FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2361 merged w/ 2354, 2357, 2346

DATE FILMED 10-14-97 CAMERA NO. 2

CAMERAMAN Jmll

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MUR 2361

MUR 2094: ON OCTOBER 24, 1985, THE NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE FILED A COMPLAINT WITH THE FEC AGAINST LEGI-TECH, INC.

MUR 2307: ON DECEMBER 18, 1986, THE FUND FOR A CONSERVATIVE MAJORITY FILED A COMPLAINT WITH THE FEC AGAINST THE AMERICAN CITIZENS FOR POLITICAL ACTION (AKA REAGAN '86 POLITICAL VICTORY FUND), AND ROBERT E. DOLAN, TREASURER.

MUR 2346: ON FEBRUARY 12, 1987, THE REPUBLICAN NATIONAL COMMITTEE FILED A COMPLAINT WITH THE FEC AGAINST THE AMERICAN CITIZENS FOR POLITICAL ACTION AND ROBERT E. DOLAN, TREASURER, AND AGAINST THE AFGHAN MERCY FUND AND TONY CAMPAIGNE, TREASURER.

MUR 2361: ON MARCH 5, 1987, THE REPUBLICAN NATIONAL COMMITTEE FILED A COMPLAINT WITH THE FEC AGAINST BEST LISTS, INC.

ON JULY 14, 1987, THE COMMISSION VOTED TO MERGE MURS 2094, 2307 AND 2346 INTO MUR 2361 (i.e., AFTER THIS DATE, ALL CASES AGAINST ALL RESPONDENTS COLLECTIVELY WERE KNOWN AS "MUR 2361").

ON APRIL 6, 1988, THE COMMISSION VOTED TO INCLUDE THE INTERNATIONAL FUNDING INSTITUTE (ROBERT E. DOLAN, EXECUTIVE VICE PRESIDENT) IN MUR 2361.

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MUR 2094

LEGI-TECH, INC.

COMPLAINT: OCTOBER 24, 1985

MERGED WITH MUR 2361: JULY 14, 1987

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GCC# 8798

National Republican Congressional Committee

320 FIRST STREET, S.E. • WASHINGTON, D.C. 20003 • 202-479-7000

GENERAL COUNSEL
Jan W. Baran

LEGAL COUNSEL
Benjamin L. Ginsberg

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
85 OCT 24 P3:58

October 24, 1985

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

Dear Mr. Steele:

Enclosed please find for filing with the Federal Election Commission a Complaint prepared on behalf of the National Republican Congressional Committee against Legi-Tech, Inc. We respectfully request a prompt investigation by the Commission and that you apprise us of all actions taken in that investigation.

Sincerely,

Jan W. Baran
General Counsel

Benjamin L. Ginsberg
Legal Counsel

df

Enclosure

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Paid for by the National Republican Congressional Committee. Not produced at government expense.

BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

In the matter of:	)
	)
National Republican Congressional Committee,	)
	)
v.	)
	)
Legi-Tech, Inc.	)
	)
	)

COMPLAINT

The National Republican Congressional Committee ("NRCC"), 320 First Street, S.E., Washington, D.C. 20003, files this complaint and accompanying exhibit pursuant to 2 U.S.C. 437g(a) against Legi-Tech, Inc., ("Legi-Tech"), 507 Eighth Street, S.E., Washington, D.C. 20003.

I. FACTS

NRCC has always complied with the Federal Election Campaign Act (the "Act") requirement that it file with the Federal Election Commission ("FEC") those portions of its contributor lists reflecting donors who contributed more than $200.00 in a calendar year. 2 U.S.C. 434 (1982). Those compilations are now on file with the FEC.

The Act requires that the FEC make the lists filed by NRCC and other political committees available for public inspection and copying. Id., 438(a)(4). The Act, in requiring that the

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information be made public, also recognizes that political committees such as NRCC have associational interests on their own behalf and on behalf of their contributors. Accordingly, the Act specifies that the content of the reports filed with the FEC may not be copied or sold or used "for the purpose of soliciting contributions or for commercial purposes." Id. (emphasis added). NRCC has always submitted its reports under the explicit statutory protection that its lists would not be used, offered or sold for commercial purposes or made available in a manner that facilitated their use for purposes of solicitations.

The FEC, in recognition of the importance of this prohibition, conspicuously posts it throughout the FEC Public Records Office. It also appears on documents available through the Clerk of the House, and, since 1984, on all NRCC submissions to the FEC.

In order to aid further in the detection of violators of the prohibition on solicitation or commercial use, the Act permits NRCC and other political committees to place ten pseudonyms (or "salts") in each list filed. Id. NRCC has taken advantage of this procedure and regularly includes ten salts on each of its lists.

