122
Qualified in Kings County
Commission Expires March 30, 1986

ASSEMBLYWOMAN FLORENCE SULLIVAN HAS BEEN ENDORSED BY THESE REPUBLICAN OFFICIALS:

Congressman Guy V. Molinari
Congressman Gerald B. Solomon

Senator Christopher Mega
Senator Frank Padavan
Senator Richard E. Schermerhorn

Assemblyman John L. Behan
Assemblyman Gordon W. Burrows
Assemblyman William Bush
Assemblyman Anthony J. Casale
Assemblyman John Cochrane
Assemblyman Armand D'Amato
Assemblyman Robert A. D'Andrea
Assemblyman John A. Esposito
Assemblyman John T. Flack
Assemblyman John Flanigan
Assemblywoman Joan P. Hague
Assemblyman Thomas Hanna
Assemblyman Michael J. Hoblock, Jr.
Assemblyman Raymond Kaisor
Assemblyman Neil Kelleher
Assemblyman Richard L. Kennedy
Assemblyman Clarence Lane
Assemblyman William J. Larkin, Jr.
Assemblyman Eugene Levy
Assemblyman John G. Lopresto
Assemblyman Thomas P. Morahan
Assemblyman James Nagle
Assemblyman John G.A. O'Neil
Assemblyman John M. Perone
Assemblyman Douglas W. Prescott
Assemblywoman Antonia P. Rettaliata
Assemblyman Stephen Saland
Assemblywoman Carol A. Siwek
Assemblyman Nicholas A. Spano
Assemblyman Frank G. Talomie, Sr.
Assemblyman Guy J. Vellela
Assemblyman Glen Warren

AND BY

THE FUND FOR A CONSERVATIVE MAJORITY

CITIZENS FOR THE REPUBLIC (THE POLITICAL ACTION COMMITTEE FOUNDED BY RONALD REAGAN IN 1977)

THE EAST SIDE CONSERVATIVE CLUB

PUBLICATION OF THIS BROCHURE IS PAID FOR BY THE STATE COMMITTEE OF THE NEW YORK STATE CONSERVATIVE PARTY 1982 VICTORY FUND
AUTHORIZED BY SULLIVAN FOR SENATE

VOTE FOR FLORENCE SULLIVAN ON SEPTEMBER 23rd.

FLORENCE SULLIVAN IS THE ONLY SENATE CANDIDATE TO ENDORSE LEW LEHRMAN FOR GOVERNOR.

ELECT ANOTHER REAGAN REPUBLICAN TO THE U.S. SENATE.

New York State Conservative Party State Committee
1982 Victory Fund
45 East 29th Street
New York, New York 10016

NON-PROFIT ORG
U.S. POSTAGE
PAID
PERMIT NO. 734
NEW YORK, N.Y.

EXHIBIT "A"

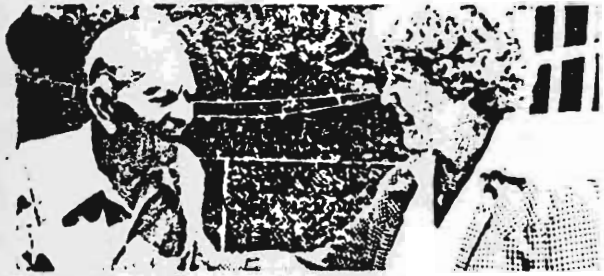
THERE ARE TWO LIBERALS AND ONE REAGAN REPUBLICAN RUNNING FOR UNITED STATES SENATOR.

THE REAGAN REPUBLICAN IS...

ASSEMBLYWOMAN FLORENCE SULLIVAN

SHE IS THE ONLY CANDIDATE WHO SUPPORTS PRESIDENT REAGAN ON ALL THESE ISSUES:

- –Tax reductions for working Americans.
- –A criminal justice system that does not let the John Hinckleys free, and protects law abiding citizens from street criminals.
- –United States Military Forces second to none.
- –To deny the Soviet Union access to vital American technology.
- –Tuition Tax Credits for parents sending their children to private and parochial schools.



Florence Sullivan understands the problems we are all facing. She is the widow of a Korean War veteran, who raised three children, taught Math and English, supported herself through St. John's Law School, served as an Assistant District Attorney and has represented the middle-class community of Bay Ridge for two terms in the New York State Legislature.

"FLORENCE SULLIVAN IS A LIFELONG CONSERVATIVE REPUBLICAN. HER LIBERAL OPPONENTS HAVE FOUGHT AGAINST THE CONSERVATIVE POLICIES OF RONALD REAGAN, AL D'AMATO AND JACK KEMP."

MICHAEL R. LONG
COUNCILMAN-AT-LARGE

Whitney North Seymour, Jr. has described himself as "A John Lindsay Republican."

While serving in the State Senate he voted to weaken the Death Penalty and opposed stiffer penalties for murderers, rapists, and other violent criminals.

Moreover, he opposes President Reagan on tuition tax credits, the Balanced Budget Amendment, voluntary prayers in public places, and improving our defense forces.

Muriel Siebert, Hugh Carey's Superintendent of Banks, contributed to the campaigns of Senator Moynihan and Hugh Carey (her latest contribution was $1,000 to Carey in December of 1981). During this race Siebert has called herself a "raving liberal" on social issues, she has called for the legalization of illegal drugs, and she has called for reductions in the defense budget.

"FLORENCE SULLIVAN OFFERS REFRESHING OPPOSITION TO LEFT-LEANING REPUBLICAN OPPONENTS LIKE SEYMOUR AND SIEBERT. SHE IS CERTAINLY OUR BEST BET AGAINST MOYNIHAN IN NOVEMBER."

RICHARD E. SCHERMERHORN, SENATOR

"FLORENCE SULLIVAN IS THE ONLY ONE WHO CAN BEAT THE LIBERAL DANIEL MOYNIHAN."

ROBERT HECKMAN
EXECUTIVE DIRECTOR
FUND FOR A CONSERVATIVE MAJORITY

"MOYNIHAN'S LIBERALISM IS NOT WHAT NEW YORKERS WANT OR NEED."

FLORENCE SULLIVAN
ASSEMBLYWOMAN

While Florence Sullivan has repeatedly voted for the Death Penalty, Moynihan twice voted against it in the United States Senate.

While Florence Sullivan believes in the importance of education in neighborhood schools, Moynihan has voted for the busing of school children.

While Florence Sullivan has voted for tax cuts, Moynihan voted against tax reductions for people earning $25,000 and less.

While Florence Sullivan is a staunch supporter of President Reagan, Moynihan supported Jimmy Carter 75% of the time.

Vote Sullivan on September 23.

RECORDS OF MAILING (3609)

PERMIT NO: 734 DATE: 10/21/02
NAME: THE CONSERVATIVE PARTY STATE COMMITTEE TYPE: 2
LOCATION: OPO

STARTING BALANCE	DATE	CLASS	RATE	POSTAGE	DEPOSITS	ENDING BALANCE	REMARKS
123.50	06/09/02	60	0.059	401.74			
					405.00		
						126.76	
126.76	09/17/02	60	0.047	235.15			
		61	0.040	11200.00			
		61	0.040	3040.12			
					10500.00		
						4151.49	

EXHIBIT "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MURIEL SIEBERT, et al., Plaintiffs	:	DEFENDANTS' ANSWERS TO PLAINTIFFS' INTERROGATORIES
-against-	:	
THE CONSERVATIVE PARTY OF NEW YORK STATE, et al., Defendants	:	82 Civ. 7419 (HFW)

Defendants answer plaintiffs' interrogatories herein as follows:

1. Q. Identify all persons who participated in (a) the preparation, (b) printing, (c) addressing, and (d) mailing of the Sullivan mailing piece and (e) payment of the costs relating thereto; and state as to each such person the role he or she played.

A. (a) The circular was prepared in draft form by Allen Roth, 135 West 29th Street, New York, New York 10001, and Robert Ryan, 135 West 29th Street, New York, New York 10001. Defendant Mahoney reviewed the circular and approved the final copy. John P. Dellera commented on certain legal aspects.

(b) Design Distributors, Inc.
45 East Industry Court
Deer Park, New York 11729

(c) Do not know.

EXHIBIT "C"

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(d) The State Committee of the New York State Conservative Party.

(e) The State Committee of the New York State Conservative Party, 1982 Victory Fund, has paid a total of $2,000 toward the cost of printing the brochure and is obligated to make a further payment of $2,980. Upon information and belief, all other costs were paid by Sullivan for Senate, the principal campaign committee of Florence M. Sullivan.

2. Q. State the amounts paid or incurred for (a) the preparation, (b) printing, (c) addressing and (d) mailing of the Sullivan mailing piece, and identify all sources of the funds for each such payment, including all intermediate transfers of funds from original donors to the ultimate payee.

A. (a) Do not know.

(b) $4,980

(c) Do not know.

(d) Postal receipts showing amounts paid will be made available for inspection and copying in accordance with Rule 33(c), Fed. R. Civ. P.

The sum of $2,000 has been paid from contributions received by the 1982 Victory Fund in accordance with the Federal Election Campaign Act.

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3. Q. State (a) the source of all mailing labels used to send out the Sullivan mailing piece; (b) by whom and the manner in which the names and addresses were compiled and computerized; and (c) all costs associated with their (1) compilation, (2) computerization, and (3) print out of mailing labels.

A. (a) Do not know.

(b) Do not know.

(c) Do not know.

4. Q. State whether the State Committee of the New York State Conservative Party, or any of its members, approved the contents of the Sullivan mailing piece and authorized its mailing under the Committee's non-profit mail permit. If so, describe the time, place, circumstances and persons involved in such approval and authorization.

A. Defendant Mahoney, on behalf of the State Committee of the Conservative Party, approved the mailing piece and authorized the mailing in question in or about September, 1982 in New York City and Maine during the course of meetings or telephone conversations with Allen Roth and Robert Ryan.

5. Q. With respect to each of the elected public officials listed in the Sullivan mailing piece, state whether it

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is claimed that he or she did in fact endorse Mrs. Sullivan over her two primary opponents, Muriel Siebert and Whitney North Seymour, Jr., and if so, when, to whom, and by what manner each one communicated such endorsement to the person or persons who prepared the copy for the Sullivan mailing piece.

A. Upon information and belief, yes. Endorsements contained in letters or press releases will be made available for inspection and copying in accordance with Rule 33(c), Fed. R. Civ. P. Upon information and belief, other endorsements were communicated in person or by telephone to Allen Roth or Robert Ryan by Gerard Kassar, 927 80th Street, Brooklyn, New York.

6. Q. Identify the person or persons who authorized the publication of the Seymour mailing piece on behalf of Sullivan for Senate, and the time, place and circumstances of the communication of such authorization to defendants or any of them.

A. Robert Ryan, in or about September, 1982, in telephone conversations and meetings with defendant Mahoney.

7. Q. (a) Identify the "State Committee of the New York State Conservative Party 1982 Victory Fund", the depository in which such Victory Fund is or was maintained, and the person authorized to withdraw monies from such Victory Fund depository. (b) Describe all payments made out of such Victory

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Fund in relation to the Sullivan mailing piece, including the date, amount, payee, what person authorized such payment.

(c) Identify the source or sources of all payments in excess of $1,000 into the Victory Fund against which the payments in relation to the Sullivan mailing piece were drawn.

A. (a) The 1982 Victory Fund is a separate segregated account of the State Committee of the New York State Conservative Party and is registered as a multi-candidate committee with the Federal Election Commission. Its funds are maintained at Manufacturers Hanover Trust Company, Lexington Avenue at 43rd Street, New York, New York 10017. The person authorized to withdraw funds from such depository is defendant O'Doherty.

(b) See answer to Interrogatory No. 2(b). Amounts paid were authorized by defendants Mahoney, Maltese, and O'Doherty. The sum of $2,000 was paid on September 21, 1982 to Design Distributors, Inc.

(c) None.

8. Q. Identify (or attach copies of) all documents, invoices, correspondence, memoes, research materials, notes, drafts or other papers or writings in the custody or control of the defendants or any of them, relating to the answers to such of the foregoing interrogatories.

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A. Objection is made to this interrogatory on the ground that documents requested are not identified with reasonable particularity. Documents known to the defendants include an invoice for printing, cancelled check for the payment described in answer 7(b), financial reports to the Federal Election Commission of the 1982 Victory Fund and Sullivan for Senate, postal receipts for the mailing, post office receipt for postage, letters of endorsement of Florence Sullivan, press release, newspaper clippings, campaign financial reports of Hugh L. Carey, correspondence and campaign literature of Whitney North Seymour, Jr., a draft of the circular and the final version thereof (Exhibit A to the complaint).

Dated: New York, New York
February 4, 1983

BAKER, NELSON & WILLIAMS
Attorneys for Defendants

By _____
A Member of the Firm
444 Madison Avenue
New York, New York 10022
Tel. No. (212) 754-1300

TO: OBERMAIER, MORVILLO & ABRAMOWITZ, P.C.
Attorneys for Plaintiffs
1290 Avenue of the Americas
New York, New York 10019
Tel. No. (212) 489-1500

AFFIDAVIT

State of New York, ss.

County of New York

J. DANIEL MAHONEY, being duly sworn deposes and says that he is a defendant in this action; that he has read the foregoing Answers to Plaintiffs' Interrogatories; that the answers to Interrogatories 1(a), 1(c), 1(d), 2(a), 2(c), 3, 4, 6 and 7(a) (to the extent of identifying the 1982 Victory Fund) are true; that the answers to the remaining interrogatories are true upon information and belief.

J. Daniel Mahoney

Sworn to before me this

4th day of February, 1983

MARION R. FOSTER
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires [illegible] 83

9004030411 51

AFFIDAVIT

State of New York, ss.

County of New York

SERPHIN R. MALTESE, being duly sworn, deposes and says that he is a defendant in this action; that he has read the foregoing Answers to Plaintiffs' Interrogatories; that the answers to Interrogatories 1(b), 1(c), 2(a), 2(c), 3 and 7(a) are true; that the answers to the remaining interrogatories are true upon information and belief.

Serphin R. Maltese

Serphin R. Maltese

Sworn to before me this

4th day of February, 1983

Arlene J. Kennare

ARLENE J. KENNARE
Notary Public, State of New York
No. 52-4744601
Qualified in Suffolk County
Commission Expires March 30, 1983

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AFFIDAVIT

State of New York, ss.

County of New York

JAMES E. O'DOHERTY, being duly sworn, deposes and says that he is a defendant in this action; that he has read the foregoing Answers to Plaintiffs' Interrogatories; that the answers to Interrogatories 1(b), 1(c), 1(e), 2(a), 2(b), 2(c), 2 (to the extent of the source of funds), 3 and 7 are true; that the answers to the remaining interrogatories are true upon information and belief.

James E. O'Doherty

James E. O'Doherty

Sworn to before me this

4th day of February, 1983

Arlene J. Kennare

ARLENE J. KENNARE
Notary Public, State of New York
No. 52-4744601
Qualified in Suffolk County
Commission Expires March 30, 1983

AFFIDAVIT

State of New York, ss.

County of New York

MICHAEL R. LONG, being duly sworn, deposes and says that he is a defendant in this action; that he has read the foregoing Answers to Plaintiffs' Interrogatories; that the answers to Interrogatories 1(c), 2(a), 2(c), 3 and 7(a) (to the extent of identifying the 1982 Victory Fund) are true; that the answers to the remaining interrogatories are true upon information and belief.

Michael R. Long

Michael R. ~~Long~~

Sworn to before me this

4th day of February, 1983

Arlene J. Kennare

ARLENE J. KENNARE
Notary Public, State of New York
No. 52-4744001
Qualified in Suffolk County
Commission Expires March 30, 1983

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 27, 1984

Muriel F. Siebert
435 East 52nd Street
New York, New York 10028

Dear Ms. Siebert:

This letter is to acknowledge receipt of your complaint which we received on December 18, 1984, against James E. O'Doherty, New York State Conservative Party Committee, The State Committee of the New York State Conservative Party 1982 Victory Fund, J. Daniel Mahoney, Michael R. Long, and Serphim R. Maltese, which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondent will be notified of this complaint within five days.

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

Sincerely,

Charles N. Steele
General Counsel

By Kenneth A. Gross
Associate General Counsel

Enclosure

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

December 27, 1984

Whitney North Seymour, Jr.
100 Park Avenue, Room 2606
New York, New York 10017

Dear Mr. Seymour:

This letter is to acknowledge receipt of your complaint which we received on December 18, 1984, against James E. O'Doherty, New York State Conservative Party Committee, The State Committee of the New York State Conservative Party 1982 Victory Fund, J. Daniel Mahoney, Michael R. Long, and Serphim R. Maltese, which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondent will be notified of this complaint within five days.

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

Sincerely,

Charles N. Steele
General Counsel

By Kenneth A. Gross
Associate General Counsel

Enclosure

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 27, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Serphim R. Maltese
Executive Vice Chairman
New York State Conservative
Party State Committee
45 East 29th Street
New York, New York 10016

Re: MUR 1866

Dear Mr. Maltese:

This letter is to notify you that on December 18, 1984 the Federal Election Commission received a complaint which alleges that the committee and you, as executive vice chairman may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1866. 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 executive vice chairman in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

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

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

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

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 27, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael R. Long
Vice Chairman
New York State Conservative
Party State Committee
45 East 29th Street
New York, New York 10016

Re: MUR 1866

Dear Mr. Long:

This letter is to notify you that on December 18, 1984 the Federal Election Commission received a complaint which alleges that the committee and you, as vice chairman may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1866. 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 vice chairman 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.

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

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

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 27, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

J. Daniel Mahoney
Chairman
New York State Conservative
Party State Committee
45 East 29th Street
New York, New York 10016

Re: MUR 1866

Dear Mr. Mahoney:

This letter is to notify you that on December 18, 1984 the Federal Election Commission received a complaint which alleges that the committee and you, as chairman may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1866. 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 chairman in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

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

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

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

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 27, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James E. O'Doherty
Treasurer
The State Committee of the
New York State Conservative
Party 1982 Victory Fund
45 East 29th Street
New York, New York 10016

Re: MUR 1866

Dear Mr. O'Doherty:

This letter is to notify you that on December 18, 1984 the Federal Election Commission received a complaint which alleges that the committee and you, as treasurer may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1866. 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 connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

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

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

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

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

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

9004080041 54

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 27, 1984

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James E. O'Doherty
Treasurer
New York State Conservative
Party State Committee
45 East 29th Street
New York, New York 10016

Re: MUR 1866

Dear Mr. O'Doherty:

This letter is to notify you that on December 18, 1984 the Federal Election Commission received a complaint which alleges that the committee and you, as treasurer may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1866. 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 connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

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

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

9004030415

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

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

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

STATEMENT OF DESIGNATION OF COUNSEL

RECEIVED AT THE FEC
GCC# 6245
85 JAN 4 A9:05

MUR 1866

NAME OF COUNSEL: JOHN P. DELLERA, ESQ.

ADDRESS: BAKER, NELSON & WILLIAMS, ESQS.
444 MADISON AVE.
N.Y. N.Y. 10022

TELEPHONE: 212-754-1300

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.

JAN. 2, 1985
Date

Serphin R. Maltese
Signature

RESPONDENT'S NAME: SERPHIN R. MALTESE

ADDRESS: 45 EAST 29TH ST
N.Y. N.Y. 10016

HOME PHONE: ——

BUSINESS PHONE: 212-689-8400

STATEMENT OF DESIGNATION OF COUNSEL

RECEIVED AT THE FEC
GCC#6389
85 JAN 14 A9:49

MUR 1866

NAME OF COUNSEL: JOHN P. DELLERA, Esq.

ADDRESS: BAKER, NELSON & WILLIAMS
444 MADISON AVENUE
NEW YORK, N. Y. 10022

TELEPHONE: (212) 754-1300

MUR 1866
Curry

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.

January 8, 1985
Date

J. Daniel Mahoney
Signature

RESPONDENT'S NAME: J. DANIEL MAHONEY

ADDRESS: 51 West 51st Street
New York, N. Y. 10019

HOME PHONE: (914) 769-8608

BUSINESS PHONE: (212) 977-9600

9 0 0 4 0 8 0 4 1 6 8

GCC# 6482

BAKER, NELSON & WILLIAMS
COUNSELLORS AT LAW
444 MADISON AVENUE
NEW YORK, N. Y. 10022

HAROLD D. O. BAKER
CLIFFORD LEFEBVRE
NEAL A. BROWN
JOHN P. DELLERA

O. TAFT NELSON
C. DICKERMAN WILLIAMS
OF COUNSEL

TELEPHONE: (212) 754-1300
CABLE ADDRESS: CHOBAY
TELEX: 422809

85 JAN 22 A 8:58

MUR 1866
Curry

January 17, 1985

Secretary,
Federal Election Commission
Washington, D.C. 20463

Re: MUR 1866

Dear Sir:

Please find enclosed Respondents' Statement in Answer to the Complaint filed in the above. The facts asserted in the enclosed appear in reports of receipts and disbursements for the period covering September 1982 filed by the 1982 Victory Fund and, I presume, Sullivan for Senate. In addition to such facts, I enclose copies of the following:

1. New York State Board of Elections letter dated June 21, 1982 addressed to Hon. Florence M. Sullivan acknowledging the filing of a certificate designating her the candidate of the Conservative Party;

2. Copies of campaign literature mailed at the reduced rate on behalf of specified candidates by the New York State Democratic Committee and the National Republican Congressional Committee.

Also enclosed is the designation of counsel of Respondent Michael R. Long. I understand that designations of the other Respondents are on file

Very truly yours,

John P. Dellera
Counsel for Respondents

0338D

Enclosures

85 JAN 22 P12:29

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Muriel F. Siebert and Whitney North Seymour, Jr., Complainants,	)	
-and-	)	
New York State Conservative Party State Committee, J. Daniel Mahoney, Michael R. Long, Serphin R. Maltese and James E. O'Doherty, Respondents	)	MUR 1866

RESPONDENTS' STATEMENT IN ANSWER TO COMPLAINT

Respondents named above, by their attorney, John P. Dellera, Esq., submit the following Statement pursuant to 2 U.S.C. sec. 437g in answer to the Complaint herein which was sworn to on November 21, 1984 (Seymour) and December 6, 1984 (Siebert) and filed with the Commission on December 17, 1984. Respondents first received a copy of such Complaint on January 5, 1985.

Respondents deny the assertions of wrongdoing contained in the Complaint and submit that this Matter Under Review should be dismissed by the Commission upon the ground that it fails to allege facts which, if true, would constitute a violation of the Federal Election Campaign Act. Furthermore, the Complaint is, in essence, an allegation of postal law violations. Complainants asserted similar claims in litigation which was dismissed on the ground that they had no right to assert such claims.

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RESPONDENTS' CONTRIBUTION TO THE SULLIVAN CAMPAIGN WAS WITHIN THE LIMIT PRESCRIBED BY THE FEDERAL ELECTION CAMPAIGN ACT

A "contribution" for purposes of the Federal Election Campaign Act is defined as a "gift, subscription, loan, advance, or deposit of money or anything of value." 2 U.S.C. sec. 431 (8)(A)(i). The only such contribution made by Respondents to the Sullivan campaign was an in-kind contribution equal to the cost of printing the mailing. This cost was $4,980, an amount within the $5,000 limit prescribed by 2 U.S.C. sec. 441a(a)(2)(A) for multi-candidate committees. The contributor, a segregated account of the Conservative Party known as the "1982 Victory Fund," had duly qualified as a multi-candidate committee at the time of the mailing in question since it had been registered with the Commission for at least six months and had received contributions from more than fifty persons. 11 CFR sec. 100.5(e)(3). Therefore, its contribution to the Sullivan campaign of the cost of printing was lawful.

Complainants' contention that Respondents made a further in-kind contribution equal to the difference between the postage paid by the candidate's committee and the postage which they claim should have been paid is without merit. Commission regulations provide that the term "anything of value," as used in the definition of "contribution" quoted above, includes all in-kind contributions. 11 CFR sec. 100.7(a)(1)(iii)(A). That section further provides that "the provision of any goods or services ... at a charge which is

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less than the usual and normal charge for such goods or services is a contribution." Respondents provided no postal services for less than the usual and normal charge and in fact paid no part of the postage charged for the mailing. Such postage was, upon information and belief, paid for by Sullivan for Senate, the candidate's principal campaign committee. Respondents did not, therefore, contribute any postal rate discount to the candidate or otherwise make an additional in-kind contribution.

Complainants argue that the in-kind contribution made here was the allegedly unlawful use of the state committee's reduced rate mail permit (Complaint, p. 4). Complainants made similar allegations in a complaint filed by the Complainants and their campaign committees against the Respondents in the U.S. District Court for the Southern District of New York. That complaint was dismissed on the ground that Complainants have no right to sue Respondents for alleged postal law violations and that the U.S. Postal Service has exclusive jurisdiction over the matters at issue. Siebert v. Conservative Party, 565 F. Supp. 56, aff'd 724 F.2d 334 (2d Cir. 1983), cert. denied 104 S. Ct. 2363 (1984).

Rather than accept the judgment of the courts, Complainants now attempt to raise the same issues before this Commission in the guise of Federal Election Campaign Act violations. If they had no right to raise such questions before the courts, then they have no right to raise such questions here. It would be improper for the Commission to

undertake to decide whether Respondents did or did not violate the postal laws when the courts have determined that such matters should be resolved by the U.S. Postal Service.

In any event, even if the Respondents did violate the postal statute in question -- an assertion they vigorously deny -- it still remains the case that they did not provide services at a discount. The "services" which were provided were delivery of mail, a service provided by the U.S. Postal Service, not Respondents. If the mailing did not qualify for the reduced rate, the Postal Service would presumably demand additional postage which, if the same were found to be due, would have to be paid. If Respondents at that point contributed such additional postage to the Sullivan campaign, an unlawful contribution could arguably* occur. If, however, the candidate's committee paid the deficiency, Respondents could not be found to have made an unlawful contribution.

In any event, such speculation is unwarranted and hardly forms the basis for a finding of probable cause to believe a violation of the Federal Election Campaign Act has occurred. No additional charge for postage has been received by Respondents, let alone paid, and none is anticipated.

---

*- We say "arguably" because is it not clear that the $5,000 limit prescribed by 2 U.S.C. sec. 441a(a)(2)(A) applies to the mailing. In September 1982, Florence Sullivan was the candidate of the Conservative Party in the general election, there being no opposition to her nomination by the Conservative Party and no Conservative Party primary. Thus, the expenditure for the mailing was made in furtherance of the Conservative Party's general election campaign and would, therefore, arguably be subject to the higher limitations of 2 U.S.C. sec. 441a(d)(1).

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What Complainants seek is a ruling by this Commission that (1) Respondents owe additional postage, notwithstanding the fact that the Postal Service, the agency charged by law with responsibility for such matters, has made no such charge, and (2) that Respondents intend to pay such non-existent charge if it is made. A non-existent intention to pay a non-existent charge does not, under any theory of law, constitute an illegal campaign contribution.

Finally, the Commission should assume, until the postal authorities determine otherwise, that the postage paid in this case represented the "usual and normal charge" for such services. The statute authorizing such reduced rates, 39 U.S.C. sec. 3626(e), was intended to facilitate political communications by political parties, Greenberg v. Bolger, 497 F. Supp. 756, 784 (EDNY 1980), and the acceptance of the piece by the Postal Service is strong evidence that Respondents were entitled to mail at the rate charged.* The Court of Appeals for the Ninth Circuit has observed that "the courts have overturned a Postal Service determination of mailing rate status only when the determination is 'clearly wrong,' amounting to an abuse of discretion." Sierra Club v. U.S. Postal Service, 549 F.2d 1199, 1201 (9th Cir. 1976). The Postal Service is entitled to at least the same deference from the Commission.