On October 1, 1985 Legi-Tech began selling to the public a campaign contribution tracking system under the trade name "Washington On-Line". According to numerous broadcast and print advertisements, Washington On-Line commercially sells its product for a fee of approximately $4,000.00 and in return provides access

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to and copies of a data base that includes the contributor lists submitted by NRCC to the FEC pursuant to the Act. As Legi-Tech's own published literature states: "Washington On-Line obtains FEC reports and enters all relevant information into" its campaign contribution tracking system. See Exhibit A. Legi-Tech admitted in a recent court case that it has copied the NRCC contributor lists from information obtained from NRCC reports on file with the FEC. Memorandum of Points and Authorities in Opposition to NRCC's Motion for Preliminary Injunction at 7, National Republican Congressional Committee v. Legi-Tech Corporation, No. 85-3106 (D.C. Cir. filed Oct. 8, 1985).

In addition to providing the names, street addresses and zip codes of NRCC's contributors, Legi-Tech also provides the telephone numbers of NRCC's contributors. Id.

If Legi-Tech is permitted to continue its copying and distribution of NRCC's lists and to use the information contained therein unlawfully, NRCC and its contributors will suffer irreparable injury. In return for exercising their rights to participate in the political process, NRCC contributors will likely be harrassed by both commercial and political organizations. Moreover, if a contribution to NRCC will subject a contributor to further solicitation and harassment, there will be a significant disincentive to making such contributions to NRCC. The damage to NRCC and its contributors, to their ultimate ability to participate in the political process, and to the free flow of political speech from these effects is precisely what the Act sets out to avoid.

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II. VIOLATION

Legi-Tech, through Washington On-Line, knowingly and willfully is violating 2 U.S.C. 438(a)(4) which states that information contained in FEC reports shall be made "available for public inspection and copying . . . except that any information copied from such reports or statements may not be sold or used by any other person for the purpose of soliciting contributions or for any commercial purposes . . . ." [emphasis added]. As the FEC itself has held, the intent of this statutory provision centers "on protecting the privacy of the 'public spirited citizens' who make contributions to campaigns." Thus, the very provision that authorizes the copying of reports filed with the FEC, as well as the Advisory Opinions of the FEC, make clear that copying is not authorized if the copying is done for commercial purposes or for the purpose of soliciting contributions.

Legi-Tech's copying, adaptation, distribution, and use of FEC reports, including NRCC's lists, and the information contained therein are outside of the limited authorization granted by the Act. Legi-Tech is selling, for profit, reports filed with the FEC, including NRCC lists, and the information contained therein. This is a patently commercial purpose. See FEC Advisory Opinion 1980-101, Fed. Election Camp. Fin. Guide (CCH) ¶ 5551 (1980) (holding that publication of a book containing contributor information would violate "commercial use" clause).

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Moreover, Legi-Tech has refused to take reasonable steps to ensure that the NRCC lists would not be used for solicitation purposes. Indeed, by adding telephone numbers to the lists, including NRCC's, Legi-Tech actively is encouraging solicitors to subscribe to its service.[1/] The addition of telephone numbers, as those sophisticated in professional solicitation operations are aware, also allows Legi-Tech, or its subscribers, to detect and possibly remove from their data base the pseudonymous names in the NRCC lists. This would make it impossible for NRCC or the FEC to detect misuse of the lists by Legi-Tech's customers, thereby reducing significantly the ability of the FEC to enforce these prohibitions.[2/] Thus, Legi-Tech is attempting to profit by facilitating the further unlawful use and copying of the FEC lists, including those of NRCC.

1/ In the fine print on one of its advertisements, Legi-Tech notes that using the information on its data base "for the purpose of soliciting contributions" would be "a violation of Federal law." See Exhibit A. Quite apart from confirming that Legi-Tech's activities were done in willful disregard of statutory requirements, the conspicious absence of a warning regarding "commercial use" indicates Legi-Tech's unwillingness fully to police its customers, as well as its disregard for the fact that its own use of NRCC's materials, when offered for a fee, is "commercial." Legi-Tech itself has acknowledged that its product contradicts the Act.

2/ Further, only the FEC, as the agency in charge of enforcing the Act, 2 U.S.C. 437c(b) (1982), has the power to impose sanctions on parties who unlawfully copy lists filed with the FEC. Legi-Tech not only does not have that power and would have no incentive to use it, but may actually insulate

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Legi-Tech's actions facilitating solicitations fly in the face, not only of the plain statutory language, but of the clear congressional desire to prevent the solicitation and harassment of contributors identified on FEC reports. As the sponsor of the amendment that added the limiting language to section 438(a)(4) stated in proposing the amendment:

> [w]e all know how much of a business the matter of selling lists and list brokering has become. These names would certainly be prime prospects for all kinds of solicitations, and I am of the opinion that unless this amendment is adopted, we will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harrassment, and in that way tend to discourage them from helping out as we need to have them do.