*- The state committees of the New York Republican and Democratic Parties have on numerous occasions used the reduced postage rates authorized by 39 U.S.C. sec. 3626(e) to mail campaign literature urging voters to support their candidates.

CONCLUSION

This Matter Under Review should be dismissed by the Commission on the ground that the Complaint does not show the existence of a violation of the Federal Election Campaign Act.

Dated: New York, New York
January 17, 1985

John P. Dellera
Counsel for Respondents
444 Madison Avenue
New York, N.Y. 10022
(212) 754-1300

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GEORGE D. SALERNO
Chairman

R. WELLS STOUT
Vice Chairman

DONALD A. RETTALIATA
Commissioner

WILLIAM H. McKEON
Commissioner

STATE OF NEW YORK

STATE BOARD OF ELECTIONS
99 WASHINGTON AVE.
ALBANY, NEW YORK 12210

THOMAS W. WALLACE
Executive Director

GEORGE V. PALMER
Asst. Executive Director

DONALD J. McCARTHY, JR.
Counsel-Enforcement

THOMAS P. ZOLEZZI
Special Counsel

June 21, 1982

Hon. Florence M. Sullivan
229 Ovington Avenue
Brooklyn, New York 11209

Dear Ms. Sullivan:

Please take notice that a certificate designating you as candidate of the Conservative Party for the office of U. S. Senator has been filed in the office of the State Board of Elections on June 21, 1982.

Very truly yours,

Thomas W. Wallace

Thomas W. Wallace
Executive Director

TWW:pb

Congressman Jack F. Kemp
Permit Holder:
National Republican Congressional Committee
320 First Street, SE
Washington, D.C. 20003

CongressionalGram

JOHN DELLERA
57 CATERBURY ROAD
ROCKVILLE CENTRE, NY 11570

I need your help.

40304177

Congressman Jack F. Kemp
Washington, D.C.

CongressionalGram

2-738-197-4633 9/20/82 OL VA 1733 091-

TO:

JOHN DELLERA
57 CATERBURY ROAD
ROCKVILLE CENTRE, NY 11570

Business Reply

I need your help.

A close friend of mine, New York Republican Congressman Ben Gilman, is fighting for his political life against an ultra-liberal Democratic Congressman, who has a pledge of full support from Tip O'Neill and Ted Kennedy, who plan to campaign for his defeat.

Redistricting has joined Ben's New York district with the Congressional district now represented by liberal Congressman Peter Peyser.

There couldn't be a more glaring contrast between these two Congressmen. Ben received a 100% rating from the National Taxpayers' Union rating on the ten key Reagan tax votes. Peyser's rating was zero. The Chamber, in 1981, gave Ben a rating of 72% and Peyser a rating of 11%.

Ben Gilman has voted for tax relief for you and for small businesses. As a Member of Congress he has attempted to serve as your watchdog against non-essential Government spending, fraud and waste.

Peter Peyser has a record of voting for legislation that is punitive to the free enterprise system. He has fought to increase the enormous size of the Federal Government.

Their records are also opposed concerning what we must do to secure the defense of our country. In 1979-80, the American Security Council gave Ben a rating of 78% at the same time Peter Peyser received a 22% rating.

Ben, as a member of the House Foreign Affairs Committee, has fought for a strong American defense posture capable of deterring Soviet military and political aggression.

Peyser opposes supporting our strategic military defense capability and has voted against the B-1 Bomber, MX Missile and Trident submarine series.

I don't think I have to remind you that Peter Peyser, Tip O'Neill and Ted Kennedy are part of a liberal coalition that voted for increased regulations on you and your family; that voted for increasing the size of the Federal Government; that voted against giving you a personal tax cut. Your help will defeat one member of that coalition.

Can I count on you for a committment to the free enterprise system, to America, and to Ben's re-election. Please respond today by returning the enclosed material with a contribution of $25, $50, or whatever you can afford.

Jack F. Kemp
Member of Congress
New York

Paid for by the National Republican Congressional Committee
Authorized by Gilman for Congress

To Reply by Phone call 202 682 0204

To be tough on crime, nothing beats experience!

1021 Veterans Memorial Hwy.
Happauge, New York 11788

Non-profit Org
U.S. Postage
PAID
Hicksville, N.Y. 11802
Permit No. 558

Senator Carol Berman is tough on crime!

JOHN P. DELLERA
57 CANTERBURY RD
ROCKVLLE CTR NY 11570

Ask Senator Carol Berman.
She's Lived Through It.

It was about 10:00 PM on an evening in July when the Bermans pulled into their driveway. As they got out of their car, another car pulled up behind them and two men jumped out. One of the men put a gun to Carol's head, and in no uncertain terms told her husband that if he did not hand over his money, he would no longer have a wife.

Does someone who makes the laws in our state have to live through that kind of experience to be tough on crime?

Of course not. But one thing's certain. Anyone who's been through it can only come out feeling one way about crime: No matter how tough the laws are, *they're not tough enough.*

Senator Berman's been tough on crime!

Toughen Penalties
She voted to enact laws that toughen penalties for violent crimes and which limit plea bargaining.

Prosecute Rape
She sponsored bills to impose harsher penalties for sex offenses, including 25 years-to-life for rape.

Restrict Bail
She supported the law to revoke bail automatically if a person is charged with a crime while awaiting trial.

Protect the Elderly
She sponsored a bill for harsher penalties for criminals who prey on the elderly.

Eliminate Illegal Handguns
She sponsored the toughest gun control law in America which mandates one year in jail for illegal possession of a handgun.

Punish Drunk Drivers
She sponsored laws to toughen penalties and revoke licenses of drunk drivers.

Help Crime Victims
She supported the law to require judges to consider the physical and psychological harm to a CRIME VICTIM when determining sentences.

Restrict Insanity Plea
Long before the Hinckley case, she introduced a bill to mandate jail sentences for the criminally insane.

Juvenile Offenders
She supported expanded delinquency programs to incarcerate hardened juvenile offenders.

Death Penalty
She voted to override Governor Carey's veto of the death penalty.

Keep Carol Berman State Senator.

To be tough on crime, nothing beats experience!

VOTE DEMOCRATIC ROW A OR ROW E Tuesday, November 2, 1982

Paid for by New York State Democratic Committee Keep Carol Berman State Senator '82, 1060A Broadway, Woodmere, N.Y. 11598 (516) 569-5686

STATEMENT OF DESIGNATION OF COUNSEL

MUR 1866

NAME OF COUNSEL: John P. Dellera

ADDRESS: Baker, Nelson & Williams
444 Madison Avenue
New York, NY 10022

TELEPHONE: (212) 754-1300

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.

1/6/85
Date

Michael R. Long
Signature

RESPONDENT'S NAME: Michael R. Long

ADDRESS: 537 76th Street
Brooklyn, NY 11209

HOME PHONE:

BUSINESS PHONE:

9004083041131

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 30, 1985

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joseph M. Sussillo
Sullivan for Senate
437 Bayridge Parkway
Brooklyn, New York 11209

Re: MUR 1866

Dear Mr. Sussillo:

This letter is to notify Sullivan for Senate Committee and you, as treasurer, that on December 18, 1984, the Federal Election Commission received a complaint alleging that the Committee and you, as treasurer may have violated sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1866. Please refer to this number in all future correspondence.

The complaint was not sent to you earlier due to administrative inadvertence. Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you and the 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 and the Committee intend to be represented by counsel in this matter, please advise the Commision by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notification and other communications from the Commission.

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

Sincerely,

Charles N. Steele
General Counsel

By Kenneth A. Gross
Associate General Counsel

Enclosures

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

SENSITIVE

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

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL BY OGC TO THE COMMISSION _____

MUR No. 1866
DATE COMPLAINT RECEIVED BY OGC
12-18-84

DATE OF NOTIFICATION TO RESPONDENT
12-27-84

STAFF MEMBER:
Deborah Curry

COMPLAINANT'S NAMES:	Michael F. Siebert and Whitney North Seymour, Jr.
RESPONDENTS' NAMES:	J. Daniel Mahoney, Michael Long, Serphim R. Maltese, James O'Doherty, New York State Conservative Party State Committee/1984 Victory Fund and Sullivan for Senate Committee and Joseph M. Sussillo as treasurer
RELEVANT STATUTE:	2 U.S.C. §§ 434, 441a, 441a(f), 441a(d)
INTERNAL REPORTS CHECKED:	None
FEDERAL AGENCIES CHECKED:	None

SUMMARY OF ALLEGATIONS

On December 18, 1984, the Office of General Counsel received a signed, sworn and notarized complaint from Muriel F. Siebert and Whitney North Seymour, Jr. (hereinafter "Complainants") alleging violations of the Federal Election Campaign Act of 1971, as amended (hereinafter the "Act") by J. Daniel Mahoney (Chairman), Michael R. Long (Vice Chairman), Serphim R. Maltese (Executive Vice Chairman), James E. O'Doherty (Treasurer), New

York State Conservative Party State Committee and 1982 Victory Fund (now called 1984 Victory Fund)1/ (hereinafter "Conservative Committee/1984 Victory Fund") and the Sullivan for Senate Committee, Joseph M. Sussillo as treasurer (hereinafter "Sullivan Committee,2/ (all hereinafter "Respondents").

Complainants allege that the Conservative Committee made an excessive in kind contribution to the Sullivan Committee by allowing the Sullivan Committee to mail campaign literature under its non profit permit number.

On January 22, 1985, the Office of General Counsel received a response from the Conservative Committee/1984 Victory Fund. To date no response has been received from the Sullivan Committee and Joseph M. Sussillo as treasurer.

FACTUAL AND LEGAL ANALYSIS

Specifically, Complainants' allege that on or "about September 1982, [the Conservative Committee] participated in the preparation, printing and mailing of a direct mail piece in support of the candidacy of Florence M. Sullivan for the Republican Party nomination for United States Senator in New York in the Primary Election held on September 23, 1982." (Attachment 1 page 2). Complainants allege that some or all of the printing

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1/ The 1982 Victory Fund amended its reports during the 83-84 election cycle to reflect a name change from 1982 Victory Fund to 1984 Victory Fund.

2/ The Sullivan Committee was not specifically named by Complainants as Respondents. However, due to the circumstances of this case, we have included the Sullivan Committee as a Respondent in the matter and have sent the Sullivan Committee notification of the complaint.

costs for the Sullivan direct mail piece ($4,980) was paid for by the 1982 Victory Fund, the federal account of the New York State Conservative Party State Committee.

Complainants' also allege that "[t]he Sullivan direct mail piece was sent out under Non-Profit Permit #734, issued to respondent [Conservative Committee], which permits mailing bulk rate mail at postal rates substantially below those charged to other groups." (Attachment 1 page 2). Complainants' further allege that the "mailing was in direct violation of Postal Service regulations...[which provide] that candidates for elective office may not use the lower non profit rate allowed to state committees but must pay full and normal bulk rate postage rates." (Attachment 1 pages 2-3).

Therefore, Complainants conclude that the "[Conservative Committee's] unlawful actions constituted an in-kind contribution to the Sullivan for Senate with a cash value of approximately $25,000." (Attachment 1 page 3). Additionally, Complainants allege that "this contribution was never reported to the FEC by either party." (Attachment 1 page 3).

In support of their allegations Complainants submit the following documents with the complaint:

1) A copy of the Sullivan direct mail piece. (Attachment 1 pages 3 and 5-7).

2) A copy of the U.S. Postal Services record for the Conservative Committee. (Attachment 1 pages 3 and 7).

3) Answers sworn by the Conservative Committee in response to Complainants" interrogatories in Siebert v. Conservative Party, (Attachment 1 pages 4 and 8-17).

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Factual and Legal Analysis

2 U.S.C. § 431 (8)(A)(i) defines contribution as "any gift, subscription, loan, advances or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office,...." The term "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A). According to this regulation, any goods or services provided without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution." (Emphasis added) Id.

Additionally, the Commission has determined that where political committees provide goods or services to one another, the entire value of such goods or services are contributions and therefore, subject to the limitations and prohibitions of the Act. Moreover, all such contributions and expenditures are required to be reported by the political committees under the Act. 2 U.S.C. § 434(b). See e.g., Advisory Opinion 1983-2.

Under 2 U.S.C. § 441a(a)(2)(A), multicandiate committees have a $5,000 limit on contributions to a candidate or her authorized committee with respect to any election to federal office.

A review of the Sullivan direct mail piece indicates that it was issued under the Conservative Committee/1984 Victory Fund's name and non-profit permit number. (Attachment 1 pages 5-6). The Sullivan direct mail piece states that the publication of the brochure was paid for by the Conservative Committee/1984 Victory Fund and authorized by the Sullivan for Senate Committee. (Attachment 2 pages 5-6). Also, the Sullivan direct mail piece,

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among other things, advocates the election of Florence Sullivan in the September 23, 1982 primary. (Attachment 2 pages 5-6).

Complainants submit evidence indicating that the printing cost of the direct mail piece was paid for by the 1984 Victory Fund. (Attachment 1 pages 9 and 11-12 and Attachment 2 page 20). The 1984 Victory Fund is the federal account of the Conservative Committee and is a multicandidate committee registered with the Commission. The direct mail piece was authorized by the candidate with the approval and authorization of the Conservative Committee/1984 Victory Fund. (Attachment 1 pages 8 and 10). It also appears that the Sullivan Committee paid for the postage of the mailing. (Attachment 1 page 9).

The Postal record indicates that a total of $14,475.27[3/] was charged for mass mailings sent out on September 17, 1982. (Attachment 1 page 7). Complainants allege that a total of 360,799 [4/] direct mail pieces were mailed out at the non-profit rate. (Attachment 1 page 7).

The use of the lower non-profit rate given by the Conservative Committee/1984 Victory Fund does not appear

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3/ Complainants' quote a total of $14,475.15 which appears to be incorrect, the postal record shows $14,475.27.

4/ For the purpose of analyzing the transaction in question, Complainants' figures will be used as approximations of the amounts involved. It is not possible to determine at this time from the postal record exactly how many direct mail pieces were sent out under the non-profit permit number. According to the postal record there is three entries for September 17, 1982 at two different postal rates. However, Complainants' figures even when used as approximations appear to be accurate. (Attachment 1 page 7).

to be the usual and normal charge for such mailing and resulted in a substantial discount or savings to the Sullivan Committee.5/ This savings or discount represents something of value to the Sullivan Committee and was for the purpose of influencing a federal election.

This transaction also represents a provision of goods and services between two political committees that was for the purpose of influencing a federal election. Thus a contribution under the Act occurred, and the entire value of the goods or services is subject to the limitations and prohibitions of the Act. Therefore, the market value or usual and normal charge for the goods and services in question, when it can be determined, is the total amount of the in-kind contribution.

In this case, both the Conservative Committee/1984 Victory Fund and the Sullivan Committee have clearly exceeded the contribution limits at 2 U.S.C. § 441a(a)(2)(A) with regard to the in-kind contribution resulting from use of the non profit permit number of the Conservative Committee/1984 Victory Fund.6/ Additionally, with regard to this transaction both committees violated 2 U.S.C. § 441a(f) in accepting the excessive contribution. Moreover, according to Commission reports neither the Conservative Committee/1984 Victory Fund nor the Sullivan Committee reported the making or receiving of contributions with regard to the printing costs of the direct mail piece or the

5/ According to Complainants, the "customary bulk mail postage rate in effect at that time was (10.9)...." (Attachment 1 page 4).

6/ The total amount, assuming the customary bulk rate and figures given by complainants, would be $39,327.09.

in-kind contribution resulting from the use of the non profit permit number of the Conservative Committee/1984 Victory Fund. Therefore, both the Sullivan Committee and Conservative Committee/1984 Victory Fund have also violated the reporting requirements of the Act under 2 U.S.C. § 434 with regard to these transactions.

Response of Conservative Committee/1984 Victory Fund.

The response of the Conservative Committee/1984 Victory Fund does not dispute the material facts presented in this matter. Rather, the Conservative Committee/1984 Victory Fund's response challenges any legal determination of a violation of the Act based on these facts. Indeed, the Conservative Committee/1984 Victory Fund states that the complaint "should be dismissed by the Commission upon the ground that it fails to allege facts which, if true, would constitute a violation of the [Act]" (Attachment 2 page 19).

Therefore, the Conservative Committee/1984 Victory Fund concludes that the only in-kind contribution was the cost of printing the mailing. Consequently, the Conservative Committee 1984 Victory Fund also concludes that the $4,980 paid for the mailing was within the $5,000 limit of the Act for the multicandidate committees and therefore lawful. (Attachement 2 page 20).

The Conservative Committee/1984 Victory Fund's conclusion that the activity in question does not give rise to an in-kind contribution is premised upon mistaken legal interpretation in general and of the Act in particular. The response of the

Conservative Committee/1984 Victory Fund states that the "complaint is in essence, an allegation of postal law violations." (Attachment 2 page 19). Moreover, the Conservative Committee/1984 Victory Fund supports this initial incorrect proposition with misinterpretations of postal cases and the Act as it relates to the activity in question.

The response of the Conservative Committee/1984 Victory Fund states that complainants made similar allegations with regard to the unlawful use of the state committees' reduced rate mail permit in the U.S. District Court for the Southern District of N.Y. (Attachment 2 page 21). The Conservative Committee/1984 Victory Fund contends that in that case the "complaint was dismissed on the ground that complainants have no right to sue respondents for alleged postal law violations and that the U.S. Postal Service has exclusive jurisdiction over the matters at issue." (Attachment 2 page 21). The Conservative Committee/1984 Victory Fund argues that the postage paid represented the usual and normal charge unless the postal authorities determine otherwise. (Attachment 2 page 22).

According to the Conservative Committee/1984 Victory Fund the statute authorizing such reduced rates, 39 U.S.C. Sec. 3626(e), was intended to facilitate political communications by political parties, Greenberg v. Bolger, 497 F. Supp. 756, 784 (EDNY 1980), and the acceptance of the piece by the Postal Service is strong evidence that respondents were entitled to mail at the rate charged." (Attachment 2 page 23). In support of this contention the Conservative Committee/1984 Victory Fund

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cites from a Ninth Circuit Court of Appeals opinion which states that "the courts have overturned a Postal Service determination of mailing rate status only when the determination is 'clearly wrong,' amounting to an abuse of discretion." Sierra Club v. U.S. Postal Service, 549 F.2d 1199, 1201 (9th Cir. 1976).

Furthermore, the Conservative Committee/1984 Victory Fund states that it did not provide services at a discount. According to the Committee "[t]he 'services' which were provided were delivery of mail, a service provided by the U.S. Postal service, not Respondents." (Attachment 2 page 22). According to the Conservative Committee/1984 Victory Fund the only way that an illegal contribution could have occurred is if the U.S. Postal service found that the mailing did not qualify for a reduced rate and the Conservative Committee/1984 Victory Fund paid the additional postage. (Attachment 2 page 22). Therefore, the Conservative Committee/1984 Victory Fund submits that "[i]t would be improper for the Commission to undertake to decide whether Respondents did or did not violate postal laws when the courts have determined that such matters should be resolved by the U.S. Postal Service."

The Conservative Committee/1984 Victory Fund's reliance on postal cases and interpretation of the Act is misplaced for several reasons. First, it is true that the court in Siebert v. Conservative Party, 565 F. Supp. 56, aff'd 724 F.2d 334 (2d Cir. 1983), cert denied 104 S. Ct. 2363 (1984), notes that "postal matters are exclusively of federal concern." 724 F.2d at 337.

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However, the holding of those cases was that 39 U.S.C. § 3626(e)(1) did not imply a private cause of action. Therefore, their relevance with respect to the activity cited herein is limited.

Second, the Federal Election Commission has exclusive jurisdiction with respect to civil enforcement of violations arising under they Act. See 2 U.S.C. §§437(c)(b)(1) and 437g. Here, something of value was received by the Sullivan Committee for the purpose of influencing a federal election and therefore a contribution under the Act occurred. The recommendation that a excessive in-kind contribution has occurred is premised on federal election law and not U.S. Postal law. This independent conclusion is reached based on an analysis under the Act as to whether something of value constituting a contribution has been received by a candidate or her committee for the purpose of influencing a federal election.

Additionally, in making a recommendation that a violation of the Act has occurred in this case, no determination is made nor is necessary to be made with regard to determining whether or not a violation of postal regulations has also occurred. Therefore, a recommendation that a violation of the Act has occurred is not inconsistent with either Greenberg or Sierra Club.

Third, the argument by the Conservative Committee/1984 Victory Fund that the "services" provided were delivery of mail which only the U.S. Postal service may provide is likewise without merit. This argument of form over substance is exactly what the broad definition of "contribution" was meant to prevent.

9004080419 3

The Conservative Committee/1984 Victory Fund's reliance on the Postal service as the provider of mail delivery service is of no import in this instance. The contribution in this case occurred at the point in time when the Conservative Committee/1984 Victory Fund allowed the Sullivan Committee the use of it's reduced postal non-profit permit meter; not at the later point in time when the mail was actually delivered. In other words at the point in time that the Conservative Committee/1984 Victory Fund allowed the use of its reduced rate postal meter, it in a very real sense became a vendor of goods or services.

Moreover, the Conservative Committee/1984 Victory Fund provided such goods or services at a substantial discount to the Sullivan Committee. Consequently, the Conservative Committee/1984 Victory Fund cannot hide behind the U.S. Postal Service's provision of mail delivery services anymore than a contributor of an excessive contribution by check can hide behind a Bank that provides a service in transacting the excessive contribution represented by that check.

Coordinated Expenditure Limit

Finally, the Conservative Committee/1984 Victory Fund seems also to imply that the $5,000 contribution limit would not apply to the mailing in question. (Attachment 2 page 22, see footnote). According to the Conservative Committee/1984 Victory Fund "[i]n September 1982, Florence Sullivan was the candidate of the Conservative Party in the general election, there being no

opposition to her nomination by the Conservative Party and no Conservative Party primary." (See footnote Attachment 2 page 22). Therefore, the Conservative Committee/1984 Victory Fund contends that "the mailing was made in furtherance of the Conservative Party's general election campaign and would, therefore, arguably be subject to the higher limitations of 2 U.S.C. § 441a(d)(1)." (Attachment 2 page 22).

2 U.S.C. § 441a(d)(1) and (3) permit party coordinated expenditures by "the national committee of a political party, or a State Committee of a political party including any subordinate committee of a State Committee...in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party...." (Emphasis added) The amount of the expenditures is subject to a specific dollar limitation. 2 U.S.C. § 441a(d)(3)(A)(i).

The party coordinated expenditure limit for a state committee or subordinate committee in the New York 1982 Senatorial general election was $480,214.48. See Federal Election Commission Record, June 1982, page 2. The Sullivan mailing was made in September 1982 prior to the New York primary which was held on September 23, 1982. In arguing that the Sullivan mailing was well within the party coordinated expenditure limit for the general election, the Conservative Committee/1984 Victory Fund states that Florence Sullivan was a candidate for the N.Y. State Conservative Party in the general

election since there was no conservative primary or opposition to her candidacy.

However, the proper analytical focus is whether the Sullivan mailing was made for the purpose of influencing the outcome of the general election for Senator of New York. See Advisory Opinion 1984-15. Here, the Sullivan mailing was clearly made for the purpose of influencing the election of Florence Sullivan to the Republican ticket in the New York primary. Though there was no conservative party primary on September 23, 1982, due to lack of conservative opposition, Florence Sullivan appeared in that primary as a nominee of the Republican Party. The Sullivan direct mail piece states "Elect Another Reagan Republican to the U.S. Senate." (Attachment 1 pages 5-6). Additionally, it urges the readers to vote for Florence Sullivan on September 23. (Attachment 1 pages 5-6).7/ As a result, Florence Sullivan won the Republican nomination for Senator in the primary but subsequently lost in the general election to the incumbent, Senator Daniel Patrick Moynihan.

Therefore, the Sullivan direct mail piece was made for the purpose of influencing a primary not general election. Consequently, the Conservative Committee may not avail itself of the higher party coordinated expenditure limit at 2 U.S.C. § 441a(d).

7/ Furthermore, Sierbert v. Conservative Party, 565 F. Supp. 56, aff'd 724 F.2d 334 (2d Cir. 1983), cert denied 104 S. Ct. 2363 (1984), also indicates that The Sullivan direct mail piece was sent to a list of selected Republican Voters.

The Office of General Counsel recommends that the Commission find reason to believe the Conservative Committee/1984 Victory Fund and Vincent G. Downing, as treasurer violated 2 U.S.C. §§ 434, 441a(a)(2)(A) and 441a(f).8/

The Office of General Counsel also recommends the Commission find reason to believe the Sullivan Committee violated 2 U.S.C. § 434, 441a(1)(A), 441a(f).

RECOMMENDATION

The Office of General Counsel recommends:

1. Find reason to believe the New York State Conservative Party State Committee/1984 Victory Fund, and Vincent G. Downing, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441a(f).

2. Find reason to believe the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f).

3. Find reason to believe the New York State Conservative State Party Committee/1984 Victory Fund and Vincent G. Downing as treasurer violated 2 U.S.C. § 434.

4. Find reason to believe the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer, violated 2 U.S.C. § 434; and

---

8/ As noted supra the 1982 Victory Fund has amended the name of the committee. Therefore, all findings will be against the 1984 Victory Fund and Vincent G. Downing, as treasurer.

5. Approve attached letters.

Charles N. Steele
General Counsel

May 3, 1985
Date

BY: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

Attachments

1. Complaint
2. Response of the Conservative Committee/1984 Victory Fund
3. Letter to Respondents

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ Cheryl A. Fleming

DATE: May 8, 1985

SUBJECT: Objection MUR 1866 - First General Counsel's Report

The above-named document was circulated to the Commission on MOnday, May 6, 1985, 11:00.

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

Commissioner Aikens		
Commissioner Elliott	X	(Comments)
Commissioner Harris	X	
Commissioner McDonald		
Commissioner McGarry		
Commissioner Reiche	X	

This matter will be placed on the Executive Session agenda for Tuesday, May 14, 1985.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of J. Daniel Mahoney, Michael Long, Serphim R. Maltese, James O'Doherty, New York State Conservative Party State Committee/1984 Victory Fund and Sullivan for Senate Committee and Joseph M. Sussillo as treasurer	)	MUR 1866

CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission executive session of May 14, 1985, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 1866:

1. Find reason to believe the New York State Conservative Party State Committee/1984 Victory Fund, and Vincent G. Downing, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A).

2. Find reason to believe the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer, violated 2 U.S.C. § 441a(f).

3. Find reason to believe the New York State Conservative State Party Committee/1984 Victory Fund and Vincent G. Downing, as treasurer, violated 2 U.S.C. § 434.

4. Find reason to believe the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer, violated 2 U.S.C. § 434.

5. Approve the appropriate letters.

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

Attest:

5-15-85
Date

Mary W. Dove
Mary W. Dove
Recording Secretary

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 22, 1985

John P. Dellera
Baker, Nelson & Williams
444 Madison Avenue
New York, New York 10022

RE: MUR 1866
New York State Conservative
Party State Committee/1984
Victory Fund and Vincent G.
Downing, as treasurer

Dear Mr. Dellera:

The Federal Election Commission notified your client on December 27, 1984, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time. We acknowledge receipt of your clients' explanation of this matter which was dated January 22, 1985.