117 Cong. Rec. 30,058 (1971) (Statement of Sen. Bellmon); Accord FEC Advisory Opinion 1980-78, Fed. Election Camp. Fin. Guide (CCH) ¶ 5530 (1980) ("The principal, if not sole, purpose of the provision was to protect contributor information and lists from being used for commercial purposes").

Footnote 2 Continued

> unlawful users from FEC sanctions, by undermining the ability of the FEC and NRCC to detect illegal use. Furthermore, to the extent that Legi-Tech's acquisition of telephone numbers allows it, or its customers, to remove the salts, improper use of FEC lists, including NRCC's, would be that much more difficult to detect.

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The Supreme Court has stated that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." Buckley v. Valeo, 424 U.S. 1, 64 (1976). In sustaining the Act's mandatory disclosure of contributions, the Court emphasized the continuing constitutional protection accorded these individuals. In fact, political parties "need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harrassment or reprisals from either Government officials or private parties" in order to qualify for an exemption from the Act's disclosure provisions. Id. at 74 (emphasis added).

In sum, Legi-Tech's past actions and planned distribution and use of FEC lists, including NRCC's, fall far outside of the scope of the limited authorization provided by the Act.

III. PRAYER FOR RELIEF

The NRCC requests that the FEC investigate this violation and enforce 2 U.S.C. 438(a)(4) and thereby protect the privacy of NRCC contributors.

The NRCC further requests that the FEC seek the maximum fines of each violation as set forth in 2 U.S.C. 437g, and take all steps necessary, including civil and injunctive action, to prevent respondents from continuing their illegal activity.

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IV. VERIFICATION

The undersigned counsel for NRCC swear that the allegations and facts set forth in this complaint are true to the best of their knowledge, information and belief.

Jan W. Baran
General Counsel, NRCC

Benjamin L. Ginsberg
Legal Counsel, NRCC

Subscribed and sworn before me this 24th day of October, 1985.

Philip A. Guarino
Notary Public

My Commission Expires: ~~My Commission Expires June 15, 1986~~.

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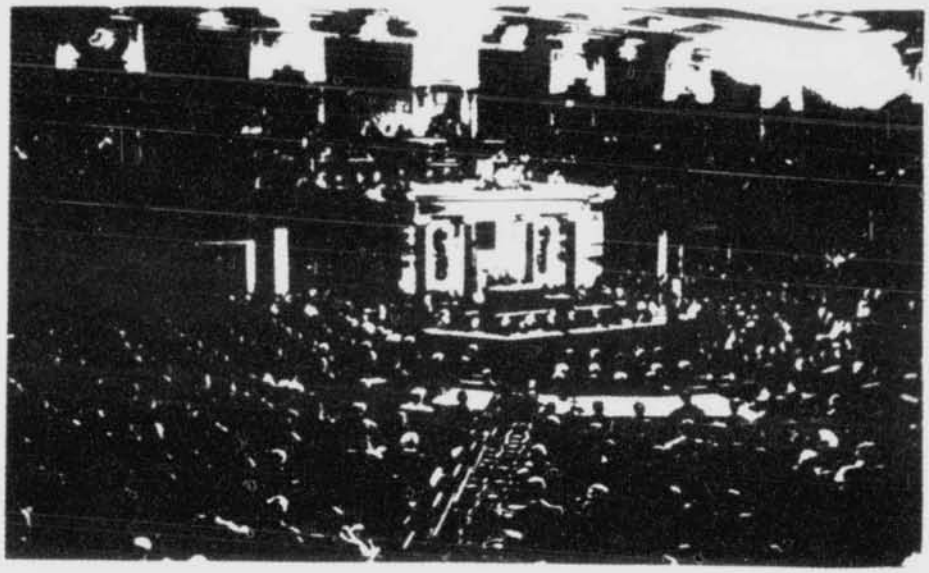
EXHIBIT A



The Campaign Contribution Tracking System™

Now you can learn whose money talks.
And who listens.

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The Campaign Contribution Tracking System gives you all the advantages of on-line information retrieval.

Speed.

It takes only seconds for the system to find, organize, and report the information you want. You'll spend only a few minutes at your computer telling the system what to look for.

Accuracy.

The Campaign Contribution Tracking System includes every piece of relevant information from each FEC report. With several stages of automatic and manual error detection before the information becomes a part of the system, we can assure the highest levels of data accuracy and completeness.

Low cost.

Your annual subscription to the Campaign Contribution Tracking System allows unlimited access. There are no hourly use charges, connect fees, and other additional costs, so you can search the system as often and as long as you want. We've increased the system's value to you by offering it at a cost that encourages—rather than penalizes—extensive use.

Easy to use.

We designed this system for people who need campaign contribution information. . . not for computer technicians. That's why you enter plain-English words, names, or single-letter answers to multiple-choice questions to describe the information you're after. Every step of the way, the system helps you by clearly asking what you want to find, and listing your options.