Upon further review of the allegations contained in the complaint and information supplied by your clients, the Commission, on May 14, 1985, determined that there is reason to believe that New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer, violated 2 U.S.C §§ 434 and 441a(a)(2)(A) provisions of the Act. Specifically, it appears that your clients made an excessive contribution to the Sullivan Committee with respect to the Sullivan direct mail piece of September 1982. Additionally, the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer, did not report the making of this excessive contribution, nor the payment of the printing costs of the direct mail piece to the Sullivan for Senate Committee.

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 have any questions, please contact Deborah Curry the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

John Warren McGarry

John Warren McGarry
Chairman

Enclosures
Procedures

DESCRIPTION OF PRELIMINARY PROCEDURES
FOR PROCESSING COMPLAINTS FILED WITH THE
FEDERAL ELECTION COMMISSION

Complaints filed with the Federal Election Commission shall be referred to the Enforcement Division of the Office of the General Counsel, where they are assigned a MUR (Matter Under Review) number and assigned to a staff member. Within 5 days of receipt of a complaint, the Commission shall notify, in writing, any respondent listed in the complaint that the complaint has been filed and shall include with such notification a copy of the complaint. Simultaneously, the complainant shall be notified that the complaint has been received and will be acted upon. The respondent(s) shall then have 15 days to demonstrate, in writing, that no action should be taken against him/ her in response to the complaint.

At the end of the 15 days, the Office of General Counsel shall report to the Commission making a recommendation(s) based upon a preliminary legal and factual analysis of the complaint and any submission made by the respondent(s). A copy of respondent's submission shall be attached to the Office of General Counsel's report and forwarded to the Commission. This initial report shall recommend either: (a) that the Commission find reason to believe that the complaint sets forth a possible violation of the Federal Election Campaign Act (FECA) and that the Commission will conduct an investigation of the matter; or (b) that the Commission finds no reason to believe that the complaint sets forth a possible violation of the Federal Election Campaign Act (FECA) and, accordingly, that the Commission close the file on the matter.

If, by an affirmative vote of four (4) Commissioners, the Commission decides that it has reason to believe that a person has committed or is about to commit a violation of the Federal Election Campaign Act (FECA), the Office of the General Counsel shall open an investigation into the matter. During the investigation, the Commission shall have the power to subpoena documents, to subpoena individuals to appear for deposition, and to order answers to interrogatories. The respondent(s) may be contacted more than once by the Commission during its investigation.

If, during this period of investigation, the respondent(s) indicate a desire to enter into conciliation, the Office of General Counsel staff may begin the conciliation process prior to a finding of probable cause to believe a violation has been committed. Conciliation is an informal method of conference and persuasion to endeavor to correct or prevent a violation of the Federal Election Campaign Act (FECA). Most often, the result of conciliation is an agreement signed by the Commission and the respondent(s). The Conciliation Agreement must be adopted by four votes of the Commission before it becomes final. After signature by the Commission and the respondent(s), the Commission shall make public the Conciliation Agreement.

[If the investigation warrants], and no conciliation agreement is entered into prior to a probable cause to believe finding, the General Counsel must notify the respondent(s) of his intent to proceed to a vote on probable cause to believe that a violation of the Federal Election Campaign Act (FECA) has been committed or is about to be committed. Included with the notification to the respondent(s) shall be a brief setting forth the position of the General Counsel on the legal and factual issues of the case. Within 15 days of receipt of such brief, the respondent(s) may submit a brief posing the position of respondent(s) and replying to the brief of the General Counsel. Both briefs will then be filed with the Commission Secretary and will be considered by the Commission. Thereafter, if the Commission determines by an affirmative vote of four (4) Commissioners, that there is probable cause to believe that a violation of the FECA has been committed or is about to be committed conciliation must be undertaken for a period of at least 30 days but not more than 90 days. If the Commission is unable to correct or prevent any violation of the FECA through conciliation the Office of General Counsel may recommend that the Commission file a civil suit against the respondent(s) to enforce the Federal Election Campaign Act (FECA). Thereafter, the Commission may, upon an affirmative vote of four (4) Commissioners, institute civil action for relief in the District Court of the United States.

See 2 U.S.C. § 437g, 11 C.F.R. Part 111.

November 1980

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 22, 1985

Joseph M. Sussillo, treasurer
Sullivan For Senate
437 Bay Ridge Parkway
Brooklyn, New York 11209

RE: MUR 1866
Sullivan For Senate and
Joseph M. Sussillo as
treasurer

Dear Mr. Sussillo:

The Federal Election Commission notified Sullivan For Senate and Joseph M. Sussillo, as treasurer on December 27, 1984, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on May 14, 1985, determined that there is reason to believe that Sullivan For Senate and you, as treasurer, have violated 2 U.S.C §§ 434 and 441a(f), provisions of the Act. Specifically, it appears that Sullivan For Senate and you as treasurer accepted an excessive contribution from New York State Conservative Party State Committee/1984 Victory Fund with respect to the Sullivan direct mail piece of September 1982. Additionally, Sullivan For Senate and you as treasurer did not report the receipt of this excessive contribution nor the payment of the printing costs of the direct mail piece by the New York State Conservative Party State Committee/1984 Victory Fund.

As of this date we have received no written response from you in connection with this matter. Please file any such response within ten days of your receipt of this notification.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause. However, in the absence of any information which demonstrates that no further action should be taken against your committee and you, as treasurer, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2, of the enclosed procedures.

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 have any questions, please contact Deborah Curry the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Procedures

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DESCRIPTION OF PRELIMINARY PROCEDURES
FOR PROCESSING COMPLAINTS FILED WITH THE
FEDERAL ELECTION COMMISSION

Complaints filed with the Federal Election Commission shall be referred to the Enforcement Division of the Office of the General Counsel, where they are assigned a MUR (Matter Under Review) number and assigned to a staff member. Within 5 days of receipt of a complaint, the Commission shall notify, in writing, any respondent listed in the complaint that the complaint has been filed and shall include with such notification a copy of the complaint. Simultaneously, the complainant shall be notified that the complaint has been received and will be acted upon. The respondent(s) shall then have 15 days to demonstrate, in writing, that no action should be taken against him/ her in response to the complaint.

At the end of the 15 days, the Office of General Counsel shall report to the Commission making a recommendation(s) based upon a preliminary legal and factual analysis of the complaint and any submission made by the respondent(s). A copy of respondent's submission shall be attached to the Office of General Counsel's report and forwarded to the Commission. This initial report shall recommend either: (a) that the Commission find reason to believe that the complaint sets forth a possible violation of the Federal Election Campaign Act (FECA) and that the Commission will conduct an investigation of the matter; or (b) that the Commission finds no reason to believe that the complaint sets forth a possible violation of the Federal Election Campaign Act (FECA) and, accordingly, that the Commission close the file on the matter.

If, by an affirmative vote of four (4) Commissioners, the Commission decides that it has reason to believe that a person has committed or is about to commit a violation of the Federal Election Campaign Act (FECA), the Office of the General Counsel shall open an investigation into the matter. During the investigation, the Commission shall have the power to subpoena documents, to subpoena individuals to appear for deposition, and to order answers to interrogatories. The respondent(s) may be contacted more than once by the Commission during its investigation.

If, during this period of investigation, the respondent(s) indicate a desire to enter into conciliation, the Office of General Counsel staff may begin the conciliation process prior to a finding of probable cause to believe a violation has been committed. Conciliation is an informal method of conference and persuasion to endeavor to correct or prevent a violation of the Federal Election Campaign Act (FECA). Most often, the result of conciliation is an agreement signed by the Commission and the respondent(s). The Conciliation Agreement must be adopted by four votes of the Commission before it becomes final. After signature by the Commission and the respondent(s), the Commission shall make public the Conciliation Agreement.

[If the investigation warrants], and no conciliation agreement is entered into prior to a probable cause to believe finding, the General Counsel must notify the respondent(s) of his intent to proceed to a vote on probable cause to believe that a violation of the Federal Election Campaign Act (FECA) has been committed or is about to be committed. Included with the notification to the respondent(s) shall be a brief setting forth the position of the General Counsel on the legal and factual issues of the case. Within 15 days of receipt of such brief, the respondent(s) may submit a brief posing the position of respondent(s) and replying to the brief of the General Counsel. Both briefs will then be filed with the Commission Secretary and will be considered by the Commission. Thereafter, if the Commission determines by an affirmative vote of four (4) Commissioners, that there is probable cause to believe that a violation of the FECA has been committed or is about to be committed conciliation must be undertaken for a period of at least 30 days but not more than 90 days. If the Commission is unable to correct or prevent any violation of the FECA through conciliation the Office of General Counsel may recommend that the Commission file a civil suit against the respondent(s) to enforce the Federal Election Campaign Act (FECA). Thereafter, the Commission may, upon an affirmative vote of four (4) Commissioners, institute civil action for relief in the District Court of the United States.

See 2 U.S.C. § 437g, 11 C.F.R. Part 111.

November 1980

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GCC #1726
Curry

JOSEPH M. SUSSILLO, J.D., P.C.
COUNSELLOR AT LAW

LOUISE M. PAULSEN
PARALEGAL

437 Bay Ridge Parkway, Brooklyn, New York 11209
718 836-6312
718 745-5860

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY
85 JUN 11 AM 10:54

June 5, 1985

85 JUN 12 P2:42

Hon. John Warren McGarry, Chairman
Federal Election Commission
Washington D. C. 20463

Attention: Ms. Deborah Curry

Re: MUR 1866
Sullivan for Senate and
Joseph M. Sussillo, Treasurer

Gentlemen:

Confirming our telephone conversation of today, this will acknowledge receipt on Tuesday, May 28, 1985 of your letter of May 22, 1985 with respect to the above matter.

I hereby request a thirty (30) day extension of time to file a written response to the complaint.

The reason for the extension of time is to obtain counsel to represent the committee and myself with respect to the allegations on which the complaint is based.

Since I was notified on March 29, 1985 that the Commission had closed its file on what was thought to be this same matter, but in reality was a different complaint number MUR 1868, it was erroneously assumed by this office that final disposition had been made.

As I have no actual knowledge of any dealings in that matter nor with respect to this particular complaint, the time is required to contact counsel who handled the previous complaint - so far unsuccessfully.

Please advise as soon as possible of your decision.

Thank you for your continued cooperation.

Very truly yours,

JOSEPH M. SUSSILLO
lp

CC: Frank P. Trotta, Jr.
Thomas Spargo

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 26, 1985

Joseph M. Susillo, Esquire
Joseph M. Susillo, J.D., P.C.
437 Bay Ridge Parkway
Brooklyn, New York 11209

RE: MUR 1866
Sullivan for Senate and
Joseph M. Susillo, as treasurer

Dear Mr. Susillo:

This is in reference to your letter dated June 5, 1985, requesting an extension of 30 days to respond to the Commission's notice that it has reason to believe that Sullivan for Senate and you, as treasurer, have violated the Act.

Considering the Commission's responsibilities under 2 U.S.C. § 437g(a)(8)(A) to act expeditiously on complaints and the circumstances of this matter, we cannot agree to your request. Your request for an extension will be granted only until June 27, 1985.

If you have any questions, please contact Deborah Curry, the attorney handling this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

7 5 0 4 0 3 0 4 2 1 0

ECC # 7868

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

Attention: Ms. Deborah Curry

---------- X

Siebert, et al
Complainants.

J. Daniel Mahoney et al
Respondents.

---------- X

INDEX NO. MUR 1866

RESPONSE

5 JUN 28 P12:15

JOSEPH M. SUSSILLO, as Treasurer of the Sullivan for Senate Committee and for said Committee responding to the within complaint alleges on information and belief:

Denies any knowledge or information sufficient to have a belief as to the truth of the allegations contained in Paragraphs of the complaint designated as "1", "2", "3", "4", "5".

That item "6" appears to be a statement of complainants belief based on inconclusive, irrelevant information contained in Exhibits "A", "B", and "C" which fails to support the belief stated.

That the subject matter of this complaint is substantially like or similar to allegations of the complainants in FEC Index No. MUR 1868 which on March 22, 1985 resulted in a determination that the Commission found "....no reason to believe that a violation of any statute within its jurisdiction has been committed."

JOSEPH M. SUSSILLO

Sworn to before me
this 26th Day of June
1985.

Louise Paulsen

LOUISE PAULSEN
Commissioner of Deeds
City of New York No. 2-2997
Certificate Filed in Kings County
Commission Expires Feb. 1, 1987

CC: Muriel F. Siebert
Whitney North Seymour, Jr.
J. Daniel Mahoney
Michael R. Long,
Serphim R. Maltese
James E. O'Doherty

9 0 0 4 0 8 0 4 2 1 1

NOTICE OF ENTRY

Sir:-Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

JOSEPH M. SUSSILLO, J.D.

Attorney for

Office and Post Office Address

437 BAY RIDGE PARKWAY

BROOKLYN, N. Y. 11209

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on 19

at M.

Dated,

Yours, etc.,

JOSEPH M. SUSSILLO, J.D.

Attorney for

Office and Post Office Address

437 BAY RIDGE PARKWAY

BROOKLYN, N. Y. 11209

To

Attorney(s) for

Index No. MUR 1866 Year 19

Siebert, et al

Complainants

J. Daniel Mahoney, et al

Respondents

RESPONSE

JOSEPH M. SUSSILLO, J.D.

Attorney for

Office and Post Office Address, Telephone

437 BAY RIDGE PARKWAY

BROOKLYN, N. Y. 11209

(212) 836-6312 (212) SH-5-5850

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

1500-JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS, N.Y.C. 10013

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© 1975 JULIUS BLUMBERG, INC.

STATE OF NEW YORK, COUNTY OF ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box

☐ **Certification By Attorney** certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

☐ **Attorney's Affirmation** shows: deponent is the attorney(s) of record for in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

.....

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ss.:

being duly sworn, deposes and says: deponent is

Check Applicable Box

☐ **Individual Verification** the in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

☐ **Corporate Verification** the of a corporation, in the within action; deponent has read the foregoing and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on 19

.....

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ss.:

being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at

Check Applicable Box

☐ **Affidavit of Service By Mail** On 19 deponent served the within upon attorney(s) for in this action, at the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

☐ **Affidavit of Personal Service** On 19 at deponent served the within upon the herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on 19

.....

The name signed must be printed beneath

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

85 SEP 4 A 9:59

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Sullivan for Senate	)	MUR 1866
Joseph M. Sussillo, Treasurer	)	
New York State Conservative Party State Committee/1984 Victory Fund Vincent G. Downing, Treasurer	)	
Michael Long	)	
Serphim R. Maltese	)	
J. Daniel Mahoney	)	
James O'Doherty	)	

GENERAL COUNSEL'S REPORT

BACKGROUND

On May 14, 1985, the Federal Election Commission (hereinafter "Commission") determined that there is reason to believe that the New York State Conservative Party State Committee/1984 Victory Fund (hereinafter "Conservative Committee/Victory Fund") and Vincent G. Downing, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and § 434, by making an excessive contribution to the Sullivan for Senate Committee and failing to report that contribution. Also on May 14, 1985, the Commission determined that there is reason to believe that the Sullivan for Senate Committee ("Sullivan Committee") and Joseph M. Sussillo, as treasurer, violated 2 U.S.C. § 441a(f), by accepting an excessive contribution from the Conservative Committee/Victory Fund and failing to report that contribution.

A written response to the reason to believe determinations was received from the Sullivan Committee on June 28, 1985. This response merely denied the allegations contained in the complaint and otherwise failed to address the factual and legal issues of

this matter. The Conservative Committee/Victory Fund did not respond to the Commission's reason to believe determinations, although it did respond in writing to notification of the complaint. However, this response also failed to provide sufficient information concerning the factual and legal issues in this matter.

At this stage of the proceeding, the Office of General Counsel is without the information necessary to enable it to make dispositive recommendations to the Commission on the factual and legal issues of the case. In general, more information is needed on the printing of the Sullivan brochure at issue, including, for example, the process by which the printing was authorized and who paid what portions of the printing costs. More information is also needed concerning the mailing of the brochures, specifically regarding, for example, the ownership of both the postage meter and postage permit used and the payment of postage for the mailing. Such evidence is essential in order to prove or disprove any violations and, in addition, to show the extent of any possible violations.

Therefore, in light of the insufficient information which has, up to now, been received by the Office of General Counsel, and due to the need for such evidence to effectuate a complete investigation of this matter, the Office of General Counsel recommends that the Commission approve the attached orders with questions to be sent to respondents.

RECOMMENDATION

The Office of General Counsel recommends that the Commission:

1. Approve and authorize sending the attached Order to Submit Written Answers and letter to the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer.

2. Approve and authorize sending the attached Order to Submit Written Answers and letter to the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer.

Charles N. Steele
General Counsel

Sept. 3, 1985
Date

BY: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

9 0 4 0 3 0 4 2 1 6

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1866
Sullivan for Senate	)	
Joseph M. Sussillo, treasurer,	)	
et. al.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 6, 1985, the Commission decided by a vote of 5-0 to take the following actions in MUR 1866:

1. Approve and authorize sending the Order to Submit Written Answers and letter to the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer.

2. Approve and authorize sending the Order to Submit Written Answers and letter to the New York State Conservative Party State Committee/ 1984 Victory Fund and Vincent G. Downing, as treasurer, submitted with the General Counsel's Report signed September 3, 1985.

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

Attest:

9-9-85
Date

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

Received in Office of Commission Secretary: Wed., 9-4-85, 9:59
Circulated on 48 hour tally basis: Wed., 9-4-85, 4:00
Deadline for votes: Fri., 9-6-85, 4:00

9 0 4 0 8 0 1 2 1 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 20, 1985

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John P. Dellera, Esq.
Baker, Nelson & Williams
444 Madison Ave.
New York, NY 10022

RE: MUR 1866
New York State Conservative Party
State Committee/1984 Victory Fund
and Vincent G. Downing, Treasurer

Dear Mr. Dellera:

On May 22, 1985, you were notified that the Commission found reason to believe that your clients violated 2 U.S.C. § 434 and § 441a(a)(2)(A) of the Federal Election Campaign Act of 1971, as amended. An investigation of this matter is being conducted and it has been determined that additional information from your client is necessary.

Consequently, the Federal Election Commission has issued the attached order which requires your clients to provide information which will assist the Commission in carrying out its statutory duty of supervising compliance with the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, U.S. Code.

It is required that you submit the information under oath and that you do so within ten days of your receipt of this order. If you have any questions, please direct them to Eric Kleinfeld, the attorney handling this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Subpoena & Order
Questions

9004030213

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
New York State Conservative Party State Committee/1984 Victory Fund	)	MUR 1866
Vincent G. Downing, Treasurer	)	
	)	

ORDER TO SUBMIT WRITTEN ANSWERS

TO: Vincent G. Downing, Treasurer
New York State Conservative Party State Committee/
1984 Victory Fund
45 East 29th Street
New York, NY 10016

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

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

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 19th day of Sept., 1985.

John Warren McGarry
John Warren McGarry
Chairman

ATTEST:

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

Attachments

9004030219

Questions for: New York State Conservative Party
State Committee/1984 Victory Fund
Vincent G. Downing, treasurer

On December 19, 1984, a complaint was filed with the Federal Election Commission (hereinafter "Commission"), the subject of which was a brochure mailed on behalf of Florence Sullivan's candidacy for the United States Senate, and a copy of the brochure is attached hereto as Exhibit A. All references in the questions which follow to the "brochure" or "mailing" refer to Exhibit A.

DEFINITIONS

1. The term "person" includes an individual, partnership, corporation, labor organization, committee, association, or any other organization or group of persons.

2. The terms "and" and "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of this request any answers or documents which may otherwise be construed to be out of its scope.

3. The term "identify" with respect to persons shall mean the full name, the last known residence address of such person, and the last known business address of such person.

9004030420

QUESTIONS

1.a. Did the NYS Conservative Party State Committee authorize the printing of Exhibit A?

1.b. If the answer to question 1.a is yes, please identify the person or persons who authorized the printing of Exhibit A.

1.c. Did the 1982 Victory Fund authorize the printing of Exhibit A?

1.d. If the answer to question 1.c is yes, please identify the person or persons who authorized the printing of Exhibit A.

2. Please identify the person or persons who printed Exhibit A.

3. Please identify the person or persons who contacted the printer to place the order for Exhibit A.

4. Please state the total cost of printing all brochures of which Exhibit A is a sample.

5.a. Did the NYS Conservative Party State Committee pay any of the printing costs for these brochures?

5.b. If the answer to question 5.a is yes, what amounts were paid by the NYS Conservative Party State Committee for the printing costs of these brochures?

6.a. Did the 1982 Victory Fund pay any of the printing costs for these brochures?

6.b. If the answer to 6.a is yes, what amounts were paid by the 1982 Victory Fund for the printing costs of these brochures?

7.a. Please identify any person or persons other than the NYS Conservative Party State Committee and the 1982 Victory Fund that paid for any of the printing costs of the brochure.

7.b. For those persons identified in question 7.a above, please list what amounts of the printing costs each paid.

9004030421

8.a. If any of the printing costs were paid by the NYS Conservative Party State Committee, please state whether this amount was ever reported to the Commission.

8.b. If so, please identify the report on which this disclosure was made to the Commission.

9.a. If any of printing costs were paid by the 1982 Victory Fund, please state whether this amount was ever reported to the Commission.

9.b. If so, please identify the report on which this disclosure was made to the Commission.

10.a. Did the the NYS Conservative Party State Committee authorize the mailing of Exhibit A?

10.b. If the answer to question 10.a is yes, please identify the person or persons who so authorized the mailing.

10.c. Did the 1982 Victory Fund authorize the mailing of Exhibit A?

10.d. If the answer to question 10.c is yes, please identify the person or persons who so authorized the mailing.

11.a. Exhibit A indicates that the postage for this mailing was paid pursuant to permit number 734, issued to a non-profit organization. Was permit number 734 issued to the NYS Conservative Party State Committee?

11.b. Was permit number 734 issued to the 1982 Victory Fund?

11.c. If the answers to questions 12.a and 12.b above are no, please identify the person or persons to whom permit number 734 was issued.

12. Please identify the person or persons who authorized the use of permit number 734 in connection with the mailing of these brochures.

13.a. At the time Exhibit A was prepared, did the NYS Conservative Party Committee own the postage meter which was used to affix the postage to the mailing?

13.b. Did the 1982 Victory Fund own the postage meter which was used to affix the postage to the mailing?

13.c. If the answer to question 14.a and 14.b above are no, please identify the person or persons who owned the postage meter which was used to affix the postage to the mailing.

14.a. Did the NYS Conservative Party cause the operation of the postage meter to affix the postage to the mailing?

14.b. If the answer to question 14.a is yes, please identify the person or persons who operated the postage meter to affix the postage to the mailing.

14.c. Did the 1982 Victory Fund cause the operation of the postage meter to affix the postage to the mailing.

14.d. If the answer to question 14.c is yes, please identify the person or persons who operated the postage meter to affix the postage to the mailing.

14.e. If the answers to question 14.a and 14.c are no, please identify the person or persons who operated the postage meter to affix the postage to the mailing.

15. Please state the total costs of postage for this mailing.

16.a. Did the NYS Conservative Party State Committee pay for or incur any of the costs of postage?

16.b. If the answer to question 16.a above is yes, please state the amounts paid or incurred by the NYS Conservative Party State Committee for the costs of postage.

17.a. Did the 1982 Victory Fund pay for or incur any of the costs of postage?

17.b. If the answer to question 17.a above is yes, please state the amounts paid or incurred by the 1982 Victory Fund for the costs of postage.

18. If the answers to questions 16.a and 17.a above are no, please identify the person or persons who paid the costs of postage.

19.a. If any of the costs of postage were paid by the NYS Conservative Party State Committee, please state whether this amount was ever reported to the Commission.

19.b. If so, please identify the report on which this disclosure was made to the Commission.

20.a. If any of the costs of postage were paid by the 1982 Victory Fund, please state whether this amount was ever reported to the Commission.

20.b. If so, please identify the report on which this disclosure was made to the Commission.

21.a. On what date were the brochures mailed. If more than one mailing was made, please list each date on which a mailing was made and the number of brochures mailed on each date.

21.c. For each of the mailings listed in question 21.a above, please state what postage rate was paid per piece.

22.a. Exhibit B is a copy of a postal record submitted by complainant of the mailing of Exhibit A. Please state whether Exhibit B is an accurate record of this mailing.

22.b. Which of the entries on Exhibit B refer to the mailing on behalf of Florence Sullivan?

22.c. Are the postal rates per piece listed on Exhibit B the actual postal rates used for each mailing?

22.d. Is the amount of postage listed on Exhibit B the amount of postage that was paid for this mailing?

ASSEMBLYWOMAN FLORENCE
[illegible]IVAN HAS BEEN ENDORSED BY
T[illegible]SE REPUBLICAN OFFICIALS:

Congressman Guy V Molinari
Congressman Gerald B Solomon

Assemblyman Michael J Hollock, Jr
Assemblyman Raymond Kaiser

Senator Christopher Mega
Senator Frank Padavan
Senator Richard E Schermerhorn

Assemblyman Neil Kelleher
Assemblyman Richard L Kennedy
Assemblyman Clarence Lane
Assemblyman William J Larkin, Jr
Assemblyman Eugene Levy
Assemblyman John G Lopresto
Assemblyman Thomas P Morahan
Assemblyman James Nagle
Assemblyman John G A O'Neil
Assemblyman John M Perione
Assemblyman Douglas W Prescott
Assemblywoman Antonia P Rettaliata
Assemblyman Stephen Salard
Assemblywoman Carol A Sweet
Assemblyman Nicholas A Spano
Assemblyman Frank G Talomie, Sr
Assemblyman Guy J Velella
Assemblyman Glen Warren

Assemblyman John L Behan
Assemblyman Gordon W Burrows
Assemblyman William Bush
Assemblyman Anthony J Casale
Assemblyman John Cochrane
Assemblyman Armand D Amato
Assemblyman Robert A D Andrea
Assemblyman John A Esposito
Assemblyman John T Flack
Assemblyman John Flanagan
Assemblywoman Joan P Hague
Assemblyman Thomas Hanna

[illegible] BY

FUND FOR A CONSERVATIVE
MAJORITY

CITIZENS FOR THE REPUBLIC
(THE POLITICAL ACTION COMMITTEE
FOUNDED BY RONALD REAGAN IN
1977)

THE EAST SIDE CONSERVATIVE CLUB

PAID FOR BY THE BINGHAMTON SPONSORED BY THE STATE COMMITTEE OF THE NEW YORK STATE CONSERVATIVE PARTY [illegible]

New York State Conservative Party State Committee
1982 Victory Fund
45 East 29th Street
New York, New York 10016

NON-PROFIT ORG
U.S. POSTAGE
PAID
PERMIT NO 734
NEW YORK N Y

FLORENCE SULLIVAN
IS THE ONLY
SENATE CANDIDATE
TO ENDORSE
LEW LEHRMAN
FOR GOVERNOR.

ELECT ANOTHER
REAGAN REPUBLICAN
TO THE U.S. SENATE

VOTE FOR FLORENCE SULLIVAN ON SEPTEMBER 23-

THERE ARE TWO LIBERALS
AND ONE REAGAN REPUBLICAN RUNNING FOR
UNITED STATES SENATOR.

THE REAGAN REPUBLICAN IS...

EXHIBIT "A"

ASSEMBLYWOMAN FLORENCE SULLIVAN

SHE IS THE ONLY CANDIDATE WHO SUPPORTS PRESIDENT REAGAN ON ALL THESE ISSUES:

- Tax reductions for working Americans.
- A criminal justice system that does not let the John Hinckleys free, and protects law abiding citizens from street criminals.
- United States Military Forces second to none.
- To deny the Soviet Union access to vital American technology.
- Tuition Tax Credits for parents sending their children to private and parochial schools.

Florence Sullivan understands the problems we are all facing. She is the widow of a Korean War veteran, who raised three children, taught Math and English, supported herself through St. John's Law School, served as an Assistant District Attorney and has represented the middle-class community of Bay Ridge for two terms in the New York State Legislature.

"FLORENCE SULLIVAN IS A LIFELONG CONSERVATIVE REPUBLICAN. HER LIBERAL OPPONENTS HAVE FOUGHT AGAINST THE CONSERVATIVE POLICIES OF RONALD REAGAN, AL D'AMATO AND JACK KEMP."

MICHAEL R. LONG
COUNCILMAN-AT-LARGE

Whitney North Seymour, Jr. has described himself as "A John Lindsay Republican."

While serving in the State Senate he voted to weaken the Death Penalty and opposed stiffer penalties for murderers, rapists, and other violent criminals.

Moreover, he opposes President Reagan on tuition tax credits, the Balanced Budget Amendment, voluntary prayers in public places, and improving our defense forces.

Muriel Siebert, Hugh Carey's Superintendent of Banks, contributed to the campaigns of Senator Moynihan and Hugh Carey (her latest contribution was $1,000 to Carey in December of 1981). During this race Siebert has called herself a "raving liberal" on social issues, she has called for the legalization of illegal drugs, and she has called for reductions in the defense budget.

"FLORENCE SULLIVAN OFFERS REFRESHING OPPOSITION TO LEFT-LEANING REPUBLICAN OPPONENTS LIKE SEYMOUR AND SIEBERT. SHE IS CERTAINLY OUR BEST BET AGAINST MOYNIHAN IN NOVEMBER."

CHARLES SCHUMER, SENATOR

"FLORENCE SULLIVAN IS THE ONLY ONE WHO CAN BEAT THE LIBERAL DANIEL MOYNIHAN."

ROBERT HECKMAN
EXECUTIVE DIRECTOR
FUND FOR A CONSERVATIVE MAJORITY

"MOYNIHAN'S LIBERALISM IS NOT WHAT NEW YORKERS WANT OR NEED."

FLORENCE SULLIVAN
ASSEMBLYWOMAN

While Florence Sullivan has repeatedly voted for the Death Penalty, Moynihan twice voted against it in the United States Senate.

While Florence Sullivan believes in the importance of education in neighborhood schools, Moynihan has voted for the busing of school children.

While Florence Sullivan has voted for tax cuts, Moynihan voted against tax reductions for people earning $25,000 and less.

While Florence Sullivan is a staunch supporter of President Reagan, Moynihan supported Jimmy Carter 75% of the time.

Vote Sullivan on September 23

RECORDS OF MAILING (3602)

PERMIT NO: 734 DATE: 10/21/02
NAME: THE CONSERVATIVE PARTY STATE COMMITTEE TYPE: 2
LOCATION: SPO

STARTING BALANCE	DATE	CLASS	RATE	POSTAGE	DEPOSITS	ENDING BALANCE	REMARKS
123.50	06/09/02	00	0.059	401.74			
					405.00		
						126.76	
126.76	09/17/02	00	0.049	235.15			
		01	0.040	11200.00			
		01	0.040	3040.12			
					10500.00		
						4151.49	

EXHIBIT "B"

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 20, 1985

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joseph M. Sussillo, Esq.
Sullivan for Senate Committee
437 Bay Ridge Parkway
Brooklyn, New York 11209

RE: MUR 1866
Sullivan for Senate Committee and
Joseph M. Sussillo, as treasurer

Dear Mr. Sussillo:

On May 22, 1985, you were notified that the Commission found reason to believe that the Sullivan for Senate Committee and you, as treasurer, violated 2 U.S.C. § 434 and § 441a(f) of the Federal Election Campaign Act of 1971, as amended. An investigation of this matter is being conducted and it has been determined that additional information from you is necessary.

Consequently, the Federal Election Commission has issued the attached order which requires you to provide information which will assist the Commission in carrying out its statutory duty of supervising compliance with the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, U.S. Code.

It is required that you submit the information under oath and that you do so within ten days of your receipt of this order. If you have any questions, please direct them to Eric Kleinfeld, the attorney handling this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Subpoena & Order
Questions

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Sullivan for Senate Committee	)	MUR 1866
Joseph M. Sussillo, treasurer	)	
	)	
	)	

ORDER TO SUBMIT WRITTEN ANSWERS

TO: Joseph M. Sussillo, treasurer
Sullivan for Senate Committee
437 Bay Ridge Parkway
Brooklyn, NY 11209

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

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

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 19th day of Sept, 1985.

John Warren McGarry
John Warren McGarry
Chairman

ATTEST:

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

Attachments

9004042229

Questions for: Sullivan for Senate Committee
Joseph M. Sussillo, treasurer

On December 19, 1984, a complaint was filed with the Federal Election Commission (hereinafter "Commission"), the subject of which was a brochure mailed on behalf of Florence Sullivan's candidacy for the United States Senate, and a copy of the brochure is attached hereto as Exhibit A. All references in the questions which follow to the "brochure" or "mailing" refer to Exhibit A.

DEFINITIONS

1. The term "person" includes an individual, partnership, corporation, labor organization, committee, association, or any other organization or group of persons.

2. The terms "and" and "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of this request any answers or documents which may otherwise be construed to be out of its scope.

3. The term "identify" with respect to persons shall mean the full name, the last known residence address of such person, and the last known business address of such person.

9 0 0 4 0 3 0 4 2 3 0

QUESTIONS

1. Please identify the person or persons who authorized the printing of Exhibit A.

2. Please identify the person or persons who printed Attachment A.

3. Please identify the person or persons who contacted the printer to place the order for Exhibit A.

4. Please state the total cost of printing all brochures of which Exhibit A is a sample.

5. Did the Sullivan for Senate Committee pay any of the printing costs for these brochures?

6. What amounts, if any, were paid by the Sullivan for Senate Committee for printing?

7.a. Please identify any person or persons other than the Sullivan for Senate Committee that paid for the cost of printing.

7.b. For those persons identified in question 7.a above, please list, in dollar figures, how much of the printing costs each paid.

8.a. Please state whether the State Committee of the New York State Conservative Party paid any of the printing costs of the brochures.

8.b. If so, please state the amount paid by the State Committee of the New York State Conservative Party for printing costs.

9.a Please state whether the separate segregated account of the New York State Conservative Party, which was registered with the Commission during the period in question under the name "1982 Victory Fund" paid any of the printing costs of the brochures.

9.b. If so, please state the amount paid by the 1982 Victory fund for printing costs.

10.a. If any of the printing costs were paid by the Sullivan for Senate Committee, please state whether this amount was ever reported to the Commission as an expenditure or disbursement or in any other form.

10.b. If so, please identify the report on which this disclosure was made to the Commission.

11.a. If any of the printing costs were paid by persons other than the Sullivan for Senate Committee please state whether this amount was ever reported to the Commission as a contribution or other receipt or in any other form.

11.b. If so, please identify the report on which this disclosure was made to the Commission.

12. Please identify the person or persons who authorized the mailing of Exhibit A.

13.a. Exhibit A indicates that the postage for this mailing was paid pursuant to permit number 734, issued to a non-profit organization. Was permit number 734 issued to the Sullivan for Senate Committee?

13.b. If the answer to question 13.a above is yes, please describe the procedure by which the Sullivan for Senate Committee obtained permit number 734.

13.c. If the answer to question 13.a above is no, please identify the person or persons to whom permit number 734 was issued.

13.d. If the answer to question 13.a above is no, please identify the person or persons who authorized the use of permit number 734 for this mailing.

14.a. At the time Exhibit A was prepared did the Sullivan for Senate Committee own the postage meter which was used to affix the postage to the mailing?

14.b. If the answer to question 14.a above is yes please state how this postage meter was obtained by the Sullivan for Senate Committee.

14.c. If the answer to question 14.a above is no, please identify the person or persons who owned the postage meter which was used to affix the postage to the mailing.

14.d. If the answer to question 14.a above is no, please identify the person or persons who authorized the use of the postage meter to affix the postage to the mailing.

15. Please identify the person or persons who operated the postage meter to affix the postage to the mailing.

16. Please state the total costs of postage for this mailing.

17.a. Did the Sullivan for Senate Committee pay for or incur any of the costs of postage?

17.b. If the answer to question 17.a above is yes, please state the amounts paid or incurred by the Sullivan for Senate Committee for the postage costs of this mailing.

18.a. Did the State Committee of the New York State Conservative Party pay for or incur any of the costs of postage?

18.b. If the answer to question 18.a above is yes, please list the amounts paid or incurred for postage by the State Committee of the New York State Conservative Party.

19.a. Did the separate segregated account of the New York State Conservative Party, the 1982 Victory Fund, pay for or incur any of the costs of postage?

19.b. If the answer to question 19.a above is yes, please list the amounts paid or incurred for postage by the 1982 Victory Fund.

20. Please identify any other persons who paid any of the costs of postage and list the amounts so paid.

21.a. If any of the costs of postage were paid by the Sullivan for Senate Committee please state whether this amount was ever reported to the Commission as an expenditure or disbursement or in any other form.

21.b. If so, please identify the report on which this disclosure was made to the Commission.

22.a. If any of the costs of postage were paid by persons other than the Sullivan for Senate Committee, please state whether this amount was ever reported to the Commmission as a contribution or other receipt or in any other form.

22.b. If so, please identify the report on which this disclosure was made to the Commission.

23.a. Please state the date on which the brochures were mailed. If more than one mailing was made, please list each date on which a mailing was made and the number of brochures mailed on each date.

23.c. For each of the mailings listed in question 23.a above, please state what postage rate was paid per piece.

24.a. Exhibit B is a copy of a postal record submitted by complainant of the mailing of Exhibit A. Please state whether Exhibit B is an accurate record of this mailing.

24.b. Which of the entries on Exhibit B refer to the mailing on behalf of Florence Sullivan?

24.c. Are the postal rates per piece listed on Exhibit B the actual postal rates used for each mailing?

24.d. Is the amount of postage listed on Exhibit B the amount of postage that was paid for this mailing?

9 0 0 4 0 3 0 4 2 3 3

9 0 0 4 0 8 0 4 2 3 4

EXHIBIT "A"

THERE ARE TWO LIBERALS
AND ONE REAGAN REPUBLICAN RUNNING FOR
UNITED STATES SENATOR.
THE REAGAN REPUBLICAN IS...

NON-PROFIT ORG
U.S. POSTAGE
PAID
PERMIT NO 734
NEW YORK N.Y.

FLORENCE SULLIVAN
IS THE ONLY
SENATE CANDIDATE
TO ENDORSE
LEW LEHRMAN
FOR GOVERNOR.

ELECT ANOTHER
REAGAN REPUBLICA
TO THE U.S. SENATE

VOTE FOR FLORENCE SULLIVAN ON SEPTEMBER 23-

New York State Conservative Party State Committee
[illegible]32 Victory Fund
[illegible] East 29th Street
New York, New York 10016

ASSEMBLYWOMAN FLORENCE
SULLIVAN HAS BEEN ENDORSED BY
THESE REPUBLICAN OFFICIALS:

Congressman Guy V. Molinari
Congressman Gerald B. Solomon

Senator Christopher Mega
Senator Frank Padavan
Senator Richard E. Schermerhorn

Assemblyman John L. Behan
Assemblyman Gordon W. Burrows
Assemblyman William Bush
Assemblyman Anthony J. Casale
Assemblyman John Cochrane
Assemblyman Armand D. Amato
Assemblyman Robert A. D'Andrea
Assemblyman John A. Esposito
Assemblyman John T. Flack
Assemblyman John Flanigan
Assemblywoman Joan P. Hague
Assemblyman Thomas Hanna
Assemblyman Michael J. Hoblock, Jr.
Assemblyman Raymond Kaisor
Assemblyman Neil Kelleher
Assemblyman Richard L. Kennedy
Assemblyman Clarence Lane
Assemblyman William J. Larkin, Jr.
Assemblyman Eugene Levy
Assemblyman John G. Lopresto
Assemblyman Thomas P. Morahan
Assemblyman James Nagle
Assemblyman John G. A. O'Neil
Assemblyman John M. Perone
Assemblyman Douglas W. Prescott
Assemblywoman Antonia P. Rettakata
Assemblyman Stephen Saland
Assemblywoman Carol A. Siwek
Assemblyman Nicholas A. Spano
Assemblyman Frank G. Talomie, Sr.
Assemblyman Guy J. Velleta
Assemblyman Glen Warren

AND BY

FUND FOR A CONSERVATIVE
MAJORITY

CITIZENS FOR THE REPUBLIC
(THE POLITICAL ACTION COMMITTEE
FOUNDED BY RONALD REAGAN IN
1977)

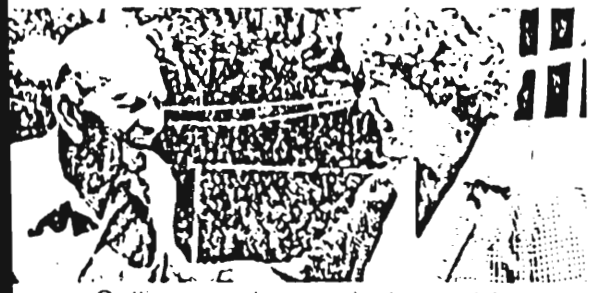
THE EAST SIDE CONSERVATIVE CLUB

PUBLICATION OF THIS BROCHURE IS PAID FOR BY THE STATE COMMITTEE OF THE NEW YORK STATE CONSERVATIVE PARTY [illegible]

ASSEMBLYWOMAN
F' ORENCE SULLIVAN

HE IS THE ONLY CANDIDATE WHO UPPORTS PRESIDENT REAGAN ON L THESE ISSUES:

ax reductions for working Americans.
criminal justice system that does not let ne John Hinckleys free, and protects law biding citizens from street criminals.
Jnited States Military Forces second to none.
o deny the Soviet Union access to vital merican technology.
uition Tax Credits for parents sending heir children to private and parochial chools.



ence Sullivan understands the problems are all facing She is the widow of a ean War veteran, who raised three dren, taught Math and English, ported herself through St John's Law ool, served as an Assistant District rney and has represented the die class community of Bay Ridge for two r in the New York State Legislature

"FLORENCE SULLIVAN IS A LIFELONG CONSERVATIVE REPUBLICAN. HER LIBERAL OPPONENTS HAVE FOUGHT AGAINST THE CONSERVATIVE POLICIES OF RONALD REAGAN, AL D'AMATO AND JACK KEMP."

MICHAEL R. LONG
COUNCILMAN-AT-LARGE

Whitney North Seymour, Jr. has described himself as "A John Lindsay Republican."

While serving in the State Senate he voted to weaken the Death Penalty and opposed stiffer penalties for murderers, rapists, and other violent criminals.

Moreover, he opposes President Reagan on tuition tax credits, the Balanced Budget Amendment, voluntary prayers in public places, and improving our defense forces.

Muriel Siebert, Hugh Carey's Superintendent of Banks, contributed to the campaigns of Senator Moynihan and Hugh Carey (her latest contribution was $1,000 to Carey in December of 1981). During this race Siebert has called herself a "raving liberal" on social issues, she has called for the legalization of illegal drugs, and she has called for reductions in the defense budget.

"FLORENCE SULLIVAN OFFERS REFRESHING OPPOSITION TO LEFT-LEANING REPUBLICAN OPPONENTS LIKE SEYMOUR AND SIEBERT. SHE IS CERTAINLY OUR BEST BET AGAINST MOYNIHAN IN NOVEMBER."

HARDY SCHIFFMERHORN, SENATOR

"FLORENCE SULLIVAN IS THE ONLY ONE WHO CAN BEAT THE LIBERAL DANIEL MOYNIHAN."

ROBERT HECKMAN
EXECUTIVE DIRECTOR
FUND FOR A CONSERVATIVE MAJORITY

"MOYNIHAN'S LIBERALISM IS NOT WHAT NEW YORKERS WANT OR NEED."

FLORENCE SULLIVAN
ASSEMBLYWOMAN

While Florence Sullivan has repeatedly voted for the Death Penalty, Moynihan twice voted against it in the United States Senate.

While Florence Sullivan believes in the importance of education in neighborhood schools, Moynihan has voted for the busing of school children.

While Florence Sullivan has voted for tax cuts, Moynihan voted against tax reductions for people earning $25,000 and less.

While Florence Sullivan is a staunch supporter of President Reagan, Moynihan supported Jimmy Carter 75% of the time.

Vote Sullivan on September 23

RECORD OF MAILING (3600)

PERMIT NO: 734 DATE: 10/21/02
NAME: THE CONSERVATIVE PARTY STATE COMMITTEE TYPE: 2
LOCATION: CPO

STARTING BALANCE	DATE	CLASS	RATE	POSTAGE	DEPOSITS	ENDING BALANCE	REMARKS
123.50	06/07/02	60	0.059	401.74			
					405.00		
						126.76	
126.76	07/17/02	60	0.040	235.15			
		61	0.040	11200.00			
		61	0.040	3040.12			
					10500.00		
						4151.49	

EXHIBIT "B"

GC0#8524
RECEIVED AT THE FEC
85 SEP 11 P1:06

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

Attention: Ms. Deborah Curry

85 SEP 12 P1:53

---------- X

Siebert, et al

Complainants.

J. Daniel Mahoney et al

Respondents.

INDEX NO. MUR 1866

RESPONSE

---------- X

JOSEPH M. SUSSILLO, as Treasurer of the Sullivan for Senate Committee and for said Committee responding to the within complaints alleges on information and belief:

Denies any knowledge or information sufficient to have a belief as to the truth of the allegations contained in Paragraphs of the complaint designed as "1", "2", "3", "4", "5" "6".

That Item C appears to be a statement of complainant's belief based on inconclusive, irrelevant information contained in Exhibits "A", "B", "C", "D", "E" and "F" which fails to support the belief stated.

That the subject matter of this complaint is substantially like or similar to allegations of the complainant's in FEC Index No. MUR 1868 which on March 22, 1985 resulted in a determination that the Commission found ".....no reason to believe that a violation of any statute within its jurisdiction has been committed."

JOSEPH M. SUSSILLO

Sworn to before me
this 15th day of August
1985.

Louise Paulsen

LOUISE PAULSEN
Commissioner of Deeds
City of New York No. 2-2997
Certificate filed in Kings County
Commission Expires Feb. 1, 1987

CC: Muriel F. Siebert
Whitney North Seymour, Jr.
J. Daniel Mahoney
Michael R. Long
Seraphim R. Maltese
James E.O'Doherty

9004030423 7

RECEIVED AT THE FEC
GCCH 8736
85 OCT 16 A8:18

5 OCT 16 A10:57

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

Attention: Ms. Deborah Curry

---------- X

Siebert, et al
Complainants.

J. Daniel Mahoney et al
Respondents.

---------- X

INDEX NO. MUR 1866

RESPONSE

JOSEPH M. SUSSILLO, being duly sworn, deposes and says on information and belief:

I have no information on which to form any answers to the information sought in questions 1 through 24D, inclusive, posed by the Federal Election Commission.

JOSEPH M. SUSSILLO

Sworn to before me
this 9th Day of October
1985.

Louise Benevento

LOUISE BENEVENTO
Commissioner of Deeds
City of New York, No. 2-2997
Certificate Filed in Kings County
Commission Expires Feb. 1, 1987

CC: Muriel F. Siebert
Whitney North Seymour, Jr.
J. Daniel Mahoney
Michael R. Long
Seraphim R. Maltese
James E. O'Doherty

9 0 0 4 0 3 0 4 2 3 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 18, 1985

Vincent G. Downing, treasurer
1984 Victory Fund/New York State
Conservative Party State Committee
45 East 29th Street
New York, New York 10016

Re: MUR 1866
J. Daniel Mahoney, Michael Long, Serphim Maltese and the 1984 Victory Fund/New York State Conservative Party State Committee

Dear Mr. Downing:

Attached you will find the Commission's letter of September 20, 1985 and its accompanying Order to Submit Written Answers, which were mailed to Mr. John P. Dellera, attorney of record in this matter for respondents J. Daniel Mahoney, Michael Long, Serphim Maltese and the 1984 Victory Fund/New York State Conservative Party State Committee. This corresponsence was returned to the Commission undelivered.

As Mr. Dellera no longer represents the above-captioned respondents in this matter, the enclosures are being forwarded to you for response, along with a Designation of Counsel Statement. A copy of the latter should be sent to the Commission for each respondent who intends to be represented by counsel in this matter.

If you have any questions, please direct them to Eric Kleinfeld, the attorney handling this matter, at (202) 523-4000.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosures

9 0 0 4 0 8 0 4 2 3 9

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
)
Sullivan for Senate)
Joseph M. Sussillo, treasurer)
New York State Conservative Party)
State Committee/1984 Victory Fund)
Vincent G. Downing, treasurer)

MUR 1866

EXECUTIVE SESSION

JAN 14 1986

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On May 14, 1985, the Federal Election Commission (hereinafter "Commission") determined that there is reason to believe that the New York State Conservative Party State Committee/1984 Victory Fund (hereinafter "Conservative Committee/Victory Fund") and Vincent G. Downing, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and § 434, by making an excessive contribution to the Sullivan for Senate Committee and failing to report that contribution. Also on May 14, 1985, the Commission determined that there is reason to believe that the Sullivan for Senate Commitee ("Sullivan Committee") and Joseph M. Sussillo, as treasurer, violated 2 U.S.C. § 441a(f) and § 434, by accepting an excessive contribution from the Conservative Committee/Victory Fund and failing to report that contribution.

A written response to the reason to believe determinations was received from the Sullivan Committee. This response merely denied the allegations contained in the complaint and otherwise failed to address the factual and legal issues of this matter. The Conservative Committee/Victory Fund did not respond to the Commission's reason to believe determinations, although it did respond in writing to notification of the complaint. However,

this response also failed to provide sufficient information concerning the factual and legal issues in this matter.

On September 6, 1985, the Commission authorized Orders to Submit Written Answers for respondents Sullivan for Senate and Joseph M. Sussillo, as treasurer, and the Conservative Committee/Victory Fund and Vincent G. Downing, as treasurer. Questions for the Conservative Committee/Victory Fund were mailed to its counsel of record in this matter. When no response was received, the Office of General Counsel contacted the Conservative Committee/Victory Fund's counsel who indicated that he no longer served in that capacity for respondent. The questions were resent to Mr. Downing, treasurer of the Conservative Committee/Victory Fund on October 17, 1985.

Again no response was received from the Conservative Committee/Victory Fund. In an attempt to elicit a response from Mr. Downing, the Office of General Counsel contacted him by telephone, during which conversation he indicated that the answers would be forthcoming and additionally, that the Conservative Committee/Victory Fund would be represented by a new counsel, to be indicated on a forthcoming designation of counsel statement. Neither responses to the Commission's questions nor a new designation of counsel statement have been received by the Commission as of the date of this report. 1/

1/ The Office of General Counsel has on several occasions been contacted by telephone by an attorney purporting to represent the Conservative Committee/Victory Fund, who has repeatedly promised that Mr. Downing would send both a Designation of Counsel Statement and answers to the Commission's questions in the future.

A response was received from Joseph M. Sussillo, treasurer of the Sullivan Committee, on behalf of that Committee. This response consisted of a single sentence stating, "I have no information on which to form any answers to the information sought in questions 1 through 24D, inclusive, posed by the Federal Election Commission."

Such an answer is insufficient and clearly unresponsive to the Commission's questions. All of these questions deal with a campaign brochure mailed on behalf of Florence Sullivan's senate campaign. The mailing itself states "Authorized by Sullivan for Senate." The questions are aimed at determining the Sullivan Committee's role in printing and mailing this brochure. Yet the Committee claims to have no information on these subjects, a claim which is completely without justification. Many of the questions seek to obtain information clearly within the knowledge of the Sullivan Committee. Mr. Sussillo, as treasurer of the Sullivan Committee, is the individual who either knows or reasonably should know the answers to the questions. Several of the questions inquire as to whether the Sullivan Committee reported certain expenditures. Mr. Sussillo, as treasurer during the period when the expenditures may have been made and as signatory of the reports, should have the knowledge to answer these questions. Additionally, the Conservative Committee/Victory Fund claims that the Sullivan Committee paid for the mailing, but the latter failed to answer the question as to whether it actually did so.

At this stage of the proceeding, the Office of General Counsel is without the information necessary to enable it to make dispositive recommendations to the Commission on the factual and legal issues of the case. In general, more information is needed on the printing of the Sullivan brochure at issue, including, for example, the process by which the printing was authorized and who paid what portions of the printing costs. More information is also needed concerning the mailing of the brochures, specifically regarding, for example, the ownership of both the postage meter and postage permit used and the payment of postage for the mailing. Such evidence is essential in order to prove or disprove any violations and, in addition, to show the extent of any possible violations.

The information which the Office of General Counsel needs is, by all indications, within the knowledge of the respondents to whom the original Orders were directed. Even though both respondents have been given repeated opportunities to cooperate with this investigation and supply the necessary information, they have chosen not to do so. In view of the foregoing, the Office of General Counsel recommends that the Commission authorize this office to file suit for enforcement of its Orders to Submit Written Answers against the Conservative Committee/Victory Fund and Vincent G. Downing, as treasurer, and Sullivan for Senate, and Joseph M. Sussillo, as treasurer, in the United States District Court.

II. Recommendations

The Office of General Counsel recommends that the Commission:

1. Authorize the Office of General Counsel to file a civil suit in United States District Court to enforce its orders against:

New York State Conservative Party
State Committee/1984 Victory Fund
Vincent G. Downing, treasurer
Sullivan for Senate
Joseph M. Sussillo, treasurer

6 Jan 1986
Date

Charles N. Steele
General Counsel

7 7 5 4 0 3 0 4 2 4 4

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Sullivan for Senate	)	
Joseph M. Sussillo, treasurer	)	
New York State Conservative Party	)	MUR 1866
State Committee/1984 Victory Fund	)	
Vincent G. Downing, treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of January 14, 1986, do hereby certify that the Commission decided by a vote of 5-0 to authorize the Office of General Counsel to file a civil suit in United States District Court to enforce its orders against:

New York State Conservative Party State
Committee/1984 Victory Fund
Vincent G. Downing, treasurer
Sullivan for Senate
Joseph M. Sussillo, treasurer

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

Attest:

1-14-86
Date

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

GCC# 9551

M1866

WINDELS, MARX, DAVIES & IVES
51 WEST 51ST STREET
NEW YORK, N.Y. 10019

(212) 977-9500
CABLE: WINMARLAW NY
TELEX:
DOMESTIC: 126959 (WU)
INTERNATIONAL: 66103 (WUI)
& 126959 (WU)
TELECOPIER: (212) 977-9583

WILLIAM R. RIESCE
ERIC W. BRUENNER
ROY H. CARLIN
JAMES P. GENROY
ANTHONY A. DEAN
WILLIAM L. DICKEY*
DANIEL J. DUFF JR
VICENTE GARCIA-DELGADO
MITCHELL A. GILBERT
ANDREW N. GUARS, JR
ROGER I. HARRIS
WALTER F. X. HEALY
CHARLES L. HEPPERICH
JOHN H. KRIZ
RICHARD R. LUDY
HUBERT J. LYNCH
J. DANIEL MAHONEY
FRANCIS A. MARKET
JOHN J. MCDERMOTT
JONATHAN H. HOUNE
RAYMOND T. MILNSKI
EDWARD P. NOLAN
CHARLES L. STEWART
JOHN Y. TAGGART
ROBERT D. TAISEY
PAUL WINDELS, JR

*ADMITTED IN DISTRICT OF COLUMBIA AND VIRGINIA ONLY

COUNSEL

DERMOD IVES
JOHN P. FISHWICK*
*ADMITTED IN VIRGINIA ONLY

JOHN J. DONOVAN
LIONEL S. JABBY
JOHN T. OWENS*
*ADMITTED IN PENNSYLVANIA AND DELAWARE ONLY

WASHINGTON OFFICE
[illegible] PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. [illegible]
(202) 775-[illegible]
CABLE: WINMARLAW D.C.
TELEX:
DOMESTIC (WU): [illegible]
INTERNATIONAL (WUI): [illegible]
TELECOPIER: (202) 775-[illegible]

January 24, 1986

86 JAN 24 P 3:51

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

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

TO WHOM IT MAY CONCERN:

I hereby authorize any representative of the Standing Committee on Federal Judiciary of the American Bar Association, to review any and all records pertaining to me located at the Federal Election Commission.