Availability.

The system is available for searching 24 hours a day, 365 days a year.

Our comprehensive service keeps you informed, on-line, and productive.

If you subscribe to LEGI-SLATE® Congressional Quarterly's Washington Alert, or any other on-line information retrieval service, you probably have all the equipment you need to begin using Washington On-Line's Campaign Contribution Tracking System.

But whether you're thoroughly experienced in on-line search procedures, or completely new to the use of electronic libraries, we can help you get the most out of our unique system.

Training.

Our comprehensive service begins with hands-on training *in your office*. We'll review the system step-by-step. . . to familiarize you with the wide range of information available and to show you how to obtain the reports of most use to you.

On-call customer support.

After that, we're available during normal working hours at 202/543-9101 to answer your questions or help in any way we can. . . whether you're having a technical problem or if you need to know more about the information in the system.

Ready reference.

Our subscriber newsletter will keep you up-to-date on system changes and improvements, remind you of who to call for assistance at Washington On-Line, and offer ideas on new applications.

And you'll find a complete summary of system information in our easy-to-follow user's guide.

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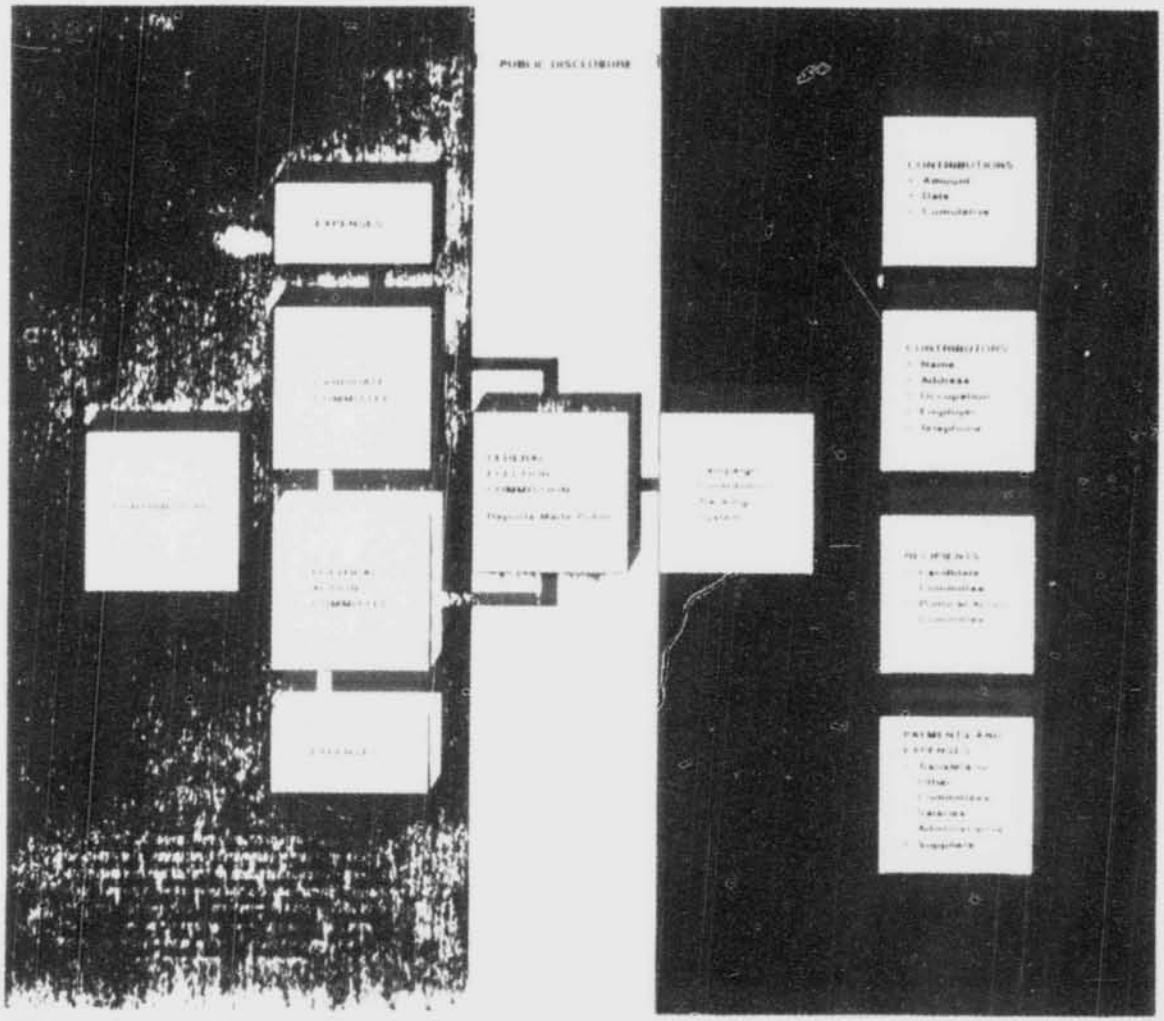

Each election cycle, more than $1 billion in campaign contributions and expenses results in some 50,000 reports representing more than 1 million pages of information.

The Campaign Contribution Tracking System™ from Washington On-Line

The perfect complement to your current legislative monitoring efforts.

Whether you're a reporter working on a story, a lobbyist working for a cause, or a private citizen who tracks Congress or federal agencies, you need to know the certain who lobbied how.

You need to know why.

Often the answer can be found in campaign contributions.

But most of you monitoring the flow of money to and from a candidate committee or PAC begins with a trip to the Federal Election Commission to scan pages of the *Reports of Receipts and Disbursements*. And even though this information on federal campaign funding is publicly available, the sheer volume and lack of cross-referencing have made it nearly inaccessible.

Until now.

Putting you in touch with the information you need.

Washington On-Line has assembled the first computerized file of FEC reports available for unlimited use. The Campaign Contribution Tracking System™.

Now, using your PC, word processor, or any terminal that communicates over the telephone, you can find and analyze campaign funding information quickly and easily.

The system includes all FEC reports filed since 1983: more than 50,000 reports representing 1 million pages of information on 500,000 contributions exceeding $1 billion. Filings are continually updated as new reports become public.

Who gave how much money to whom? What did they do with it?

Enter the name of any candidate, party, or PAC and discover every contribution over $200 by source, date, and amount. Identify every reported campaign expense.

And for the first time, you can learn of all the contributions given by any individual, simply by entering that person's name.

Since individual contributors don't have to make public disclosures, information on them is only obtainable from the reports of recipients. Before the Campaign Contribution Tracking System, your only access to this information was by looking through millions of pages of committee filings for every reference to the person you're interested in.

Now you can find all the information you want instantly, without leaving your office.

And by combining several search qualifiers, you can make the information received as general or specific as you want.

For example, you may want a list of every contributor to a particular candidate. Or you could narrow that search to contributions made after the election.

The system will let you compare the salary and administrative expenses of various committees. Or find payments over certain dollar amounts.

If you prefer, you can obtain a complete summary from any committee's FEC report.

You can display this information on your computer's video screen, or print out a copy for closer examination.

And since your search will take only a few seconds, finding exactly what you want is always worth the effort.

507 Eighth Street, Southeast, Washington, D.C. 20003 202/543-9101 © 1985 Washington On-Line

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Printed in USA

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ANNOUNCING

The Campaign Contribution Tracking System™ from Washington On-Line

Until now, monitoring the flow of dollars to and from a candidate's campaign committee or a PAC began with a trip to the Federal Election Commission.

You have to find the reports you need, copy them, and then manually cross-reference information to learn anything useful.

With more than 500,000 contributions cited in the 50,000 *Reports of Receipts and Disbursements* filed every two years, following even one committee could be difficult. And tracking an individual contributor nearly impossible.

We've done the hard part.

Now you can access and analyze federal campaign contribution information quickly, easily, and from your own desk. Because Washington On-Line has assembled the only computerized file of all FEC reports.

Already in the system are all filings since 1983: more than 1 million pages of information reporting on the $1 billion in contributions affecting the 1984 primary and general elections. Filings will be updated as new reports become public.

The perfect complement to your current legislative monitoring efforts. Or a valuable stand-alone service.

If you subscribe to LEGI-SLATE®, Congressional Quarterly's Washington Alert Service, or any other on-line information retrieval system, you probably have all the equipment you need to begin using the Campaign Contribution Tracking System.

It's easy to use, and works with your PC, word processor, or any kind of terminal that communicates over the telephone.

The Campaign Contribution Tracking System includes information on:

Contributors	Contributions	Recipients	Committee Payments	Expenses
Name Address Employer Telephone number	Amount Date	Committee names and addresses Cash on hand	To other candidate committees To other PACs	Staff salaries Administrative Campaign activities Services

It is a violation of federal law to sell or use information copied from FEC reports for the purpose of soliciting contributions from other than political committees.

We help you discover the link between political contributions and who won or lost. And which legislation passed or failed.

Information by recipient.

You can look at all the information contained in each candidate committee or PAC report. This includes the date, amount, and source of each contribution of $200 or more. And every reported committee expense.

Learn who contributes to which candidates or PACs. Discover how efficiently committees spend their funds. Track transfer payments from committee-to-committee.

Information by contributor.

For the first time, you can discover all the contributions made by any individual mentioned in any committee report.

Before the Campaign Contribution Tracking System, the only way to do this would have been to search manually through the millions of pages in hopes of finding every reference to the person you're interested in. Now your automated search takes only seconds, and yields the exact information you want.