Very truly yours,

John Daniel Mahoney

John Daniel Mahoney

2 2 0 4 0 3 0 1 2 4 6

AMERICAN BAR ASSOCIATION

COMMITTEE ON THE FEDERAL JUDICIARY

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information which concerns me, including any complaints erased by law, and is known to, recorded with, on file with or in the possession of any governmental, judicial, investigative or other official agency, including the Commission on Judicial Conduct, or any educational institution, and I hereby authorize a representative of the Committee on the Federal Judiciary to request and to receive any such information.

J. Daniel Mahony
Signature

December 18, 1985
Date

40804247

GCC#9832

HAND DELIVERED

86 FEB 26 AM 11:25

WINDELS, MARX, DAVIES & IVES
51 WEST 51ST STREET
NEW YORK, N.Y. 10019

(212) 977-9600

CABLE WINMARLAW
TELEX
DOMESTIC 126959 (WU)
INTERNATIONAL 66103 (WU)
& 126959 (WU)
TELECOPIER (212) 977 9583

WASHINGTON OFFICE
1701 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006
(202) 775-5980
CABLE WINMARLAW D.C.
TELEX
DOMESTIC (WU) 897010
INTERNATIONAL (WUI) 897010
TELECOPIER (202) 775-0099

February 25, 1986

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
FEB 26 P1:25

VIA FEDERAL EXPRESS

Eric P. Kleinfeld, Esq.
Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: In Re New York State Conservative Party State Committee/1982 Victory Fund
M.U.R. 1866

Dear Mr. Kleinfeld:

Enclosed please find the responses of Vincent G. Downing, Treasurer of the 1984 Victory Fund, to the Order to Submit Written Answers propounded by the Federal Election Commission ("FEC") in this matter. I also enclose forms signed by Mr. Downing, Serphin R. Maltese and J. Daniel Mahoney designating the undersigned as their counsel of record in this matter.

In connection with further proceedings in this matter, may I refer you to Respondents' Statement in Answer to Complaint ("Respondents' Statement") dated January 17, 1985 and submitted by respondents' former counsel, John P. Dellera, Esq. I have enclosed a copy for your convenient reference.

In Respondents' Statement, Mr. Dellera sets forth in detail the legal basis for respondents' contention that M.U.R. 1866 should be dismissed because the complaint fails to allege facts which, if true, would constitute a violation of the Federal Election Campaign Act ("FECA").

Moroever, this controversy was previously litigated in the Federal Courts, which dismisssed the complaint because the allegations related to possible postal law violations which are within the exclusive jurisdiction of the U. S.

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Postal Service. Siebert v. Conservative Party, 565 F. Supp. 56 (S.D.N.Y.), aff'd, 724 F.2d 334 (2d Cir. 1983), cert. denied, 104 S.Ct. 2363 (1984).

Having been rejected in the courts Complainants have recast their allegations in the guise of FECA violations. It is clearly inappropriate for the FEC to undertake to decide a postal law issue when the Courts have determined that it should be resolved by the U. S. Postal Service.

Finally, unless the U. S. Postal Service determines otherwise, the FEC should assume that the postage paid in this case is lawful. The statute authorizing the postage paid is 39 U.S.C. § 3626(e) which was intended to facilitate political communications by political parties. Greenberg v. Bolger, 497 F. Supp. 756, 784 (E.D.N.Y. 1980). In addition, the acceptance of the piece by the Postal Service is strong evidence that Respondents were entitled to mail at the rate charged. (Indeed, the state committees of the Republican and Democratic Parties of New York have on numerous occasions used the postage rates authorized by 39 U.S.C. § 3626(e) to mail campaign literature seeking support for their candidates.) The United States Court of Appeals for the Ninth Circuit has observed that "the Courts have overturned a Postal Service determination of mailing rate status only when the determination is 'clearly wrong,' amounting to an abuse of discretion." Sierra Club v. U. S. Postal Service, 549 F.2d 1199, 1201 (9th Cir. 1976). The Postal Service should be afforded at least that same deference by the FEC.

In light of the above, the continuation of this investigation would seem unwarranted, especially in view of the prior litigation of the very issues presented by M.U.R. 1866 in the federal courts.

In any event, please do not hesitate to contact me if you have any further questions or if I can provide any further information.

Thank you for your cooperation in this matter.

Very truly yours,

Christopher Ragucci

Christopher T. Ragucci

CTR:jlp
Enclosures

Vince Downing

STATEMENT OF DESIGNATION OF COUNSEL

MUR 1866

NAME OF COUNSEL: Christopher T. Ragucci

ADDRESS: 51 West 51ST Street, 40th fl.

New York, New York 10019

TELEPHONE: 212 977-9600

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.

Feb. 25, 1986
Date

Vincent G. Downing
Signature

RESPONDENT'S NAME: VINCENT G. DOWNING

ADDRESS: 45 EAST 29 ST.

NEW YORK,

N.Y. 10016

HOME PHONE: 718-478-6932

BUSINESS PHONE: 212-689-8400

Seraph Maltese

STATEMENT OF DESIGNATION OF COUNSEL

MUR 1866

NAME OF COUNSEL: Christopher T. Ragucci

ADDRESS: 51 West 51ST Street, 40th fl.
New York, New York 10019

TELEPHONE: 212 977-9600

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.

2/25/86
Date

Signature

RESPONDENT'S NAME: SERAPHIN R. MALTESE

ADDRESS: 45 EAST 29 ST.
NEW YORK, N.Y. 10016

HOME PHONE: 718-424-8372

BUSINESS PHONE: 212-689-8400

90040802251

JDM

STATEMENT OF DESIGNATION OF COUNSEL

MUR 1866

NAME OF COUNSEL: Christopher T. Ragucci

ADDRESS: 51 West 51ST Street, 40th fl.
New York, New York 10019

TELEPHONE: 212 977-9600

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.

[illegible] 25, 1986
Date

J. Daniel Mahoney
Signature

RESPONDENT'S NAME: J. Daniel Mahoney

ADDRESS: 51 West 51st Street
New York, N. Y. 10019

HOME PHONE: (914) 769-8608

BUSINESS PHONE: (212) 977-9600

40304252

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of New York State Conservative Party State Committee/ 1982 Victory Fund	))))	MUR 1866

RESPONSE TO ORDER TO SUBMIT WRITTEN ANSWERS

On behalf of respondents in the above captioned matter, VINCENT G. DOWNING hereby responds to the Order to Submit Written Answers to questions propounded to him by the Federal Election Commission pursuant to 2 U.S.C. 437d(a)(1) as follows:

1a. Q. Did the NYS Conservative Party State Committee authorize the printing of Exhibit A?

A. Yes.

1b. Q. If the answer to question 1a is yes, please identify the person or persons who authorized the printing of Exhibit A.

A. J. Daniel Mahoney.

1c. Q. Did the 1982 Victory Fund authorize the printing of Exhibit A?

A. The 1982 Victory Fund (now known as the 1984 Victory Fund) is a segregated account maintained by the New York State Conservative Party State Committee, and all actions with respect to the account were taken by responsible Conservative Party state officers.

1d. Q. If the answer to question 1c is yes, please identify the person or persons who authorized the printing of Exhibit A.

A. Not applicable.

2. Q. Please identify the person or persons who printed Exhibit A.

A. Design Distributors, Inc.

3. Q. Please identify the person or persons who contacted the printer to place the order for Exhibit A.

A. Serphin R. Maltese.

4. Q. Please state the total cost of printing all brochures of which Exhibit A is a sample.

A. $4,980.

5a. Q. Did the NYS Conservative Party State Committee pay any of the printing costs for these brochures?

A. Yes, from the 1982 Victory Fund account.

5b. Q. If the answer to question 5a is yes, what amounts were paid by the NYS Conservative Party State Committee for the printing costs of these brochures?

A. $2,000.

6a. Q. Did the 1982 Victory Fund pay any of the printing costs for these brochures?

A. See answer to 5a.

6b. Q. If the answer to 6a is yes, what amounts were paid by the 1982 Victory Fund for the printing costs of these brochures?

2 0 0 4 0 8 0 4 2 5 4

A. See answer to 5b.

7a. Q. Please identify any person or persons other than the NYS Conservative Party State Committee and the 1982 Victory Fund that paid for any of the printing costs of the brochure.

A. I am not aware of anyone else.

7b. Q. For those persons identified in question 7a above, please list what amounts of the printing costs each paid.

A. Not applicable.

8a. Q. If any of the printing costs were paid by the NYS Conservative Party State Committee, please state whether this amount was ever reported to the Commission.

A. Yes.

8b. Q. If so, please identify the report on which this disclosure was made to the Commission.

A. Report of the 1982 Victory Fund for the six months ended June 30, 1983 (Schedule D, Item E therein) and, upon information and belief, prior reports on file with the Federal Election Commission.

9a. Q. If any of printing costs were paid by the 1982 Victory Fund, please state whether this amount was ever reported to the Commission.

A. See answer to 8a.

9b. Q. If so, please identify the report on which this disclosure was made to the Commission.

A. See answer to 8b.

10a. Q. Did the NYS Conservative Party State Committee authorize the mailing of Exhibit A?

A. Yes.

10b. Q. If the answer to question 10a is yes, please identify the person or persons who so authorized the mailing.

A. J. Daniel Mahoney.

10c. Q. Did the 1982 Victory Fund authorize the mailing of Exhibit A?

A. See answer to 1c.

10d. Q. If the answer to question 10c is yes, please identify the person or persons who so authorized the mailing.

A. Not applicable.

11a. Q. Exhibit A indicates that the postage for this mailing was paid pursuant to permit number 734, issued to a non-profit organization. Was permit number 734 issued to the NYS Conservative Party State Committee?

A. Yes.

11b. Q. Was permit number 734 issued to the 1982 Victory Fund?

A. No.

11c. Q. If the answer to questions 11a and 11b above are no, please identify the person or persons to whom permit number 734 was issued.

A. Not applicable.

12. Q. Please identify the person or persons who authorized the use of permit number 734 in connection with the mailing of these brochures.

A. J. Daniel Mahoney.

13a. Q. At the time Exhibit A was prepared, did the NYS Conservative Party Committee own the postage meter which was used to affix the postage to the mailing?

A. No postage meter was utilized.

13b. Q. Did the 1982 Victory Fund own the postage meter which was used to affix the postage to the mailing?

A. Not applicable.

13c. Q. If the answer to question 13a and 13b above are no, pleae identify the person or persons who owned the postage meter which was used to affix the postage to the mailing.

A. Not applicable.

14a. Q. Did the NYS Conservative Party cause the operation of the postage meter to affix the postage to the mailing?

A. Not applicable.

14b. Q. If the answer to question 14a is yes, please identify the person or persons who operated the postage meter to affix the postage to the mailing.

A. Not applicable.

9 0 0 4 0 8 0 4 2 5 7

14c. Q. Did the 1982 Victory Fund cause the operation of the postage meter to affix the postage to the mailing.

A. Not applicable.

14d. Q. If the answer to question 14c is yes, please identify the person or persons who operated the postage meter to affix the postage to the mailing.

A. Not applicable.

14e. Q. If the answer to question 14a and 14c are no, please identify the person or persons who operated the postage meter to affix the postage to the mailing.

A. Not applicable.

15. Q. Please state the total costs of postage for this mailing.

A. Upon information and belief, $14,475.27.

16a. Q. Did the NYS Conservative Party State Committee pay for or incur any of the costs of postage?

A. No.

16b. Q. If the answer to question 16a above is yes, please state the amounts paid or incurred by the NYS Conservative Party State Committee for the costs of postage.

A. Not applicable.

17a. Q. Did the 1982 Victory Fund pay for or incur any of the costs of postage?

A. No.

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17b. Q. If the answer to question 17a above is yes,please state the amounts paid or incurred by the 1982 Victory Fund for the costs of postage.

A. Not applicable.

18. Q. If the answers to questions 16a and 17a above are no, please identify the person or persons who paid the costs of postage.

A. Upon information and belief, the Sullivan for Senate Committee.

19a. Q. If any of the costs of postage were paid by the NYS Conservative Party State Committee, please state whether this amount was ever reported to the Commission.

A. The costs of postage were not paid by the NYS Conservative Party State Committee. They were paid by Sullivan for Senate depositing funds directly into the NYS Conservative Party State Committee account with the United States Postal Service.

19b. Q. If so, please identify the report on which this disclosure was made to the Commission.

A. Not applicable.

20a. Q. If any of the costs of postage were paid by the 1982 Victory Fund, please state whether this amount was ever reported to the Commission.

A. The costs of postage were not paid by the 1982 Victory Fund. See answer to 19a.

20b. Q. If so, please identify the report on which this disclosure was made to the Commission.

A. Not applicable.

21a. Q. On what date were the brochures mailed. If more than one mailing was made, please list each date on which a mailing was made and the number of brochures mailed on each date.

A. Upon information and belief, September 17, 1982.

21c. Q. For each of the mailings listed in question 21a above, please state what postage rate was paid per piece.

A. Upon information and belief, $0.049 and $0.040.

22a. Q. Exhibit B is a copy of a postal record submitted by complainant of the mailing of Exhibit A. Please state whether Exhibit B is an accurate record of this mailing.

A. Upon information and belief, yes.

22b. Q. Which of the entries on Exhibit B refer to the mailing on behalf of Florence Sullivan?

A. Upon information and belief, those for the date September 17, 1982.

22c. Q. Are the postal rates per piece listed on Exhibit B the actual postal rates used for each mailing?

A. Upon information and belief, yes.

22d. Q. Is the amount of postage listed on Exhibit B the amount of postage that was paid for this mailing?

A. Upon information and belief, yes.

VERIFICATION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

VINCENT G. DOWNING, being duly sworn, deposes and says: although I was not treasurer of the 1982 Victory Fund at the time of the events to whose occurrence the foregoing written answers are directed, I have read the foregoing questions and responses, I am familiar with the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

Vincent G. Downing
VINCENT G. DOWNING

Sworn to before me on
February 25, 1986.

Christopher T. Ragucci
Notary Public

CHRISTOPHER T. RAGUCCI
Notary Public, State of New York
No. 4837977
Qualified in New York County
Commission Expires March 30, 1987

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Muriel F. Siebert and Whitney North Seymour, Jr., Complainants,	)	
-and-	)	
New York State Conservative Party State Committee, J. Daniel Mahoney, Michael R. Long, Serphin R. Maltese and James E. O'Doherty, Respondents	)	MUR 1866

RESPONDENTS' STATEMENT IN ANSWER TO COMPLAINT

Respondents named above, by their attorney, John P. Dellera, Esq., submit the following Statement pursuant to 2 U.S.C. sec. 437g in answer to the Complaint herein which was sworn to on November 21, 1984 (Seymour) and December 6, 1984 (Siebert) and filed with the Commission on December 17, 1984. Respondents first received a copy of such Complaint on January 5, 1985.

Respondents deny the assertions of wrongdoing contained in the Complaint and submit that this Matter Under Review should be dismissed by the Commission upon the ground that it fails to allege facts which, if true, would constitute a violation of the Federal Election Campaign Act. Furthermore, the Complaint is, in essence, an allegation of postal law violations. Complainants asserted similar claims in litigation which was dismissed on the ground that they had no right to assert such claims.

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RESPONDENTS' CONTRIBUTION TO THE SULLIVAN CAMPAIGN WAS WITHIN THE LIMIT PRESCRIBED BY THE FEDERAL ELECTION CAMPAIGN ACT

A "contribution" for purposes of the Federal Election Campaign Act is defined as a "gift, subscription, loan, advance, or deposit of money or anything of value." 2 U.S.C. sec. 431 (8)(A)(i). The only such contribution made by Respondents to the Sullivan campaign was an in-kind contribution equal to the cost of printing the mailing. This cost was $4,980, an amount within the $5,000 limit prescribed by 2 U.S.C. sec. 441a(a)(2)(A) for multi-candidate committees. The contributor, a segregated account of the Conservative Party known as the "1982 Victory Fund," had duly qualified as a multi-candidate committee at the time of the mailing in question since it had been registered with the Commission for at least six months and had received contributions from more than fifty persons. 11 CFR sec. 100.5(e)(3). Therefore, its contribution to the Sullivan campaign of the cost of printing was lawful.

Complainants' contention that Respondents made a further in-kind contribution equal to the difference between the postage paid by the candidate's committee and the postage which they claim should have been paid is without merit. Commission regulations provide that the term "anything of value," as used in the definition of "contribution" quoted above, includes all in-kind contributions. 11 CFR sec. 100.7(a)(1)(iii)(A). That section further provides that "the provision of any goods or services ... at a charge which is

less than the usual and normal charge for such goods or services is a contribution." Respondents provided no postal services for less than the usual and normal charge and in fact paid no part of the postage charged for the mailing. Such postage was, upon information and belief, paid for by Sullivan for Senate, the candidate's principal campaign committee. Respondents did not, therefore, contribute any postal rate discount to the candidate or otherwise make an additional in-kind contribution.

Complainants argue that the in-kind contribution made here was the allegedly unlawful use of the state committee's reduced rate mail permit (Complaint, p. 4). Complainants made similar allegations in a complaint filed by the Complainants and their campaign committees against the Respondents in the U.S. District Court for the Southern District of New York. That complaint was dismissed on the ground that Complainants have no right to sue Respondents for alleged postal law violations and that the U.S. Postal Service has exclusive jurisdiction over the matters at issue. Siebert v. Conservative Party, 565 F. Supp. 56, aff'd 724 F.2d 334 (2d Cir. 1983), cert. denied 104 S. Ct. 2363 (1984).

Rather than accept the judgment of the courts, Complainants now attempt to raise the same issues before this Commission in the guise of Federal Election Campaign Act violations. If they had no right to raise such questions before the courts, then they have no right to raise such questions here. It would be improper for the Commission to

undertake to decide whether Respondents did or did not violate the postal laws when the courts have determined that such matters should be resolved by the U.S. Postal Service.

In any event, even if the Respondents did violate the postal statute in question -- an assertion they vigorously deny -- it still remains the case that they did not provide services at a discount. The "services" which were provided were delivery of mail, a service provided by the U.S. Postal Service, not Respondents. If the mailing did not qualify for the reduced rate, the Postal Service would presumably demand additional postage which, if the same were found to be due, would have to be paid. If Respondents at that point contributed such additional postage to the Sullivan campaign, an unlawful contribution could arguably* occur. If, however, the candidate's committee paid the deficiency, Respondents could not be found to have made an unlawful contribution.

In any event, such speculation is unwarranted and hardly forms the basis for a finding of probable cause to believe a violation of the Federal Election Campaign Act has occurred. No additional charge for postage has been received by Respondents, let alone paid, and none is anticipated.

*- We say "arguably" because is it not clear that the $5,000 limit prescribed by 2 U.S.C. sec. 441a(a)(2)(A) applies to the mailing. In September 1982, Florence Sullivan was the candidate of the Conservative Party in the general election, there being no opposition to her nomination by the Conservative Party and no Conservative Party primary. Thus, the expenditure for the mailing was made in furtherance of the Conservative Party's general election campaign and would, therefore, arguably be subject to the higher limitations of 2 U.S.C. sec. 441a(d)(1).

What Complainants seek is a ruling by this Commission that (1) Respondents owe additional postage, notwithstanding the fact that the Postal Service, the agency charged by law with responsibility for such matters, has made no such charge, and (2) that Respondents intend to pay such non-existent charge if it is made. A non-existent intention to pay a non-existent charge does not, under any theory of law, constitute an illegal campaign contribution.

Finally, the Commission should assume, until the postal authorities determine otherwise, that the postage paid in this case represented the "usual and normal charge" for such services. The statute authorizing such reduced rates, 39 U.S.C. sec. 3626(e), was intended to facilitate political communications by political parties, Greenberg v. Bolger, 497 F. Supp. 756, 784 (EDNY 1980), and the acceptance of the piece by the Postal Service is strong evidence that Respondents were entitled to mail at the rate charged.* The Court of Appeals for the Ninth Circuit has observed that "the courts have overturned a Postal Service determination of mailing rate status only when the determination is 'clearly wrong,' amounting to an abuse of discretion." Sierra Club v. U.S. Postal Service, 549 F.2d 1199, 1201 (9th Cir. 1976). The Postal Service is entitled to at least the same deference from the Commission.

*- The state committees of the New York Republican and Democratic Parties have on numerous occasions used the reduced postage rates authorized by 39 U.S.C. sec. 3626(e) to mail campaign literature urging voters to support their candidates.

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CONCLUSION

This Matter Under Review should be dismissed by the Commission on the ground that the Complaint does not show the existence of a violation of the Federal Election Campaign Act.

Dated: New York, New York
January 17, 1985

John P. Dellera
Counsel for Respondents
444 Madison Avenue
New York, N.Y. 10022
(212) 754-1300

0310D

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NEW YORK, N.Y. 10019

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CABLE: WINMARLAW NY
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DOMESTIC: 126959 (WU)
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& 126959 (WU)
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WILLIAM B. BIERCE
ERIC W. BRUENNER
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JAMES P. CONROY
ANTHONY A. DEAN
WILLIAM L. DICKEY*
DANIEL V. DUFF, JR.
VICENTE GARCIA-DELGADO
MITCHELL A. GILBERT
ANDREW N. GRASS, JR.
ROGER I. HARRIS
WALTER F. X. HEALY
CHARLES L. HERTERICH
JOHN M. KRIZ
RICHARD R. LURY
ROBERT J. LYNCH
J. DANIEL MAHONEY
FRANCIS X. MARKEY
JOHN J. McDERMOTT
JONATHON R. MOORE
RAYMOND T. MUNSELL
EDWARD P. NOLAN
CHARLES L. STEWART
JOHN Y. TAGGART
ROBERT D. TAISEY
PAUL WINDELS, JR.

*ADMITTED IN DISTRICT OF COLUMBIA AND VIRGINIA ONLY

COUNSEL
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JOHN P. FISHWICK*
*ADMITTED IN VIRGINIA ONLY

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*ADMITTED IN PENNSYLVANIA AND DELAWARE ONLY

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CABLE: WINMARLAW D.C.
TELEX
DOMESTIC (WU) 897010
INTERNATIONAL (WUI) 897010
TELECOPIER (202) 775-0099

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February 25, 1986

86 FEB 27 P 2:29

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

Attention: Eric Kleinfeld, Esq.

Dear Mr. Kleinfeld:

I hereby authorize any representative of the Committee on the Judiciary of the United States Senate, to review any and all records pertaining to me located at the Federal Election Commission.

Very truly yours,

J. Daniel Mahoney

J. Daniel Mahoney

40304263

SENSITIVE

Before the Federal Election Commission

In the Matter of	)	
	)	
Sullivan for Senate	)	86 APR 22 AM 8:21
Joseph M. Sussillo, treasurer	)	
	)	

Comprehensive Investigative Report

On January 14, 1986, the Federal Election Commission authorized the Office of General Counsel to file a civil suit in United States District Court to enforce its order to submit written answers against the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer.

A petition was filed in the United States District Court for the Eastern Division of New York. A hearing is scheduled in this matter for May 16, 1986. The Office of General Counsel will make a further report to the Commission pending the outcome of the May 16th hearing.

Charles N. Steele
General Counsel

April 21, 1986
Date

By: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

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Kim - needs new folder

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE
GENERAL COUNSEL

FROM: MWE MARJORIE W. EMMONS/ CHERYL A. FLEMING CAF

DATE: APRIL 23, 1986

SUBJECT: MUR 1866 - COMPREHENSIVE INVESTIGATIVE REPORT SIGNED APRIL 21, 1986

The above-named document was circulated by the Commission Secretary's Office to the Commissioners on Tuesday, April 22, 1986 at 4:00 P.M.

There were no objections received in the Office of the Secretary of the Commission to the Comprehensive Investigative Report at the time of the deadline.

Mike Long

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ACC#311
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STATEMENT OF DESIGNATION OF COUNSEL

MUR 1866

NAME OF COUNSEL: Christopher T. Ragucci

ADDRESS: 51 West 51ST Street, 40th fl.
New York, New York 10019

TELEPHONE: 212 977-9600

86 APR 24 P3:36

RE... GENERAL COUNSEL

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.

3/14/86
Date

Michael R Long
Signature

RESPONDENT'S NAME: MICHAEL R LONG

ADDRESS: 537 76 St
BROOKLYN N.Y.
11209

HOME PHONE: 718-748 8018

BUSINESS PHONE: 718 748 6505

GCC# 488

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86 MAY 15 AM 11:41

JOSEPH M. SUSSILLO, J.D., P.C.
COUNSELLOR AT LAW

LOUISE M. PAULSEN
PARALEGAL

437 Bay Ridge Parkway · Brooklyn, New York 11209
718 836-6312
718 745-5850

May 14, 1986

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

Attention: Michael A. Dymersky, Esq.

Re: MUR 1866
Sullivan for Senate Committee and
Joseph M. Sussillo, as treasurer

Dear Mr. Dymersky:

Enclosed is amended Respondents' Answers to Petitioners' Interrogatories with respect to the above matter.

In it the answers to questions 7b, 14c, 14d and 15 have been either corrected or clarified, pursuant to our conversation.

Very truly yours,

JOSEPH M. SUSSILLO
JMS/js
encl.

cc: Joseph Seminara, Esq.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -

MURIEL SIEBERT, et al.,
Complaintant.

-against-

J. DANIEL MAHONEY, Chairman, et al.,
Respondents

- - - - - - - - - - - - - - - - - - - -

AMENDED RESPONDENTS' ANSWERS TO PETITIONERS' INTERROGATORIES

MUR 1866

Respondent, JOSEPH M. SUSSILLO, Treasurer of the SULLIVAN FOR SENATE, answers the Petitioner's interrogatories herein on information and belief as follows:

Q. 1. Please identify the person or persons who authorized the printing of Exhibit A.

A. 1. New York State Conservative Party State Committee.

Q. 2. Please identify the person or persons who printed Attachment A.

A. 2. Design Distributors, Inc. located at 45 East Industry Court, Deer Park, New York 11729.

Q. 3. Please identify the person or persons who contacted the printer to place the order for Exhibit A.

A. 3. Robert Ryan located at 145 West 45th Street New York, New York, 10036.

Q. 4. Please state the total cost of printing all brochures of which Exhibit A is a sample.

A. 4. $4,980.00.

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Q. 5. Did the Sullivan for Senate Committee pay any of the printing costs for these brochures?

A. 5. No.

Q. 6. What amounts, if any, were paid by the Sullivan for Senate Committee for printing?

A. 6. None.

Q. 7.a. Please identify any person or persons other than the Sullivan for Senate Committee that paid for the cost of printing.

A. 7.a. New York State Conservative Party 1982 Victory Fund.

Q. 7.b. For those persons identified in question 7 a. above, please list, in dollar figures, how much of the printing costs each paid.

A. 7.b. $2,000.00. Balance of $2,980.00 is obliation of New York State Conservative Party Victory Fund.

Q. 8.a. Please state whether the State Committee of the New York State Conservative Party paid any of the printing costs of the brochures.

A. 8.a. No. See 7.b. above.

Q. 8.b. If so, please state the amount paid by the State Committee of the New York State Conservative Party for

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printing costs.

A. 8.b. Not applicable.

Q. 9.a. Please state whether the separate segregated account of the New York State Conservative Party, which was registered with the Commission during the period in question under the name "1982 Victory Fund" paid any of the printing costs of the brochures.

A. 9.a. Yes.

Q. 9.b. If so, please state the amount paid by the 1982 Victory fund for printing costs.

A. 9.b. See 7.b.

Q. 10.a. If any of the printing costs were paid by the Sullivan for Senate Committee, please state whether this amount was ever reported to the Comission as an expenditure or disbursement or in any other form.

A. 10.a. Not applicable.

Q. 10.b. If so, please identify the report on which this disclosure was made to the Commission.

A. 10.b. Not applicable.

Q. 11.a. If any of the printing costs were paid by persons other than the Sullivan for Senate Committee please state whether this amount was ever reported to the Commission as

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a contribution or other receipt or in any other form.

A. 11.a. Do not know.

Q. 11.b. If so, please identify the report on which this disclosure was made to the Commission.

A. 11.b. Not applicable

Q. 12. Please identify the person or persons who authorized the mailing of Exhibit A.

A. 12. State Committe of the New York State Conservative Party.

Q. 13.a. Exhibit A. indicates that the postage for this mailing was paid pursuant to permit number 734, issued to a non-profit organization. Was permit number 734 issued to the Sullivan for Senate Committee?.

A. 13.a. No.

Q. 13.b. If the answer to question 13.a above is yes please describe the procedure by which the Sullivan for Senate Committee obtained permit number 734.

A. 13.b. Not applicable.

Q. 13.c. If the answer to 13. a. above is no, please identify the person or persons to whom permit number 734 was issued.

A. 13.c. The Conservative Party State Committee.

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Q. 13.d. If the answer to 13. a above is no, please identify the person or persons who authorized the use of permit number 734 for this mailing.

A. 13.d. The Conservative Party State Committee.

Q. 14.a. At the time Exhibit A was prepared did the Sullivan for Senate Committee own the postage meter which was used to affix the postage to the mailing?

A. 14.a. No.

Q. 14.b. If the answer to question 14. a above is yes please state how this postage meter was obtained by the Sullivan for Senate Committee.

A. 14.b. Not applicable.

Q. 14.c. If the answer to question 14. a above is no, please identify the person or persons who owned the postage meter which was used to affix the postage to the mailing.

A. 14.c. The United States Post Office, using their own equipment, under their control.

Q. 14.d. If the answer to question 14. a. above is no, please identify the person or persons who authorized the use of the postage meter to affix the postage to the mailing.

A. 14.d. Do not know.

Q. 15. Please identify the person or persons who

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operated the postage meter to affix the postage to the mailing.

A. 15. Do not know.

Q. 16. Please state the total costs of postage for this mailing.

A. 16. $14,475.27.

Q. 17.a. Did the Sullivan for Senate Committee pay for or incur any of the costs of postage?

A. 17.a. Yes.

Q. 17.b. If the answer to question 17.a. above is yes please state the amounts paid or incurred by the Sullivan for Senate Committee for the postage costs of this mailing.

A. 17.b. $14,475.27.

Q. 18.a. Did the State Committee of the New York State Conservative Party pay for or incur any of the costs of postage?

A. 18.a. No.

Q. 18.b. If the answer to question 18a above is yes please list the amounts paid or incurred for postage by the State Committe of the New York State Conservative Party.

A. 18.b. Not applicable.

Q. 19.a. Did the separate segregated account of the New York State Conservative Party, the 1982 Victory Fund, pay

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for or incur any of the costs of postage?

A. 19.a. No.

Q. 19.b. If the answer to question 19.a. above is yes, please list the amounts paid or incurred for postage by the 1982 Victory Fund.

A. 19.b. Not applicable.

Q. 20. Please identify any other persons who paid any of the costs of postage and list the amounts so paid.

A. 20. None.

Q. 21.a. If any of the costs of postage were paid by the Sullivan for Senate Committee please state whether this amount was ever reported to the Commission as an expenditure or disdbursement or in any other form.

A. 21.a. Yes.

Q. 21.b. If so, please identify the report on which this disclosure was made to the Commission.

A. 21.b. September 4 thru September 30, 1982 FEC report.

Q. 22.a. If any of the costs of postage were paid by persons other than the Sullivan for Senate Committee, please state whether this amount was ever reported to the Commission as a contribution or other receipt or in any other form.

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A. 22.a. Not applicable.

Q. 22.b. If so, please identify the report on which this disclosure was made to the Commission.

A. 22.b. Not applicable.

Q. 23.a. Please state the date on which the brochures were mailed. If more than one mailing was made, please list each date on which a mailing was made and the number of brochures mailed on each date.

A. 23.a. On or about the 17th day of September, 1982.

Q. 23.b. For each of the mailings listed in question 23.a above, please state what postage rate was paid per piece.

A. 23.b. .049 and .040.

Q. 24.a. Exhibit B is a copy of a postal record submitted by complainant of the mailing of Exhibit A. Please state whether Exhibit B is an accurate record of this mailing.

A. 24.a. No.

Q. 24.b. Which of the entries on Exhibit B refer to the mailing on behalf of Florence Sullivan?

A. 24.b. $ 235.15
11,200.00
3,040.12

Q. 24.c. Are the postal rates per piece listed on

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Exhibit B the actual postal rates used for each mailing?

A. 24.c. Yes.

Q. 24.d. Is the amount of postage listed on Exhibit B the amount of postage that was paid for this mailing?

A. 24.d. No.

DATED: May 15, 1986

JOSEPH M. SUSSILLO

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STATE OF NEW YORK)
:ss.:
COUNTY OF KINGS)

JOSEPH M. SUSSILLO, being duly sworn deposes and says:

Deponent is the Respondent in the within action; deponent has read the answers to the Petitioner's interrogatories and knows the contents thereof; the same is true to deponent's own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

JOSEPH M. SUSSILLO

Sworn to before me
this 15th day of May,
1986.

RICHARD A. KAPLIN
Notary Public, State of New York
No. [illegible]
Qualified in Kings County
Commission Expires Feb. 3, 1988

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SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 10, 1986

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele CNS/gm
General Counsel

SUBJECT: MUR 1866

Attached for the Commission's review are briefs stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of these briefs and a letter notifying the respondent of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe was mailed on July 10, 1986. Following receipt of the Respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments
1. Briefs
2. Letter to Respondents

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 10, 1986

Sullivan for Senate
Joseph M. Sussillo, treasurer
437 Bay Ridge Parkway
Brooklyn, NY 11209

RE: MUR 1866
Sullivan for Senate
and Joseph M. Sussillo,
treasurer

Dear Mr. Sussillo:

Based on a complaint filed with the Commission on December 18, 1984, the Commission determined on May 14, 1985, that there was reason to believe that the Sullivan for Senate Committee and you, as treasurer, had violated 2 U.S.C. § 441a(f) and § 434(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

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

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

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A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety, days to settle this matter through a conciliation agreement.

Should you have any questions, please contact Eric Kleinfeld, the attorney assigned to handle this matter, at (202)376-5690.

Sincerely,

Charles N. Steele /fm

Charles N. Steele
General Counsel

Enclosure
Brief

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Sullivan for Senate	)	MUR 1866
Joseph M. Sussillo,	)	
treasurer	)	

General Counsel's Brief

I. Statement of the Case

On May 14, 1985, the Federal Election Commission ("Commission") determined that there is reason to believe that the Sullivan for Senate Committee ("Sullivan Committee") and Joseph M. Sussillo, as treasurer, violated 2 U.S.C. § 441a(f) and § 434, by accepting an excessive contribution from the New York State Conservative Party State Committee/1984 Victory Fund ("Conservative Party") and failing to report that contribution. The basis for these determinations was a complaint filed with the Office of General Counsel alleging that the Conservative Party allowed the Sullivan Committee to mail campaign literature under the Party's non-profit permit number, resulting in the receipt of an excessive contribution.

On September 6, 1985, the Commission authorized an Order to Submit Written Answers for respondent the Sullivan Committee. A response was received from Joseph M. Sussillo, treasurer of the Sullivan Committee, on behalf of that committee, stating that he had no information with which to answer any of the interrogatories.

On January 14, 1986, the Commission authorized the Office of General Counsel to file a civil suit in United States District

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Court to enforce its Order against the Sullivan Committee. The Commission then filed a petition in the Eastern Division of New York against the Sullivan Committee. On May 9 and May 15, 1986, responses were received from the Sullivan Committee, prior to the scheduled hearing in this matter.

II. Legal Analysis

Complainants allege that in September 1982, the Conservative Party prepared, printed and mailed a direct mail piece in support of the candidacy of Florence M. Sullivan for the Republican nomination for United States Senator from New York. Complainants allege that the Sullivan direct mail piece was sent out under a postal permit issued to the Conservative Party, permitting the use of a postal rate substantially below that which the Sullivan Committee was entitled, further resulting in an in-kind contribution of approximately $25,000 which was never reported to the Commission.

Pursuant to 2 U.S.C. § 431(8)(A)(i), a contribution is defined as "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..." The term "person" includes a committee or any other organization or group of persons. 2 U.S.C. § 431(11). The term "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A). According to this regulation, any goods or services provided at a charge which is less than the usual and normal charge for such goods or services is a contribution.

Pursuant to 2 U.S.C. § 441a(a)(2)(A), no multicandidate committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5000. Further no candidate or political committee shall accept any contribution in violation of 2 U.S.C. § 441a(a)(2)(A). 2 U.S.C. § 441a(f).

According to the responses received to the interrogatories, the Sullivan direct mail piece was printed by the authority of the Conservative Party. The total cost of printing was $4980, $2000 of which was paid by the Party, with the balance currently a debt of the Party. This printing cost was reported to the Commission on the 1983 Mid-year report of the Victory Fund.

The Sullivan direct mail piece was also mailed by the authority of the Conservative Party. Postage was paid for the mailing pursuant to non-profit permit number 734. This permit was issued to the Conservative Party, and its use allowed the Sullivan Committee to pay a substantially lesser amount in postage than had the normal bulk rate been utilized. The customary bulk mail postage rate in effect at the time of the Sullivan mailing was 10.9 cents per piece. According to postal records of the Sullivan mailing, two rates were utilized for the mailing, 4 cents and 4.9 cents per piece.

According to respondents, the total cost of postage paid for the Sullivan mailing was $14,475.27. This amount was paid by the Sullivan Committee depositing funds directly into the Conservative Party's account with the United States Postal Service. The Sullivan Committee reported the costs of postage on its monthly report for September 1982.

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The postal record of the Sullivan mailing indicates that of the entire amount of postage, $235.15 was based on a rate of 4.9 cents per piece and $14,240.12 was based on a rate of 4.0 cents per piece. By dividing the postal rates into the postage listed, the postal record shows that 360,802 pieces were sent out in the Sullivan mailing.

If the Sullivan Committee had paid the customary bulk rate of 10.9 cents per piece on 360,802 pieces mailed, the postage cost would have been $39,327.42. Instead, the Sullivan Committee paid $14,475.27, a difference of $24,852.15.

Thus, the Conservative Party provided a service to the Sullivan Committee, i.e. the use of its non-profit postage permit. This service is a contribution, pursuant to 2 U.S.C. § 431(8)(A)(i) and 11 C.F.R. § 100.7(a)(1)(iii)(A). The value of the service, to the Sullivan Committee, was the amount of savings in the total cost of postage, $24,852.15.

The Conservative Party, as a multicandidate committee, was limited, pursuant to 2 U.S.C. § 441a(a)(2)(A), to total contributions of $5000 to Sullivan for the 1982 primary election. Having previously made a contribution of $4980 to the Sullivan Committee for the costs of printing the mailing, only $20 of the $24,852.15 was within the contribution limitations of 2 U.S.C. § 441a(a)(2)(a).

Therefore, the Conservative Party made an excessive contribution to the Sullivan Committee in the amount of $24,832.15, for the value of the service provided to the latter.

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Similarly, the Sullivan Committee accepted an excessive contribution in the amount of $24,832.15. Accordingly, the Office of General Counsel recommends that the Commission find probable cause to believe that the Sullivan Committee violated 2 U.S.C. § 441a(f).

Also, because the contribution from the Conservative Party to the Sullivan Committee went unreported, the Office of General Counsel recommends that the Commission find probable cause to believe that the Sullivan Committee violated 2 U.S.C. § 434(b).

III. General Counsel's Recommendations

The Office of General Counsel recommends that the Commission:

1. Find probable cause to believe that the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer, violated 2 U.S.C. § 441a(f) and § 434(b).

7/10/86
Date

Charles N. Steele
Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 10, 1986

Christopher J. Ragucci, Esquire
Windells, Marx, Davies & Ives
51 West 51st Street
New York, NY 10019

RE: MUR 1866
New York State Conservative
Party State Committee/1984
Victory Fund and Vincent G.
Downing, treasurer

Dear Mr. Ragucci:

Based on a complaint filed with the Commission on December 18, 1984, the Commission determined on May 14, 1985, that there was reason to believe that your clients had violated 2 U.S.C. § 441a(a)(2)(A) and § 434(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

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

If you are unable to file a responsive brief within 15 days, you may submit a written request to the Commission for an extension of time in which to file a brief. The Commission will not grant any extensions beyond 20 days.

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A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety, days to settle this matter through a conciliation agreement.

Should you have any questions, please contact Eric Kleinfeld, the attorney assigned to handle this matter, at (202)376-5690.

Sincerely,

Charles N. Steele

Charles N. Steele
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
New York State Conservative Party State Committee/ 1984 Victory Fund Vincent G. Downing, treasurer	)	MUR 1866

General Counsel's Brief

I. Statement of the Case

On May 14, 1985, the Federal Election Commission ("Commission") determined that there is reason to believe that the New York State Conservative Party State Committee/1984 Victory Fund ("Conservative Party") and Vincent G. Downing, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and § 434, by making an excessive contribution to the Sullivan for Senate Committee ("Sullivan Committee") and failing to report that contribution. The basis for these determinations was a complaint filed with the Office of General Counsel alleging that the Conservative Party allowed the Sullivan Committee to mail campaign literature under the Party's non-profit permit number, resulting in the making of an excessive contribution.

On September 6, 1985, the Commission authorized an Order to Submit Written Answers for respondent Conservative Party. The Conservative Party, despite assurances to the contrary, failed to respond.

On January 14, 1986, the Commission authorized the Office of General Counsel to file a civil suit in United States District Court to enforce its Order against the Conservative Party. On

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February 26, 1986, prior to the filing of the complaint to enforce its Order, the Commission received a response from the Conservative Party.

II. Legal Analysis

Complainants allege that in September 1982, the Conservative Party prepared, printed and mailed a direct mail piece in support of the candidacy of Florence M. Sullivan for the Republican nomination for United States Senator from New York. Complainants allege that the Sullivan direct mail piece was sent out under a postal permit issued to the Conservative Party, permitting the use of a postal rate substantially below that which the Sullivan Committee was entitled, further resulting in an in-kind contribution of approximately $25,000 which was never reported to the Commission.

Pursuant to 2 U.S.C. § 431(8)(A)(i), a contribution is defined as "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..." The term "person" includes a committee or any other organization or group of persons. 2 U.S.C. § 431(11). The term "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A). According to this regulation, any goods or services provided at a charge which is less than the usual and normal charge for such goods or services is a contribution.

Pursuant to 2 U.S.C. § 441a(a)(2)(A), no multicandidate committee shall make contributions to any candidate and his

authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5000. Further no candidate or political committee shall accept any contribution in violation of 2 U.S.C. § 441a(a)(2)(A). 2 U.S.C. § 441a(f).

According to the responses received to the Commission's interrogatories, the Sullivan direct mail piece was printed by the authority of the Conservative Party. The total cost of printing was $4980, $2000 of which was paid by the Party, with the balance currently a debt of the Party. This printing cost was reported to the Commission on the 1983 Mid-year report of the Victory Fund.

The Sullivan direct mail piece was also mailed by the authority of the Conservative Party. Postage was paid for the mailing pursuant to non-profit permit number 734. This permit was issued to the Conservative Party, and its use allowed the Sullivan Committee to pay a substantially lesser amount in postage than had the normal bulk rate been utilized. The customary bulk mail postage rate in effect at the time of the Sullivan mailing was 10.9 cents per piece. According to postal records of the Sullivan mailing, two rates were utilized for the mailing, 4 cents and 4.9 cents per piece.

According to respondents, the total cost of postage paid for the Sullivan mailing was $14,475.27. This amount was paid by the Sullivan Committee depositing funds directly into the Conservative Party's account with the United States Postal Service. The Sullivan Committee reported the costs of postage on its monthly report for September 1982.

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The postal record of the Sullivan mailing indicates that of the entire amount of postage, $235.15 was based on a rate of 4.9 cents per piece and $14,240.12 was based on a rate of 4.0 cents per piece. By dividing the postal rates into the postage listed, the postal record shows that 360,802 pieces were sent out in the Sullivan mailing.

If the Sullivan Committee had paid the customary bulk rate of 10.9 cents per piece on 360,802 pieces mailed, the postage cost would have been $39,327.42. Instead, the Sullivan Committee paid $14,475.27, a difference of $24,852.15.

Thus, the Conservative Party provided a service to the Sullivan Committee, i.e. the use of its non-profit postage permit. This service is a contribution, pursuant to 2 U.S.C. § 431(8)(A)(i) and 11 C.F.R. § 100.7(a)(1)(iii)(A). The value of the service, to the Sullivan Committee, was the amount of savings in the total cost of postage, $24,852.15.

The Conservative Party, as a multicandidate committee, was limited, pursuant to 2 U.S.C. § 441a(a)(2)(A), to total contributions of $5000 to Sullivan for the 1982 primary election. Having previously made a contribution of $4980 to the Sullivan Committee for the costs of printing the mailing, only $20 of the $24,852.15 was within the contribution limitations of 2 U.S.C. § 441a(a)(2)(a).

Therefore, the Conservative Party made an excessive contribution to the Sullivan Committee in the amount of $24,832.15, for the value of the service provided to the latter.

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Similarly, the Sullivan Committee accepted an excessive contribution in the amount of $24,832.15. Accordingly, the Office of General Counsel recommends that the Commission find probable cause to believe that the Conservative Party violated 2 U.S.C. § 441a(a)(2)(A).

Also, because the contribution from the Conservative Party to the Sullivan Committee went unreported, the Office of General Counsel recommends that the Commission find probable cause to believe that the Conservative Party violated 2 U.S.C. § 434(b).

III. General Counsel's Recommendations

The Office of General Counsel recommends that the Commission:

1. Find probable cause to believe that the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and § 434(b).

7/10/86
Date

Charles N. Steele
General Counsel

GCC 1030

BROWN & SEYMOUR
Counsellors at Law
100 PARK AVENUE
NEW YORK, NY 10017

PETER MEGARGEE BROWN
(212) 599-1630

WHITNEY NORTH SEYMOUR, JR.
(212) 599-0068

86 JUL 25 A8:45

July 22, 1986

General Counsel
Federal Election Commission
Washington, D.C. 20463

Dear Sir:

I have never received any notification of the Commission's final action on the complaint referred to in the enclosed letter from your office dated December 27, 1984.

Would you please advise me as to its current status?

Very truly yours,

Whitney North Seymour, Jr.

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pelm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 29, 1986

Whitney North Seymour, Jr., Esquire
Brown & Seymour
100 Park Avenue
New York, NY 10017

Dear Mr. Seymour:

This is in response to your letter of July 22, 1986, in which you request information pertaining to the complaint filed by you with the Commission.

The Federal Election Campaign Act prohibits any person from making public the fact of any notification or investigation by the Commission unless the party being investigated has agreed in writing that the matter be made public. (See 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(a)). Because there has been no written agreement that the matter be made public, we are not in a position to release any information at this time.

As you were informed by letter of December 27, 1984, we will notify you as soon as the Commission determines what action should be taken. We cannot, of course, advise you concerning your contemplated action pursuant to 2 U.S.C. § 437g(a)(8).

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

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RECEIVED BY THE FEC
GCC 1035
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MUR 1866

WOLFF, SEMINARA & MITHERZ
230 PARK AVENUE
SUITE 2300
NEW YORK, N.Y. 10169

212 - 867-4200
TELECOPIER 212-949-1460

SIDNEY A. WOLFF (1927-1982)

JOSEPH F. SEMINARA
HAROLD MITHERZ
MATTHEW J. D'EMIC
GLENN E. JENKINS*

JOANNE S. LEHU

*N.Y., N.J. AND D.C. BARS

NEW JERSEY OFFICE:
645 MARTINSVILLE RD.
LIBERTY CORNER, NJ 07938

N.J. COUNSEL
GLENN E. JENKINS

July 23, 1986

Eric Kleinfeld, Esq.
Federal Election Commission
Office of General Counsel
999 E Street
Washington, D. C. 20463

Re: Federal Election Commission v. Sullivan for Senate Committee and Joseph M. Sussillo

Dear Mr. Kleinfeld:

As I mentioned to you by telephone today, I will be out of the office for a few days and I will be unable to file a responsive brief on behalf of our client, Joseph M. Sussillo this week.

Pursuant to our conversation, this is to confirm that our time within which to file a responsive brief is extended to August 11, 1986.

Yours very truly,

JOSEPH F. SEMINARA

JFS/ts

cc: Joseph M. Sussillo

86 JUL 25 P3:31
GENERAL COUNSEL
RECEIVED

pl/lm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 28, 1986

Joseph F. Seminara, Esquire
Wolff, Seminara & Mitherz
Suite 2300
230 Park Avenue
New York, New York 10169

Re: MUR 1866
Sullivan for Senate and
Joseph M. Sussillo, as
treasurer

Dear Mr. Seminara:

This is in reference to your letter dated July 23, 1986, requesting an extension until August 11, 1986 to respond to the General Counsel's Brief in the above-captioned matter. After considering the circumstances presented in your letter, the Commission has determined to grant you your requested extension. Accordingly, your response will be due on August 11, 1986.

If you have any questions, please contact Eric Kleinfeld, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

By: Lawrence M. Noble
Deputy General Counsel

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WOLFF, SEMINARA & MITHERZ
230 PARK AVENUE
SUITE 2300
NEW YORK, N.Y. 10169

212-867-4200
TELECOPIER 212-949-1460

SIDNEY A. WOLFF (1927-1982)

JOSEPH F. SEMINARA
HAROLD MITHERZ
MATTHEW J. D'EMIC
GLENN E. JENKINS*

JOANNE S. LEHU

*N.Y., N.J. AND D.C. BARS

NEW JERSEY OFFICE:
645 MARTINSVILLE RD.
LIBERTY CORNER, NJ 07938

N.J. COUNSEL
GLENN E. JENKINS

August 7, 1986

FEDERAL EXPRESS

Eric Kleinfeld, Esq.
Federal Election Commission
Office of General Counsel
999 E Street
Washington, D. C. 20463

Re: Federal Election Commission v. Sullivan for Senate Committee and Joseph M. Sussillo

Dear Mr. Kleinfeld:

Thank you for granting the extension.

Enclosed please find ten (10) copies of Respondent's Brief.

Yours very truly,

JOSEPH F. SEMINARA

JFS/ts
Enclosures

cc: Joseph M. Sussillo, Esq.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Sullivan for Senate	)	MUR 1866
Joseph M. Sussillo,	)	
Treasurer	)	

Respondent's Brief

I am an Attorney-at-Law admitted to practice in the courts of the State of New York and the Federal Courts for the past thirty years. I appear on behalf of Respondent, JOSEPH M. SUSSILLO, to urge the members of the Commission that there is no reason to believe that any violation of any statute within its jurisdiction has been committed by Respondent.

I have known MR. SUSSILLO ("Joe" to me) for approximately twenty-five years, as a neighbor, fellow attorney in the same community of Bay Ridge, Brooklyn, in which we both live and practice law, and as a respected political opponent. I share with Joe the conviction that under our system of government, in addition to attending to our jobs and paying our bills, citizens owe the duty of being actively involved in community affairs and to articulate in a sensible and mature fashion the social, political and economic issues of our time and place.

MR. SUSSILLO, in his many professional, civic and political activities, epitomizes the role of the attorney-citizen at its best. We belong to different parties, but

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our respective political affiliations and preferences are of no consequence to me in my role as his attorney, and certainly are of no consequence to the Commission.

I preface my arguments with these few personal comments since I deem it of importance to the Commissioners to know something about the Respondent in evaluating the facts and issue referred to in Respondent's brief.

The alleged violations of the Federal Election Campaign Act set forth in General Counsel's brief relate to events that occurred four years ago in August, 1982 in connection with the unsuccessful candidacy of Florence M. Sullivan, the Republican candidate for the U. S. Senate of New York.

The alleged violations of failure to report in-kind contributions have been the object of prior inquiries by the Commission.

By letter dated December 31, 1984, copy of which is enclosed as Exhibit "A", the office of General Counsel informed Respondent SUSSILLO that "he may have violated certains sections" of the Act individually and as Treasurer of the Sullivan for Senate Committee ("MUR 1866). On March 29, 1985, the Commission determined that on the basis of information in the complaint and information provided by the Respondent, "there is no reason to believe that a violation of any statute within its jurisdiction had been committed".

Again, on July 31, 1985, the Commission notified the Respondent of a complaint "alleging" violations of certain sections of the Federal Election Campaign Act of 1971"", as amended. The gravamen of that complaint was the allegation that

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Respondent SULLIVAN for SENATE caused 360,799 direct mail pieces supporting the candidacy of FLORENCE M. SULLIVAN to be mailed to 1980 Republican Party primary voters in New York State under the non-profit bulk rate permit of the New York State Conservative Party State Committee. This is the same basic allegation which appear on Page 2 of General Counsel's brief which makes reference to an alleged unreported in-kind contribution of approximately $25,000.00.

On October 22, 1985, the Commission notified JOSEPH M. SUSSILLO, Treasurer, that on March 22, 1985, the Commission has found "no reason to believe that a violation of any statute within its jurisdiction had been committed". Accordingly, the Commission closed its file in the matter (MUR-1866). (Exhibit "B")

It appears that the same issue became the subject of court litigation in the U. S. District Court in the Southern District of New York. A copy of Defendants' answer to interrogatories in that case states in part that:

Defendant, J. DANIEL MAHONEY (now a Federal District Court Judge) on behalf of the State Committee of the Conservative Party, approved the mailing piece and authorized the mailing in question in or about September, 1982 in New York State and Maine during the course of meetings or telephone conversations with Alan Roth and Robert Ryan.

No mention whatsoever is made in Defendants' interrogatories to JOSEPH M. SUSSILLO.

The brochure clearly states to have been paid for by the State Committee of the New York State Conservative Party 1982 VICTORY FUND, 45 East 29th Street, New York, New York 10016. Copies of the answer to interrogatories in the matter of Muriel Siebert, et al., v. The Conservative Party of New York State, et al., (82 Civ. 7419 (HFW)), is annexed hereto, together with a copy of the brochure in question.* (Exhibit "C")

MR. SUSSILLO is not now and has never been an officer of the Conservative Party and he had a nominal and peripheral involvement with the day-to-day conduct of the campaign of FLORENCE M. SULLIVAN. He was not involved in publicity strategies and the mailing of printed matters. He did, of course, discharge the ministerial acts of signing checks and reports, but the actual supervision of disbursements and payments of campaign expenses was left to the Campaign Manager, and other campaign workers. At all times during the campaign, MR. SUSSILLO remained at his Brooklyn office, practicing law, and did not accompany the candidate in her appearances throughout the State.