Besides the amount, dates, and recipients of contributions, Washington On-Line provides the address, occupation, and employer of every listed contributor. Many entries also include telephone numbers.

Presented in customized reports.

You decide the contents of each report you receive.

For example, you can search for all contributions to a particular candidate . . . just those over a certain amount . . . or between specific dates. You can combine any number of search qualifiers. You can display this information on your computer's video screen. But more often you'll prefer to print out a copy for closer examination.

One subscription fee provides unlimited use.

Unlike other computerized search services you may be familiar with, Washington On-Line's Campaign Contribution Tracking System has no hourly fees or other connect charges. You can search the system as often and as long as you want. Your annual subscription covers it all.

Who is Washington On-Line?

Were a service of Legi-Tech Corporation, an established electronic publisher and subsidiary of McClatchy Newspapers. Legi-Tech has been providing highly successful contribution monitoring systems in New York and California since 1981. Today, more than 500 clients subscribe to a full range of Legi-Tech's on-line services.

See for yourself.

Call today, or return the attached postage-paid card, and we can arrange to show you the system at work. In your Washington office.

Only in a demonstration can you appreciate the power, speed, and accuracy of the Campaign Contribution Tracking System.

WASHINGTON ON-LINE

607 Eighth Street, Southeast, Washington, D.C. 20003 202/543-9101 © 1985 Washington On-Line. Printed in USA

"Campaign Contribution Tracking System" is a service mark of Washington On-Line.

Washington On-Line helps you find out whose money talks. And who listens.

I want to learn more about the Campaign Contribution Tracking System™ from Washington On-Line.

☐ Please call me to arrange a demonstration. ☐ Please send additional information.

Name _____ Title _____

Organization _____

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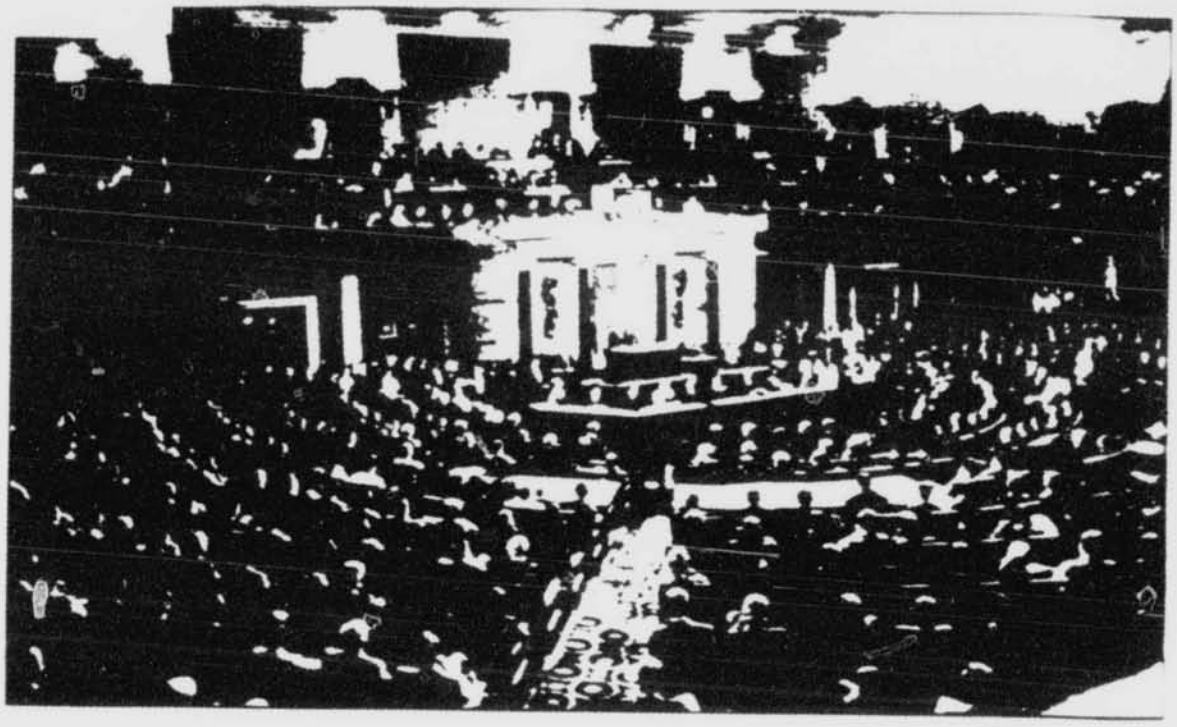
Legal Times of Washington, September 2, 1985, at A28.

LEGAL TIMES

Money talks.



We've made it easy to find out who listens.

Announcing the Campaign Contribution Tracking System™ from Washington On-Line.

Now you can find and examine federal campaign contribution information without going to the Federal Election Commission. Because Washington On-Line has implemented a computerized file of FEC *Reports and Documents* that you can search from your own desk.