There is no probable cause to believe that Respondent "was involved in a knowing and willful violation" of the Act. (U.S.C. §437(c).

As Respondent stated in answer to the Commission's interrogatories on May 15, 1986:

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* Siebert vs. Conservative Party of New York State, 565 Supp. 56; Aff. 724 F2 334 (1983); Cert. Denied 104 Sup. Ct. 1063. The court in this case held that the Defendants were entitled to a dismissal of the action.

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(A) The printing of the brochure was authorized and undertaken by the New York State Conservative Party;

(B) Arrangements for the printing were made by one Robert Ryan, known to MR. SUSSILLO as a public relations campaign worker and in no way answerable to him;

(C) The mailing was arranged by the Conservative Party by the use of its own postal service permit number;

(D) MR. SUSSILLO played no role in the mailing or affixing of the postage;

(E) The sum of $14,475.27 was routinely paid by the SULLIVAN FOR SENATE COMMITTEE as one of the main campaign expenses and reported to the Commission in the Committee September 2-September 30, 1982 report.

MR. SUSSILLO never saw the brochure until after it was mailed, played no role whatsoever in the preparation and mailing of the brochure and had no way of knowing at the time of the filing of the report in September, 1982 that any in-kind contribution had been made by the Conservative Party to the SULLIVAN FOR SENATE COMMITTEE.

It is respectfully submitted that there is no evidence in this matter which in any way indicates any "knowing, conscious and deliberate flaunting as required by the Act". (American Federation Labor vs. Federal Election Commission, 628, F. 2d, 97).

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WHEREFORE, I urge that the Commission find no probable cause to believe that the SULLIVAN FOR SENATE COMMITTEE and JOSEPH M. SUSSILLO, as Treasurer, in any way violated 2 U.S.C., § 441a(f) and § 434(b).

DATED: New York, New York
August 7, 1986

JOSEPH F. SEMINARA
Attorney for JOSEPH M. SUSSILLO
WOLFF, SEMINARA & MITHERZ
230 Park Avenue
New York, New York 10169
(212) 867-4200

9000403308

CLOSED

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 29, 1985

Joseph M. Sussillo, Treasurer
Sullivan for Senate
437 Bay Ridge Parkway
Brooklyn, New York 11209

Re: MUR 1868
Sullivan for Senate
Joseph M. Sussillo, Treasurer

Dear Mr. Sussillo:

On December 31, 1984, the Commission notified Sullivan for Senate and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on March 22, 1985, determined that, on the basis of the information in the complaint and information provided by the respondents, 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

By: Kenneth A. Gross
Associate General Counsel

9704080309

Closed

10/25

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 22, 1985

Joseph M. Sussillo, treasurer
437 Bay Ridge Parkway
Brooklyn, New York 11209

RE: MUR 2050
Sullivan for Senate
Committee and Joseph M.
Sussillo, as treasurer

Dear Mr. Sussillo:

On July 31, 1985, the Commission notified the Sullivan for Senate Committee and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on October 16, 1985, determined that on the basis of the information in the complaint, 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

By Kenneth A. Gross
Associate General Counsel

9004030310

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

MURIEL SIEBERT, et al.,	:	
Plaintiffs	:	DEFENDANTS' ANSWERS TO PLAINTIFFS' INTERROGATORIES
-against-	:	
THE CONSERVATIVE PARTY OF NEW YORK STATE, et al.,	:	82 Civ. 7419 (HFW)
Defendants	:	

- -x

Defendants answer plaintiffs' interrogatories herein as follows:

1. Q. Identify all persons who participated in (a) the preparation, (b) printing, (c) addressing, and (d) mailing of the Sullivan mailing piece and (e) payment of the costs relating thereto; and state as to each such person the role he or she played.

A. (a) The circular was prepared in draft form by Allen Roth, 135 West 29th Street, New York, New York 10001, and Robert Ryan, 135 West 29th Street, New York, New York 10001. Defendant Mahoney reviewed the circular and approved the final copy. John P. Dellera commented on certain legal aspects.

(b) Design Distributors, Inc.
45 East Industry Court
Deer Park, New York 11729

(c) Do not know.

EXHIBIT C

(d) The State Committee of the New York State Conservative Party.

(e) The State Committee of the New York State Conservative Party, 1982 Victory Fund, has paid a total of $2,000 toward the cost of printing the brochure and is obligated to make a further payment of $2,980. Upon information and belief, all other costs were paid by Sullivan for Senate, the principal campaign committee of Florence M. Sullivan.

2. Q. State the amounts paid or incurred for (a) the preparation, (b) printing, (c) addressing and (d) mailing of the Sullivan mailing piece, and identify all sources of the funds for each such payment, including all intermediate transfers of funds from original donors to the ultimate payee.

A. (a) Do not know.

(b) $4,980

(c) Do not know.

(d) Postal receipts showing amounts paid will be made available for inspection and copying in accordance with Rule 33(c), Fed. R. Civ. P.

The sum of $2,000 has been paid from contributions received by the 1982 Victory Fund in accordance with the Federal Election Campaign Act.

3. Q. State (a) the source of all mailing labels used to send out the Sullivan mailing piece; (b) by whom and the manner in which the names and addresses were compiled and computerized; and (c) all costs associated with their (1) compilation, (2) computerization, and (3) print out of mailing labels.

A. (a) Do not know.

(b) Do not know.

(c) Do not know.

4. Q. State whether the State Committee of the New York State Conservative Party, or any of its members, approved the contents of the Sullivan mailing piece and authorized its mailing under the Committee's non-profit mail permit. If so, describe the time, place, circumstances and persons involved in such approval and authorization.

A. Defendant Mahoney, on behalf of the State Committee of the Conservative Party, approved the mailing piece and authorized the mailing in question in or about September, 1982 in New York City and Maine during the course of meetings or telephone conversations with Allen Roth and Robert Ryan.

5. Q. With respect to each of the elected public officials listed in the Sullivan mailing piece, state whether it

is claimed that he or she did in fact endorse Mrs. Sullivan over her two primary opponents, Muriel Siebert and Whitney North Seymour, Jr., and if so, when, to whom, and by what manner each one communicated such endorsement to the person or persons who prepared the copy for the Sullivan mailing piece.

A. Upon information and belief, yes. Endorsements contained in letters or press releases will be made available for inspection and copying in accordance with Rule 33(c), Fed. R. Civ. P. Upon information and belief, other endorsements were communicated in person or by telephone to Allen Roth or Robert Ryan by Gerard Kassar, 927 80th Street, Brooklyn, New York.

6. Q. Identify the person or persons who authorized the publication of the Seymour mailing piece on behalf of Sullivan for Senate, and the time, place and circumstances of the communication of such authorization to defendants or any of them.

A. Robert Ryan, in or about September, 1982, in telephone conversations and meetings with defendant Mahoney.

7. Q. (a) Identify the "State Committee of the New York State Conservative Party 1982 Victory Fund", the depository in which such Victory Fund is or was maintained, and the person authorized to withdraw monies from such Victory Fund depository. (b) Describe all payments made out of such Victory

Fund in relation to the Sullivan mailing piece, including the date, amount, payee, what person authorized such payment.

(c) Identify the source or sources of all payments in excess of $1,000 into the Victory Fund against which the payments in relation to the Sullivan mailing piece were drawn.

A. (a) The 1982 Victory Fund is a separate segregated account of the State Committee of the New York State Conservative Party and is registered as a multi-candidate committee with the Federal Election Commission. Its funds are maintained at Manufacturers Hanover Trust Company, Lexington Avenue at 43rd Street, New York, New York 10017. The person authorized to withdraw funds from such depository is defendant O'Doherty.

(b) See answer to Interrogatory No. 2(b). Amounts paid were authorized by defendants Mahoney, Maltese, and O'Doherty. The sum of $2,000 was paid on September 21, 1982 to Design Distributors, Inc.

(c) None.

8. Q. Identify (or attach copies of) all documents, invoices, correspondence, memoes, research materials, notes, drafts or other papers or writings in the custody or control of the defendants or any of them, relating to the answers to such of the foregoing interrogatories.

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AFFIDAVIT

State of New York, ss.

County of New York

J. DANIEL MAHONEY, being duly sworn deposes and says that he is a defendant in this action; that he has read the foregoing Answers to Plaintiffs' Interrogatories; that the answers to Interrogatories 1(a), 1(c), 1(d), 2(a), 2(c), 3, 4, 6 and 7(a) (to the extent of identifying the 1982 Victory Fund) are true; that the answers to the remaining interrogatories are true upon information and belief.

J. Daniel Mahoney

Sworn to before me this

4th day of February, 1983

MARION R. FOSTER
Notary Public, State of New York
No. [illegible]
Qualified in [illegible]
Commission Expires [illegible] 83

AFFIDAVIT

State of New York, ss.

County of New York

SERPHIN R. MALTESE, being duly sworn, deposes and says that he is a defendant in this action; that he has read the foregoing Answers to Plaintiffs' Interrogatories; that the answers to Interrogatories 1(b), 1(c), 2(a), 2(c), 3 and 7(a) are true; that the answers to the remaining interrogatories are true upon information and belief.

Serphin R. Maltese

Serphin R. Maltese

Sworn to before me this

4th day of February, 1983

Arlene J. Kennare

ARLENE J. KENNARE
Notary Public, State of New York
No. 52-4744601
Qualified in Suffolk County
Commission Expires March 30, 1983

AFFIDAVIT

State of New York, ss.

County of New York

MICHAEL R. LONG, being duly sworn, deposes and says that he is a defendant in this action; that he has read the foregoing Answers to Plaintiffs' Interrogatories; that the answers to Interrogatories 1(c), 2(a), 2(c), 3 and 7(a) (to the extent of identifying the 1982 Victory Fund) are true; that the answers to the remaining interrogatories are true upon information and belief.

Michael R. Long

Michael R. ~~Long~~

Sworn to before me this

4th day of February, 1983

Arlene J. Kennare

ARLENE J. KENNARE
Notary Public, State of New York
No. 52-4744601
Qualified in Suffolk County
Commission Expires March 30, 1983

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AFFIDAVIT

State of New York, ss.

County of New York

JAMES E. O'DOHERTY, being duly sworn, deposes and says that he is a defendant in this action; that he has read the foregoing Answers to Plaintiffs' Interrogatories; that the answers to Interrogatories 1(b), 1(c), 1(e), 2(a), 2(b), 2(c), 2 (to the extent of the source of funds), 3 and 7 are true; that the answers to the remaining interrogatories are true upon information and belief.

James E. O'Doherty

James E. O'Doherty

Sworn to before me this

7th day of February, 1983

Arlene J. Kennare

ARLENE J. KENNARE
Notary Public, State of New York
No. 52-4744601
Qualified in Suffolk County
Commission Expires March 30, 1983

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ASSEMBLYWOMAN FLORENCE SULLIVAN HAS BEEN ENDORSED BY THESE REPUBLICAN OFFICIALS:

Congressman Guy V. Molinari
Congressman Gerald B. Solomon

Senator Christopher Mega
Senator Frank Padavan
Senator Richard E. Schermerhorn

Assemblyman John L. Behan
Assemblyman Gordon W. Burrows
Assemblyman William Bush
Assemblyman Anthony J. Casale
Assemblyman John Cochrane
Assemblyman Armand D. Amato
Assemblyman Richard A. D'Andrea
Assemblyman John A. Esposito
Assemblyman John T. Flack
Assemblyman John Flanagan
Assemblywoman Joan P. Hague
Assemblyman Thomas Hanna
Assemblyman Michael J. Hoblock, Jr
Assemblyman Raymond Kaiser
Assemblyman Neil Kelleher
Assemblyman Richard L. Kennedy
Assemblyman Clarence Lane
Assemblyman William J. Larkin, Jr
Assemblyman Eugene Levy
Assemblyman John G. Lopinto
Assemblyman Thomas P. Morahan
Assemblyman James Margle
Assemblyman John G. A. O'Neil
Assemblyman John M. Perone
Assemblyman Douglas W. Prescott
Assemblywoman Antonia P. Pellegrino
Assemblyman Stephen Sarand
Assemblywoman Carol A. Sweck
Assemblyman Nicholas A. Spano
Assemblyman Frank G. Talomie, Sr
Assemblyman Guy J. Velleta
Assemblyman Glen Warren

EXHIBIT "A"

AND BY

FUND FOR A CONSERVATIVE MAJORITY

CITIZENS FOR THE REPUBLIC
(THE POLITICAL ACTION COMMITTEE FOUNDED BY RONALD REAGAN IN 1977)

THE EAST SIDE CONSERVATIVE CLUB

PUBLICATION OF THIS BROCHURE IS PAID FOR BY THE STATE COMMITTEE OF [illegible]

VOTE FOR FLORENCE SULLIVAN ON SEPTEMBER 23rd.

FLORENCE SULLIVAN IS THE ONLY SENATE CANDIDATE TO ENDORSE LEW LEHRMAN FOR GOVERNOR.

ELECT ANOTHER REAGAN REPUBLICAN TO THE U.S. SENATE.

New York State Conservative Party State Committee
1982 Victory Fund
45 East 29th Street
New York, New York 10016

NON PROFIT ORG
U.S. POSTAGE
PAID
PERMIT NO 734
NEW YORK, N.Y.

THERE ARE TWO LIBERALS
AND ONE REAGAN REPUBLICAN RUNNING FOR
UNITED STATES SENATOR.
THE REAGAN REPUBLICAN IS...

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ASSEMBLYWOMAN FLORENCE SULLIVAN

SHE IS THE ONLY CANDIDATE WHO SUPPORTS PRESIDENT REAGAN ON ALL THESE ISSUES:

- Tax reductions for working Americans.
- A criminal justice system that does not let the John Hinckleys free, and protects law abiding citizens from street criminals.
- United States Military Forces second to none.
- To deny the Soviet Union access to vital American technology.
- Tuition Tax Credits for parents sending their children to private and parochial schools.

Florence Sullivan understands the problems we are all facing. She is the widow of a Korean War veteran, who raised three children, taught Math and English, supported herself through St. John's Law School, served as an Assistant District Attorney and has represented the middle-class community of Bay Ridge for two terms in the New York State Legislature.

"FLORENCE SULLIVAN IS A LIFELONG CONSERVATIVE REPUBLICAN. HER LIBERAL OPPONENTS HAVE FOUGHT AGAINST THE CONSERVATIVE POLICIES OF RONALD REAGAN, AL D'AMATO AND JACK KEMP."

MICHAEL R. LONG
COUNCILMAN-AT-LARGE

Whitney North Seymour, Jr. has described himself as "A John Lindsay Republican."

While serving in the State Senate he voted to weaken the Death Penalty and opposed stiffer penalties for murderers, rapists, and other violent criminals.

Moreover, he opposes President Reagan on tuition tax credits, the Balanced Budget Amendment, voluntary prayers in public places, and improving our defense forces.

Muriel Siebert, Hugh Carey's Superintendent of Banks, contributed to the campaigns of Senator Moynihan and Hugh Carey (her latest contribution was $1,000 to Carey in December of 1981). During this race Siebert has called herself a "raving liberal" on social issues, she has called for the legalization of illegal drugs, and she has called for reductions in the defense budget.

"FLORENCE SULLIVAN OFFERS REFRESHING OPPOSITION TO LEFT-LEANING REPUBLICAN OPPONENTS LIKE SEYMOUR AND SIEBERT. SHE IS CERTAINLY OUR BEST BET AGAINST MOYNIHAN IN NOVEMBER.".

RICHARD E. SCHERMERHORN, SENATOR

"FLORENCE SULLIVAN IS THE ONLY ONE WHO CAN BEAT THE LIBERAL DANIEL MOYNIHAN."

ROBERT HECKMAN
EXECUTIVE DIRECTOR
FUND FOR A CONSERVATIVE MAJORITY

"MOYNIHAN'S LIBERALISM IS NOT WHAT NEW YORKERS WANT OR NEED."

FLORENCE SULLIVAN
ASSEMBLYWOMAN

While Florence Sullivan has repeatedly voted for the Death Penalty, Moynihan twice voted against it in the United States Senate.

While Florence Sullivan believes in the importance of education in neighborhood schools, Moynihan has voted for the busing of school children.

While Florence Sullivan has voted for tax cuts, Moynihan voted against tax reductions for people earning $25,000 and less.

While Florence Sullivan is a staunch supporter of President Reagan, Moynihan supported Jimmy Carter 75% of the time.

Vote Sullivan on September 23.

SENSITIVE

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

86 SEP 9 A10:38

In the Matter of	)	
	)	
Sullivan for Senate	)	MUR 1866
Joseph M. Sussillo, treasurer	)	
New York State Conservative	)	
Party State Committee/1984	)	
Victory Fund	)	
Vincent G. Downing, treasurer	)	

EXECUTIVE SESSION

SEP 16 1986

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On May 14, 1985, the Federal Election Commission ("Commission") determined there is reason to believe that the New York State Conservative Party State Committee/1984 Victory Fund ("Conservative Party") and Vincent G. Downing, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and § 434, by making an excessive contribution to the Sullivan for Senate Committee ("Sullivan Committee") and failing to report that contribution. Also on May 14, 1985, the Commission determined there is reason to believe that the Sullivan Committee and Joseph M. Sussillo, as treasurer, violated 2 U.S.C. § 441a(f) and § 434 by accepting an excessive contribution from the Conservative Party and failing to report that contribution. The basis for these determinations was a complaint filed with the Commission alleging that the Conservative Party allowed the Sullivan Committee to mail campaign literature under the Party's non-profit permit number.

On September 6, 1985, the Commission authorized Orders to Submit Written Answers for both respondent committees. The Conservative Party failed to respond. A response was received from Joseph M. Sussillo, treasurer of the Sullivan Committee,

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stating that he had no information with which to answer any of the interrogatories.

On January 14, 1986, the Commission authorized the Office of General Counsel to file a civil suit in United States District Court to enforce its Orders against respondents. On February 26, 1986, prior to the filing of the complaint in District Court, the Commission received a response from the Conservative Party. The Office of General Counsel then filed a petition in the Eastern Division of New York against the Sullivan Committee. On May 9 and May 15, 1986, responses were received from the Sullivan Committee, prior to the scheduled hearing in this matter.

On July 10, 1986, the Office of General Counsel mailed to the Conservative Party and the Sullivan Committee briefs on the factual and legal issues of this matter. By letter dated July 23, 1986, counsel for the Sullivan Committee requested an extension of time until August 11, 1986 to file a response brief. The Sullivan Committee's response brief was received by the Office of General Counsel on August 8, 1986. The Conservative Party failed to file a response brief in this matter.

II. LEGAL ANALYSIS

The Office of General Counsel relies primarily on its briefs dated July 10, 1986. The brief submitted by the Sullivan Committee adds little in the way of new information or argument. Instead, that brief demonstrates a miscomprehension of the issues at hand.

Counsel is apparently arguing that respondent was twice notified that MUR 1866 was closed. Such is not the case. Two

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separate Matters Under Review involving this respondent were at one time considered by the Commission. See MURs 1868 and 2050. Both of these matters are now closed, and it is to these which counsel refers. The closing letters cited by counsel clearly state the correct MUR numbers. Respondent was never informed by the Commission that MUR 1866 was closed.

The remainder of respondent's brief is devoted to asserting that Mr. Sussillo, the Sullivan Committee's treasurer, had no involvement in the preparation or mailing of the campaign brochure at issue. However, the primary issue is not Mr. Sussillo's role, but rather the acceptance by the Sullivan Committee of an excessive contribution from the Conservative Party. At this point, the facts are undisputed. The Conservative Party prepared and mailed a campaign brochure on behalf of Florence Sullivan, using its non-profit postage permit, and the Sullivan Committee paid the amount of the discounted postage.

Thus, the Conservative Party provided a service to the Sullivan Committee, i.e. the usage of its non-profit postage permit. This service is a contribution, pursuant to 2 U.S.C. § 431(8)(A)(i) and 11 C.F.R. § 100.7(a)(1)(iii)(A). The value of the service was the amount of savings in the total cost of postage.

If the Sullivan Committee had paid the customary bulk rate of 10.9 cents per piece on the 360,802 pieces mailed, the postage cost would have been $39,327.42. Instead, using the Conservative Party's non-profit postage permit, the Sullivan Committee paid $14,475.27, a difference of $24,852.15.

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The Conservative Party, as a multicandidate committee, was limited, pursuant to 2 U.S.C. § 441a(a)(2)(A), to total contributions of $5000 to Sullivan for the 1982 primary election. Having previously made a contribution of $4980 to the Sullivan Committee for the costs of printing the mailing, only $20 of the $24,852.15 was within the contribution limitations of 2 U.S.C. § 441a(a)(2)(a).

Therefore, the Conservative Party made an excessive contribution to the Sullivan Committee in the amount of $24,832.15, for the value of the service provided to the latter. Similarly, the Sullivan Committee accepted an excessive contribution in the amount of $24,832.15. Accordingly, the Office of General Counsel recommends that the Commission find probable cause to believe that the Conservative Party and Vincent G. Downing, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and probable cause to believe that the Sullivan Committee and Joseph M. Sussillo, as treasurer violated 2 U.S.C. § 441a(f).

Also, because the contribution from the Conservative Party to the Sullivan Committee went unreported, the Office of General Counsel recommends that the Commission find probable cause to believe that the Conservative Party and Vincent G. Downing, as treasurer, and the Sullivan Committee and Joseph M. Sussillo, as treasurer, violated 2 U.S.C. § 434(b).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Find probable cause to believe that the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and § 434(b).

2. Find probable cause to believe that the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer, violated 2 U.S.C. § 441a(f) and § 434(b).

3. Approve the attached conciliation agreements.

4. Approve the attached letters.

8 September 1986
Date

Charles N. Steele
General Counsel

Attachments
1. Proposed Conciliation Agreements
2. Proposed letters

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Sullivan for Senate	)	
Joseph M. Sussillo, treasurer	)	
New York State Conservative Party	)	MUR 1866
State Committee/1984 Victory	)	
Fund	)	
Vincent G. Downing, treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of September 16, 1986, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 1866:

1. Find probable cause to believe that the New York State Conservative Party State Committee/ 1984 Victory Fund and Vincent G. Downing, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and § 434(b).

2. Find probable cause to believe that the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer, violated 2 U.S.C. § 441a(f) and § 434(b).

3. Approve the conciliation agreements attached to the General Counsel's report dated September 8, 1986.

4. Approve the letters attached to the General Counsel's report dated September 8, 1986.

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

Attest:

9-17-86
Date

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

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pcm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 19, 1986

Joseph F. Seminara, Esquire
Wolff, Seminara & Mitherz
7301 Park Avenue
Suite 2300
New York, New York 10169

RE: MUR 1866
Sullivan for Senate and
Joseph M. Sussillo,
treasurer

Dear Mr. Seminara:

On September 16 , 1986, the Commission determined that there is probable cause to believe your clients committed a violation of 2 U.S.C. § 441a(f) and § 434(b), provisions of the Federal Election Campaign Act of 1971, as amended, in connection with the excessive contribution of a discount postage rate received from the New York State Conservative Party Committee/1984 Victory Fund and the failure to report that contribution.

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

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

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If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Eric Kleinfeld, the attorney assigned to this matter, at (202)376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Conciliation Agreement

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pl/mr

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 19, 1986

Christopher J. Ragucci, Esquire
Windells, Marx, Davies & Ives
51 West 51st Street
New York, New York 10019

RE: MUR 1866
New York State Conservative
Party State Committee/1984
Victory Fund and Vincent G.
Downing, treasurer

Dear Mr. Ragucci:

On September 16 , 1986, the Commission determined that there is probable cause to believe your clients committed a violation of 2 U.S.C. § 441a(a)(2)(A) and § 434(b), provisions of the Federal Election Campaign Act of 1971, as amended, in connection with the excessive contribution of a discount postage rate to the Sullivan for Senate Committee and the failure to report that contribution.

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

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

If you have any questions or suggestions for changes in the enclosed conciliation agreement, please contact Eric Kleinfeld, the attorney assigned to this matter, at (202)376-5690.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Conciliation Agreement

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JOSEPH M. SUSSILLO, J.D., P.C.
COUNSELLOR AT LAW

LOUISE M. BENEVENTO
PARALEGAL

437 Bay Ridge Parkway · Brooklyn, New York 11209
718 836-6312
718 745-6850

December 9, 1986

Federal Election Commission
Washington, D. C. 20463

Attention: Eric Kleinfeld, Esq.

Re: Sullivan for Senate
MUR 1866

Dear Mr. Kleinfeld:

I would like to take a moment to familiarize you with certain facts regarding Mrs. Sullivan and myself which hopefully might impact on any consideration that will be given.

Mrs. Sullivan is a widow with three children, a former high school teacher and District Attorney, who studied at night to become a lawyer, and who with some small help from me was elected to the New York Assembly for two terms before being reidstricted out of her constituency.

After her unsuccessful run for the United States Senate, she took a position as counsel to the Regional Director of GSA in New York. Only recently has she resigned that post to start in private practice.

For my part, Mrs. Sullivan and I were grammar school class mates who share a long time personal friendship which resulted in my sponsoring her for her original State Assembly candidacy.

The United States senatorial candidacy which is the subject of this proceeding was a matter of "Loves labor lost" and a committment to a political philosophy and ideals which unfortunately did not result in the popular support for which we had both hoped.

My involvement in her campaign was more that of a figurehead than as a participant and others handled the day to day particulars.

As a practitioner, I have a relatively modest, successful private practice and in no way would I be considered a financial mogul.

The committee from its inception was never able to generate a very formidable campaign fund and invariably always ran in the red. At the present time, and for more than two years, it has no assets. Neither of the principals are of significant means as to be classified as high living political entrepreneurs - merely citizens interested in better government.

This then is a very short outline of the people with whom your agency is dealing. It is hoped that you will take into consideration the foregoing in making a final determination.

Thank you for your continued cooperation and good will in

attempting to reconcile this matter in a fair and reasonable fashion.

Very truly yours,

JOSEPH M. SUSSILLO
lb
encl.

CC: Joseph Seminara, Esq.
Florence M. Sullivan, Esq.

SENSITIVE
EXECUTIVE SESSION
FEB 03 1987

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Sullivan for Senate	)	MUR 1866
Joseph M. Sussillo, as treasurer	)	
New York State Conservative	)	
Party State Committee/1984	)	
Victory Fund	)	
Vincent G. Downing, treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On September 16, 1986, the Federal Election Commission ("Commission") found probable cause to believe that the New York State Conservative Party State Committee/1984 Victory Fund ("Conservative Party") and Vincent G. Downing, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and § 434 by making an excessive contribution to the Sullivan for Senate Committee ("Sullivan Committee") and failing to report that contribution. Also on September 16, 1986, the Commission found probable cause to believe that the Sullivan Committee and Joseph M. Sussillo, as treasurer, violated 2 U.S.C. § 441a(f) and § 434, by accepting an excessive contribution from the Conservative Party and failing to report that contribution. The factual basis for these determinations was the Sullivan Committee's use of the Conservative Party's non-profit postage permit to mail campaign literature in connection with Florence Sullivan's 1982 campaign for the United States Senate.

Conciliation agreements were approved by the Commission and mailed to both sets of respondents.

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With respect to the Conservative Party, no response either in writing or by telephone has been received to the conciliation agreement mailed by the Commission on September 19, 1986. Repeated attempts were made to contact the Conservative Party's counsel during the conciliation period, without response.1/ Additionally, counsel for the Sullivan Committee met with the Conservative Party in attempt to seek assistance in settling this matter and was told that no such assistance would be forthcoming.

This non-responsiveness by the Conservative Party is consistent with their treatment of the Commission's interrogatories in this matter which were sent to the Conservative Party in September, 1985, and were not answered until February, 1986, some five months later, after the Commission had authorized the Office of General Counsel to file suit in District Court to enforce its Order. The statutory period for conciliation expired on December 22, 1986. Because the Conservative Party has shown no inclination to conciliate this matter,

the

1/ Telephone messages were left at the law firm of respondent's counsel and past chairman on October 30, November 10, 13, 20 and 24. None of these calls were returned.

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Office of General Counsel recommends that the Commission authorize it to file a civil suit for relief in the United States District Court against the Conservative Party and Vincent G. Downing, as treasurer, and the Sullivan Committee and Joseph M. Sussillo, as treasurer.

II. RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Reject the conciliation agreement proposed by the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer.

2. Authorize the Office of General Counsel to file a civil suit for relief in the United States District Court against the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer.

3. Authorize the Office of General Counsel to file a civil suit for relief in the United States District Court against the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer.

4. Approve the attached letters.

27 JUN 1987
Date

BY: Charles N. Steele
General Counsel

Attachments
1. Counterproposal of Sullivan Committee
2. Letters (2)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Sullivan for Senate	)	
Joseph M. Sussillo, as treasurer	)	MUR 1866
New York State Conservative Party	)	
State Committee/1984 Victory Fund	)	
Vincent G. Downing, treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of February 3, 1987, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 1866:

1. Reject recommendation number 1 in the General Counsel's report dated January 27, 1987.

2. Reopen conciliation negotiations with the Sullivan for Senate Committee based on the following conditions:

   a)

   b)

   c) Inform them that if no agreement is reached within fifteen days the Commission will file a civil suit for relief in the United States District Court against the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer.

(continued)

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3. Authorize the Office of General Counsel to file a civil suit for relief in the United States District Court against the New York State Conservative Party State Committee/ 1984 Victory Fund and Vincent G. Downing, as treasurer.

4. Direct the Office of General Counsel to send appropriate letters pursuant to the above actions.

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

Attest:

2-5-87
Date

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

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plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 10, 1987

Christopher J. Ragucci, Esquire
Windells, Marx, Davies & Ives
51 West 51st Street
New York, New York 10019

Re: MUR 1866
New York State Conservative
Party State Committee/1984
Victory Fund and Vincent G.
Downing, as treasurer

Dear Mr. Ragucci:

You were previously notified that on September 16, 1986, the Federal Election Commission found probable cause to believe that your clients violated 2 U.S.C. § 441a(a)(2)(A) and § 434, provisions of the Federal Election Campaign Act of 1971, as amended, in connection with the above-captioned matter.

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

Should you have any questions, or should you wish to settle this matter prior to suit, please contact Eric Kleinfeld, the attorney handling this case, at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Joseph F. Seminara, Esquire
Wolff, Seminara & Mitherz
7301 Park Avenue
Suite 2300
New York, New York 10169

Re: MUR 1866
Sullivan for Senate and
Joseph M. Sussillo, as
treasurer

Dear Mr. Seminara:

You were previously notified that on September 16, 1986, the Federal Election Commission found probable cause to believe that your clients violated 2 U.S.C. § 441a(f) and § 434, provisions of the Federal Election Campaign Act of 1971, as amended, in connection with the above-captioned matter. On February 3, 1987, the Commission rejected the conciliation agreement submitted by your clients.

Although we have been unable to settle this matter through conciliation within the allowable time period, the Commission has directed the Office of General Counsel to send you a final conciliation proposal in order to achieve settlement of this matter. However, please note that the Commission has also authorized the institution of a civil action for relief in the United States District Court if an agreement is not reached within fiteen (15) days from your receipt of this letter.

Should you have any questions, please contact Eric Kleinfeld, the attorney handling this case, at (202) 376-5690.

Sincerely,

* original letter signed

Charles N. Steele
General Counsel

9704080343346

RECEIVED AT THE FEC
QCC# 2797
87 FEB 27 A 8:40

WOLFF, SEMINARA & MITHERZ
230 PARK AVENUE
SUITE 2300
NEW YORK, N.Y. 10169

212-867-4200
TELECOPIER 212-949-1460

SIDNEY A. WOLFF (1927-1982)
JOSEPH F. SEMINARA
HAROLD MITHERZ
[redacted]
GLENN E. JENKINS*
JOANNE S. LEHU
*N.Y., N.J. AND D.C. BARS

NEW JERSEY OFFICE:
645 MARTINSVILLE RD.
LIBERTY CORNER, NJ 07938

N.J. COUNSEL
GLENN E. JENKINS

February 23, 1987

Eric Kleinfeld, Esq.
Federal Election Commission
Washington, DC 20461

Re: MUR 1866
Sullivan for Senate and
Joseph M. Sussillo, as Treasurer

87 FEB 27 A 9:36

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

Dear Mr. Kleinfeld:

Your letter of February 10, 1987 reached my office on February 20, 1987. The delay was due to the fact that the correspondence was addressed to 7301 Park Avenue.

I have been in communication with Mr. Sussillo's office and you will have his response by next Friday.

Very truly yours,

JOSEPH F. SEMINARA

JFS:lw

GCC# 2867

87 MAR 11 A9:41

JOSEPH M. SUSSILLO, J.D., P.C.
COUNSELLOR AT LAW

LOUISE M. BENEVENTO
PARALEGAL

437 Bay Ridge Parkway · Brooklyn, New York 11209
718 836-6312
718 745-5850

March 6, 1987

87 MAR 11 A10:19

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

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

Re: MUR 1866
Sullivan for Senate and
Joseph M. Sussillo, as treasurer

Dear Mr. Steele:

Pursuant to your letter of February 10, 1987 which I received on February 23, 1987, I have enclosed, in triplicate, the duly executed conciliation agreement.

Kindly return executed copy when the same has been completed.

Thank you for your cooperation in bringing this matter to a final solution.

Very truly yours,

JOSEPH M. SUSSILLO
JMS/rt
Enclosures

xc: Joseph F. Seminara
Florence Sullivan

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

March 25, 1987

Joseph M. Sussillo, treasurer
Sullivan for Senate Committee
437 Bay Ridge Parkway
Brooklyn, NY 11209

RE: MUR 1866
Sullivan for Senate Committee
and Joseph M. Sussillo,
treasurer

Dear Mr. Sussillo:

On February 19, 1987, the Commission sent you a final conciliation proposal in the above-captioned MUR, in order to reach a settlement of violations of 2 U.S.C. § 434(b) and § 441a(f). This agreement inadvertently contained the wrong page two. Enclosed is another copy of the Commission's proposed agreement with the correct page two included. This page coincides with the page two included in the Commission's original proposal. Please sign this agreement and return it to this Office. Once it has been received the agreement will be forwarded to the Commission for approval.

Should you have any questions or problems, please contact R. Lee Andersen, the Assistant General Counsel in charge of this matter at (202) 376-5690.

Sincerely,

Lawrence M. Noble
Acting General Counsel

Enclosure
Conciliation Agreement

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RECEIVED AT THE FEC
GCC# 3047
87 APR 6 A9:26

JOSEPH M. SUSSILLO, J.D., P.C.
COUNSELLOR AT LAW

LOUISE M. BENEVENTO
PARALEGAL

437 Bay Ridge Parkway · Brooklyn, New York 11209
718 836-6312
718 745-5850

March 31, 1987

87 APR 6 P12:17
RECEIVED
OFFICE OF THE
GENERAL COUNSEL

90040804350

Lawrence M. Noble
Acting General Counsel
Federal Election Commission
Washington, D. C. 20463

Re: MUR 1866
Sullivan for Senate Committee
and Joseph M. Sussillo, Treasurer

Dear Mr. Noble:

In accordance with your letter of March 25, 1987, I enclose duly executed "correct" final conciliation proposed in the above captioned MUR for submission to the Commission for approval.

It replaces the earlier executed agreement dated February 10, 1987 containing the incorrect page 2, which is hereby deemed null and void.

On receipt of the approved Agreement, the Committee shall comply with its terms.

Very truly yours,

JOSEPH M. SUSSILLO
lb
encl.

CC: Florence M. Sullivan, Esq.
Joseph Seminara, Esq.

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OFFICE OF THE SEC
COMMISSION SECRETARY
87 APR 24 P 3:49

In the Matter of	)	
	)	
Sullivan for Senate	)	MUR 1866
Joseph M. Sussillo, treasurer	)	
	)	

General Counsel's Report

I. Background

Attached is a conciliation agreement signed by Joseph M. Sussillo, treasurer of the Sullivan for Senate Committee. The attached agreement contains no changes from the agreement approved by the Commission on February 3, 1987.

II. Recommendations

1. Accept the conciliation agreement submitted by the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer.

2. Approve the attached letter.

3. Close the file as it pertains to the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer.

4/24/87
Date

Lawrence M. Noble
Acting General Counsel

Attachments
1. Conciliation agreement
2. Letter

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Sullivan for Senate	)	MUR 1866
Joseph M. Sussillo, treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 29, 1987, the Commission decided by a vote of 6-0 to take the following actions in MUR 1866:

1. Accept the conciliation agreement submitted by the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer, as recommended in the General Counsel's Report signed April 24, 1987.

2. Approve the letter, as recommended in the General Counsel's Report signed April 24, 1987.

3. Close the file as it pertains to the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer.

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

Attest:

4-29-87
Date

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

Received in the Office of Commission Secretary:	Fri.,	4-24-87,	3:49
Circulated on 48 hour tally basis:	Mon.,	4-27-87,	11:00
Deadline for vote:	Wed.,	4-29-87,	11:00

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 1, 1987

Joseph M. Sussillo, treasurer
Sullivan for Senate Committee
437 Bay Ridge Parkway
Brooklyn, NY 11209

RE: MUR 1866
Sullivan for Senate Committee
and Joseph M. Sussillo, treasurer

Dear Mr. Sussillo:

On April 29, 1987, the Commission accepted the conciliation agreement signed by you in settlement of a violation of 2 U.S.C. § 434(b) and § 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to the Sullivan for Senate Committee and you, as treasurer, and it will become a part of the public record within thirty days after this matter has been closed with respect to all other respondents involved. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing within 10 days.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed.

Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,

Lawrence M. Noble
Acting General Counsel

Enclosure
Conciliation Agreement

9004080433

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Sullivan for Senate	)	MUR 1866
Joseph M. Sussillo, treasurer	)	
	)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Muriel F. Siebert and Whitney North Seymour, Jr. An investigation was conducted, and the Commission found probable cause to believe that Sullivan for Senate and Joseph M. Sussillo, as treasurer, ("Respondents") violated 2 U.S.C. § 441a(f) and § 434(b) by accepting an excessive contribution from the New York State Conservative Party State Committee/1984 Victory Fund ("Conservative Party") and failing to report that contribution.

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

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

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

III. Respondents enter voluntarily into this agreement with the Commission.

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

1. Respondent Sullivan for Senate is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Respondent Joseph M. Sussillo currently serves as treasurer for respondent Committee.

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3. The Conservative Party is a multicandidate committee within the meaning of 11 C.F.R. § 100.5(e)(3).

4. In September, 1982, the Conservative Party authorized and paid for the printing of a direct mail piece on behalf of Florence M. Sullivan, candidate for the Republican nomination for United States Senator. The cost of printing was $4980.

5. In connection with the Sullivan piece, the Conservative Party also authorized respondents to mail their literature using the non-profit postage permit issued to the Conservative Party.

6. Respondents mailed in excess of 360,000 pieces at postage rates of 4.0 cents and 4.9 cents per piece, with a total postage cost of $14,475.27.

7. The customary bulk rate for postage at the time of the mailing was 10.9 cents per piece. At this rate, respondents' mailing would have cost $39,327.42.

Excessive Contribution

8. Section 431(8)(A)(i), Title 2, United States Code, defines a contribution as any gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing any election for Federal office. Pursuant to section 100.7(a), Chapter 11, Code of Federal Regulations, a service is a contribution, and the term "anything of value" includes all in-kind contributions.

9. Section 441a(a)(2)(A), Title 2, United States Code, prohibits contributions by multicandidate committees in excess of $5000 to the authorized political committee of a candidate with respect to any election for Federal office. Section 441a(f), Title 2, United States Code, prohibits the authorized political committee of a candidate from accepting contributions from a multicandidate committee in excess of the $5000 limitation in 2 U.S.C. § 441a(a)(2)(A).

10. Respondents accepted a contribution in the amount of $4980 from the Conservative Party for the printing of its direct mail piece in connection with the 1982 primary election.

11. By using the Conservative Party's non-profit postage permit, respondents accepted a contribution from the Conservative Party, of $24,852.15, the amount of the discounted postage, for the 1982 primary election.

Failure to Report

12. Section 434(b) Title 2, United States Code, requires all political committees to disclose contributions received from other political committees together with the date and amount of such contribution.

13. Respondents failed to disclose the contribution received from the Conservative Party for postage costs.

V. The contributions of $29,832 accepted by respondents Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer, from the New York State Conservative Party State Committee/1984 Victory Fund in connection with the 1982 primary election were in excess of the contribution limitation by

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$24,832, in violation of 2 U.S.C. § 441a(f).

VI. Respondents Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer, failed to disclose the contribution received from the New York State Conservative Party State Committee/1984 Victory Fund, in violation of 2 U.S.C. § 434(b).

VII. Respondents will pay a civil penalty to the Treasurer of the United States in the amount of Five Thousand dollars ($5,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

X. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

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oral, made by either party or by agents of either party, that is not contained in this written agreement shall be valid.

XII. The Sullivan for Senate Committee, Joseph M. Sussillo, as treasurer, contends that they did not intentionally violate any laws of the United States or of the State of New York as they apply to the conduct of financing the Florence M. Sullivan candidacy for the Republican nomination for the United States Senate.

FOR THE COMMISSION:

Lawrence M. Noble
Acting General Counsel

5/1/87
Date

FOR THE RESPONDENTS:

Joseph M. SUSSILLO
treasurer

3-31-87
Date

9 0 4 0 8 0 4 3 5 8

COCC3463

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87 MAY 26 A9:13

JOSEPH M. SUSSILLO, J.D., P.C.
COUNSELLOR AT LAW

LOUISE M. BENEVENTO
PARALEGAL

437 Bay Ridge Parkway · Brooklyn, New York 11209
718 836-6612
718 745-5850

May 21, 1987

87 MAY 27 P2:57

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

Federal Election Commission
Washington D. C. 20463

Atten: Lawrence M. Noble,
Acting General Counsel

Re: MUR 1866
Sullivan for Senate Committee
and Joseph M. Sussillo, treasurer

Dear Mr. Noble:

Pursuant to the terms of the Conciliation Agreement accepted by the commission with respect to the above matter, I have enclosed a bank check in the sum of $5,000.00 in full satisfaction thereof.

Thank you for your cooperation in bringing this matter to a conclusion.

Very truly yours,

Joseph M. Sussillo (lb)

JOSEPH M. SUSSILLO
lb
encl.

9004080043359

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 23, 1990

Joseph M. Sussillo, Treasurer
Sullivan for Senate Committee
437 Bay Ridge Parkway
Brooklyn, NY 11209

Re: MUR 1866
Sullivan for Senate Committee and
Joseph M. Sussillo, as Treasurer.

Dear Mr. Sussillo:

You were previously advised by letter dated May 1, 1987 that the Commission had closed its file in the above-captioned matter as it pertained to the Sullivan for Senate Committee and you, as treasurer, and that the Commission's file would become part of the public record within thirty days after the matter was resolved with respect to the remaining respondents. You were further cautioned that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(b) and 437g(a)(12)(A) would remain in effect until the entire matter had been closed.

This is to notify you that on April 3, 1990, the Commission voted to accept a signed consent order and judgment submitted by the other respondents, the New York State Conservative Party State Committee/1984 Victory Fund ("Victory Fund") and Vincent G. Downing, as treasurer of the Victory Fund, in the ensuing litigation. FEC v. New York State Conservative Party State Committee/1984 Victory Fund, No. 87-Civ-3309(KTD) (S.D.N.Y. filed May 13, 1987). A copy of that document, which has now also been approved by the court, is enclosed for your files.

This concludes the Commission's consideration of this matter. The Commission's permanent file in the administrative enforcement matter will be forwarded to the Commission's Public Disclosure Division for placement on the public record. See 11 C.F.R. § 4.4. Should you wish to submit any additional legal or factual materials to be placed on the public record in connection with

that matter, please do so within ten days. Such materials should be sent to the attention of the Office of General Counsel.

Should you have any questions or problems, please contact Robert Bonham, the litigation attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure.

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RECEIVED
FEDERAL ELECTION COMMISSION

90 APR 23 AM 9:12

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL ELECTION COMMISSION, Plaintiff,	)	
v.	)	No. 87-Civ-3309(KTD)
NEW YORK STATE CONSERVATIVE PARTY STATE COMMITTEE/1984 VICTORY FUND, et al., Defendants.	)	FINAL CONSENT ORDER AND JUDGMENT

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 APR 23 PM 10:01

FINAL CONSENT ORDER AND JUDGMENT

This action for declaratory, injunctive and other appropriate relief was instituted by the plaintiff Federal Election Commission (the "Commission" or "FEC") against defendants the New York State Conservative Party State Committee/1984 Victory Fund ("Victory Fund") and Vincent G. Downing, as treasurer of the Victory Fund, pursuant to the express authority granted the Commission by sections 307(a)(6) and 309(a)(6)(A) of the Federal Election Campaign Act of 1971, as amended (the "Act"), codified at 2 U.S.C. §§ 437d(a)(6) and 437g(a)(6)(A).

This Court has original jurisdiction over this suit pursuant to 28 U.S.C. § 1345 as an action brought by an agency of the United States expressly authorized to sue by an Act of Congress. Venue is properly found in the United States District Court for the Southern District of New York in accord with 2 U.S.C. § 437g(a)(6)(A) as all defendants can be found, reside or transact business in this district. The plaintiff Commission has satisfied all jurisdictional requirements which are prerequisites

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to filing this suit.

The parties now agree to entry of this Court's judgment and consent to the issuance of this order, as evidenced by the signatures affixed hereto. Defendants assure this Court that they will comply in all respects with the Act.

The parties agree the pertinent facts in this matter are as follows:

(1) Plaintiff Federal Election Commission is the agency of the United States government empowered with exclusive primary jurisdiction to administer, interpret and enforce the Act. See generally 2 U.S.C. §§ 437c(b)(1), 437d(a) and 437g. The FEC is authorized to institute investigations of possible violations of the Act, 2 U.S.C. § 437g(a)(2), and has exclusive jurisdiction to initiate civil actions in the United States district courts to obtain judicial enforcement of the Act. 2 U.S.C. §§ 437c(b)(1) and 437d(e).

(2) Defendant New York State Conservative Party State Committee/1984 Victory Fund is a "political committee" within the meaning of 2 U.S.C. § 431(4) and is a multicandidate committee within the meaning of 11 C.F.R. § 100.5(e)(5).

(3) Defendant Vincent G. Downing is the treasurer of the Victory Fund. See 2 U.S.C. §§ 432(a), 432(c) and 434(a)(1).

(4) Section 431(8)(A)(i) of Title 2, United States Code, defines a "contribution" as any gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing any election for Federal office. Pursuant to the Commission's regulations, the term "anything of value"

includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii). In this regard, the provision of goods or services at less than the usual and normal charge is specifically defined as a contribution. Id.

(5) Section 441a(a)(2)(A) of Title 2, United States Code, prohibits contributions by multicandidate committees in excess of $5,000 to the authorized political committees of a candidate with respect to any election for Federal office.

(6) Section 434(b) of Title 2, United States Code, requires all political committees to disclose contributions made to other political committees along with the date and amount of such contributions.

(7) In September 1982, defendants authorized and paid $4,980 for the printing of direct mail literature on behalf of Florence M. Sullivan, a candidate for the 1982 Republican nomination for United States Senate from New York. Defendants also authorized Sullivan's principal campaign committee, the Sullivan for Senate Committee ("Sullivan Committee"), to mail that literature using the Victory Fund's non-profit postal permit.

(8) The Sullivan Committee mailed in excess of 360,000 pieces of campaign literature using the Victory Fund's non-profit postal permit at postage rates of 4.0 cents and 4.9 cents per piece. The total cost of postage for that mailing was $14,475.27.

(9) The customary bulk rate for postage at the time of the Sullivan Committee mailing was 10.9 cents per piece. At this

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postage rate, the Sullivan Committee's mailing would have cost $39,327.42.

(10) Defendants made a $4,980 contribution to the Sullivan Committee in connection with the 1982 primary election in New York by paying for the printing of the direct mail literature.

(11) By permitting the Sullivan Committee to use the Victory Fund's non-profit postal permit, defendants made a $24,852.15 in-kind contribution to the Sullivan Committee in connection with the 1982 primary election in New York. This amount represents the difference between what the postage for the Sullivan Committee's mailing would have cost at the customary rate of 10.9 cents per piece ($39,327.42) and the actual cost of postage for the Sullivan Committee's mailing using the Victory Funds' non-profit postal permit ($14,475.27).

(12) Defendants were required to report the $24,852.15 in-kind contribution to the Sullivan Committee with respect to postage costs pursuant to 2 U.S.C. § 434(b).

Therefore, it is ORDERED, ADJUDGED AND DECREED:

1. That defendants the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) by contributing $24,832.15 in excess of the statutory contribution limitation to the Sullivan for Senate Committee in connection with the 1982 primary election in New York;

2. That defendants the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer, violated 2 U.S.C. § 434(b) by failing to report the

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$24,852.15 in-kind contribution to the Sullivan for Senate Committee;

3. That the defendants the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing shall pay to the plaintiff Federal Election Commission a civil penalty in the amount of fifteen thousand dollars ($15,000) for which defendants shall be jointly and severally liable. This penalty shall be paid as follows:

(a) An initial payment of five thousand dollars ($5,000) due and payable by certified or cashier's check on the date of entry of this consent order and judgment;

(b) Thereafter, beginning on the first (1st) day of the second (2nd) calendar month after entry of this consent order and judgment, five (5) consecutive monthly installments of two thousand dollars ($2,000) each;

(c) Each such monthly installment shall be due and payable on the first (1st) day of the calendar month in which it becomes due;

(d) In the event that any payment is not received by the Commission by the first (1st) day of the calendar month in which it becomes due, the Commission may, in its discretion, accelerate the remaining payments and cause the entire amount then outstanding to become due and payable in full upon ten (10) days written notice to defendants. Failure by the Commission to accelerate payment with regard to any overdue amount shall not be

construed as a waiver of its right to accelerate with regard to any other overdue payment.

4. Defendants the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer, shall within fifteen (15) days from the date of entry of this consent order and judgment amend the periodic reports of receipts and expenditures previously filed by and/or on behalf of defendants with the Commission to disclose the in-kind contribution which is the subject matter of this litigation. The parties agree that payment of the entire fifteen thousand dollar civil penalty amount by defendants according to the foregoing schedule shall constitute complete satisfaction of all financial liability of defendants to the Federal Election Commission arising from this judgment and the default judgments in the prior litigation between the parties, and that once the fifteen thousand dollar civil penalty is paid and the amended reports required by this consent order and judgment are filed with the Commission, no future collection proceedings shall be brought by the Commission against defendants in connection with any of these judgments.

5. That defendants the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer, are permanently enjoined from future violations of 2 U.S.C. §§ 441a(a)(2)(A) and 434(b); and

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6. That the parties shall bear their own costs and attorney's fees in this litigation.

4/17/90
Date

Kevin Thomas Duffy
United States District Judge

We hereby consent to the entry of the foregoing consent order and judgment.

Lawrence M. Noble
General Counsel

Richard B. Bader
Associate General Counsel

Robert W. Bonham, III
Attorney

FOR THE PLAINTIFF
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463
(202) 376-5690

Thomas V. Ognibene
68-12 Fresh Pond Road
Ridgewood, NY 11385
(718) 386-9775

FOR DEFENDANTS
NEW YORK STATE CONSERVATIVE
PARTY STATE COMMITTEE/
1984 VICTORY FUND AND
VINCENT G. DOWNING, AS
TREASURER

Copies to:

Robert W. Bonham, III
Office of the General Counsel
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463
(Counsel for Plaintiff)

Thomas V. Ognibene
68-12 Fresh Pond Road
Ridgewood, NY 11385
(Counsel for Defendants)

9004080043368

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FEDERAL ELECTION COMMISSION, Plaintiff, v. NEW YORK STATE CONSERVATIVE PARTY STATE COMMITTEE/1984 VICTORY FUND, *et al.*, Defendants.	)	No. 87-Civ-3309(KTD) CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April 1990, I caused to be served by first-class mail, postage prepaid, a copy of the proposed final consent order and judgment which today was forwarded by the plaintiff Federal Election Commission to the clerk of the court for filing on behalf of the parties in the above-captioned litigation, on counsel for defendants at the following address:

Thomas V. Ognibene, Esquire
68-12 Fresh Pond Road
Ridgewood, NY 11385

April 9, 1990

Robert W. Bonham, III
Attorney

9 0 0 4 0 8 0 4 3 6 9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 5, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Whitney North Seymour, Jr.
100 Park Avenue, Room 2606
New York, New York 10017

RE: MUR 1866

Dear Ms. Seymour:

This is in reference to the complaint you filed with the Federal Election Commission on December 17, 1984, concerning the New York State Conservative Party State Committee.

After conducting an investigation, the Commission found probable cause to believe the Sullivan for Senate Committee, Joseph M. Sussillo, as treasurer, the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer, violated certain provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). With respect to the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer, a conciliation agreement was accepted by the Commission. Enclosed is a copy of the signed conciliation agreement.

As to the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer, the Commission was unable to settle the matter through a conciliation agreement and, therefore, authorized the filing of a civil suit in United States District Court. On April 3, 1990, the Commission voted to accept a signed consent order and judgment submitted by the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer, in the ensuing litigation. FEC v. New York State Conservative Party State Committee/1984 Victory Fund, No. 87-Civ-3309(KTD) (S.D.N.Y. filed May 13, 1987). A copy of that

document, which has now also been approved by the court, is enclosed for your information. The Commission's consideration of this matter is now concluded.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosures

40:0431

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 5, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Muriel F. Siebert
435 East 52nd Street
New York, New York 10028

RE: MUR 1866

Dear Ms. Siebert:

This is in reference to the complaint you filed with the Federal Election Commission on December 17, 1984, concerning the New York State Conservative Party State Committee.

After conducting an investigation, the Commission found probable cause to believe the Sullivan for Senate Committee, Joseph M. Sussillo, as treasurer, the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer, violated certain provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). With respect to the Sullivan for Senate Committee and Joseph M. Sussillo, as treasurer, a conciliation agreement was accepted by the Commission. Enclosed is a copy of the signed conciliation agreement.

As to the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer, the Commission was unable to settle the matter through a conciliation agreement and, therefore, authorized the filing of a civil suit in United States District Court. On April 3, 1990, the Commission voted to accept a signed consent order and judgment submitted by the New York State Conservative Party State Committee/1984 Victory Fund and Vincent G. Downing, as treasurer, in the ensuing litigation. FEC v. New York State Conservative Party State Committee/1984 Victory Fund, No. 87-Civ-3309(KTD) (S.D.N.Y. filed May 13, 1987). A copy of

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that document, which has now also been approved by the court, is enclosed for your information. The Commission's consideration of this matter is now concluded.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosures

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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