And all you need to begin using this system is a PC, word processor or any terminal that communicates over the telephone.

Who gave how much money to whom? What did they do with it?

With the Campaign Contribution Tracking System, you can easily obtain a list of them, tabulate contribution received by any candidate committee, party, political action committee (PAC), or other entity. Plus, all committees and their PAC's must report expenses. Track committee contributions, dates, name, address, and employer information.

[illegible]

The perfect complement to your current legislative monitoring efforts.

The campaign contribution system is perfect for those who want to know who is behind the legislation they are following. Is it a special interest group? Is it a PAC? Is it a political party? Is it a corporation? Is it a trade association? Is it a political action committee? Track the money and you will know who is behind the legislation.

[illegible] are updated as fast as they become public.

No hourly fees or connect charges.

The annual subscription fee allows unlimited use of the system, so you can search as often as you want.

Proven reliable and accurate.

Campaign Contribution is a service of [illegible], a subsidiary of Washington Newspapers, which has [illegible] successfully contributed [illegible] systems in New York [illegible]

[illegible] information [illegible] demonstration of the Campaign Contribution Tracking System. [illegible] Washington On-Line [illegible]

WASHINGTON ON-LINE

[illegible] Washington [illegible]

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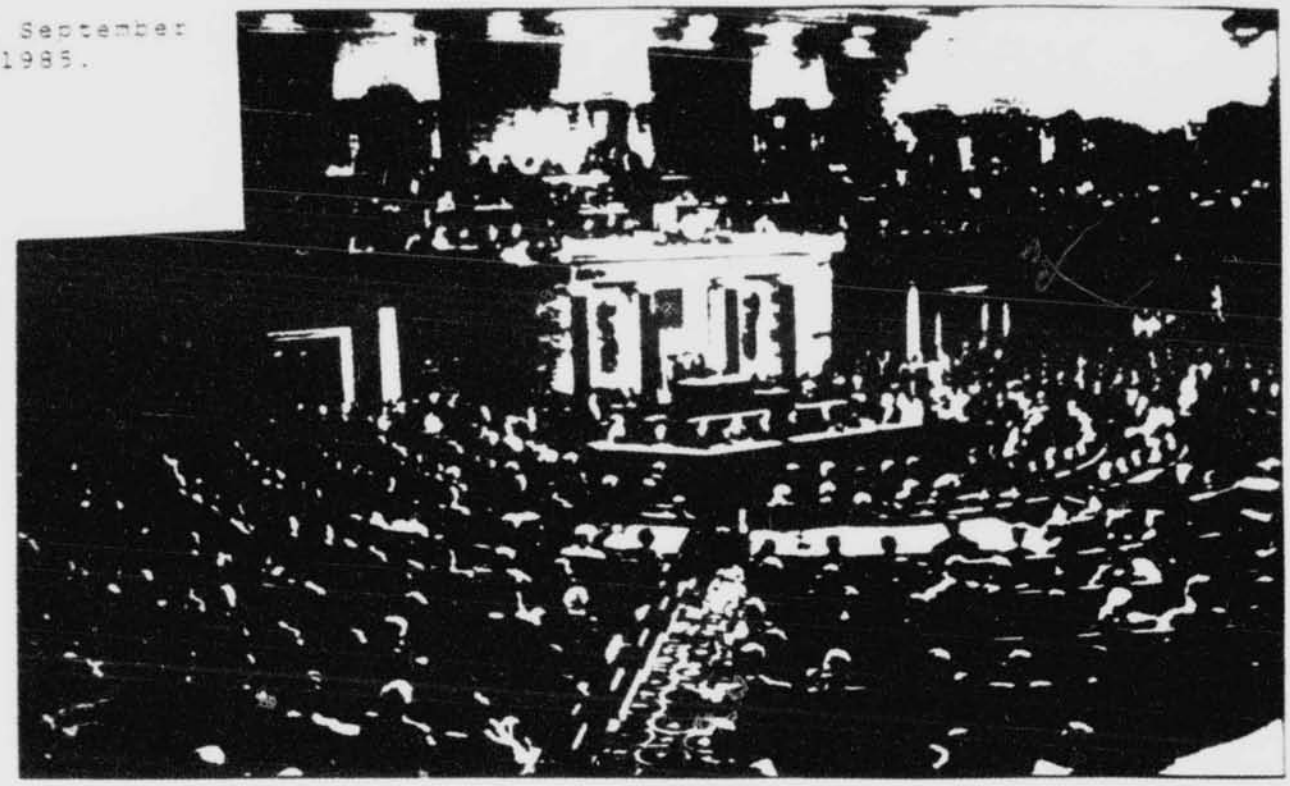
Money talks.

Time, September 30, 1985.



We've made it easy to find out who listens.

Announcing the Campaign Contribution Tracking System℠ from Washington On-Line.

Now you can find and examine federal campaign contribution information without going to the Federal Election Commission. Because Washington On-Line has assembled a computerized file of FEC *Reports of Receipts and Disbursements* that you can search from your own desk.

And all you need to begin using this system is a PC, word processor or any terminal that communicates over the telephone.

Who gave how much money to whom? What did they do with it?

With the Campaign Contribution Tracking System, you can quickly obtain a list of every reportable contribution received by any candidate committee or PAC.

Print out summary tables from their FEC filings. Monitor campaign expenses. Track committee committee payments. Search by name, address and employer of every contributor.

And for the first time, easily track the contributions made by individuals simply by entering the contributors name.

The perfect complement to your current legislative monitoring efforts.

The Campaign Contribution Tracking System helps you understand the link between contributions and votes won or lost. Or which legislation passed or failed.

Already in the system are more than [illegible] reports covering the last [illegible] elections. [illegible] pages of [illegible] on [illegible] contributions totaling $[illegible] billion. Filings are updated as new reports become public.

No hourly fees or connect charges.

The annual subscription fee allows unlimited use of the system, so you can search as often or as long as you need.

Proven reliable and accurate.

Washington On-Line is a service of LegiTech Corporation, a subsidiary of Multiform Newspapers, which has provided highly successful contribution monitoring systems in New York and California since [illegible].

Call today for more information, or to arrange a free demonstration of the Campaign Contribution Tracking System. Then see for yourself how quickly you can discover whose money talks. And who listens.

WASHINGTON ON-LINE

[illegible] Eighth Street, Southeast, Washington, D.C. [illegible]

[illegible] Washington On-Line

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 29, 1985

Legi-Tech, Inc.
507 Eighth Street, S.E.
Washington, D.C. 20003

Re: MUR 2094

Dear Sirs:

This letter is to notify you that on October 24, 1985, the Federal Election Commission received a complaint which alleges that Legi-Tech, Inc. 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 2094. Please refer to this number in all future correspondence.

Under the Act, Legi-Tech, Inc. has the opportunity to demonstrate, in writing, that no action should be taken against Legi-Tech, Inc. in 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 Eric Kleinfeld, the staff member assigned to this matter at (202)523-4143. 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
Complaint
Procedures
Designation of Counsel Statement

9704384150 3

MUR 2094

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 29, 1985

Jan W. Baran, General Counsel
National Republican Congressional
Committee
320 First Street, N.E.
Washington, D.C. 20003

Dear Sir:

This letter will acknowledge receipt of your complaint which we received on October 24, 1985, which alledges possible violations of the Federal Election Campaign laws by Legi-Tech, Inc. 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 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. We have numbered this matter under review MUR 2094. Please refer to this number in all future correspondence. If you have any questions, please contact Lorraine F. Ramos at (202) 523-4075.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure

9704384150 4

BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

In the Matter of NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE v. LEGI-TECH, INC.	MUR NO. 2094

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
95 NOV 15 AM 11:52

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RESPONSE TO COMPLAINT

Pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6, Respondent Legi-Tech, Inc. ("Legi-Tech") hereby responds to the complaint filed in this proceeding by the National Republican Congressional Committee ("NRCC"). Legi-Tech offers to its subscribers an electronic news service that includes, among other items, information on campaign contributions obtained from public disclosure reports filed with the Federal Election Commission. Seeking to block the publication of this information, NRCC initiated an unsuccessful action in the United States District Court for the District of Columbia claiming that it holds a copyright in its public campaign contribution reports submitted to the Commission, and that Legi-Tech had infringed this copyright. After NRCC presented all of the facts on which it relies in its FEC complaint, Judge

Gerhard Gesell denied NRCC's request for relief in its entirety and ruled that the evidence before him showed that Legi-Tech was operating in full compliance with the FEC statute and regulations.

For reasons explained in detail below, Judge Gesell was correct. Legi-Tech qualifies under the exemption to the restriction on the use of information from FEC reports for commercial purposes set forth in 11 C.F.R. § 104.15(c). Legi-Tech uses this information only in "newspapers, magazines, books or other similar communications" and does not distribute the information for the purpose of soliciting contributions. Indeed, a recent decision of the United States Court of Appeals for the Second Circuit explicitly recognized the status of Legi-Tech as "an organ of the press." Legi-Tech, Inc. v. Keiper, 766 F.2d 728, 730 (2d Cir. 1985). A finding by the Commission that Legi-Tech does not qualify for the exemption would put the FEC in direct conflict with the Second Circuit. Accordingly, no action should be taken on the basis of the NRCC complaint.

FACTUAL BACKGROUND

I. Legi-Tech's Electronic Publication Activities

Legi-Tech is a subsidiary of McClatchy Newspapers, a diversified media company that owns and operates several metropolitan newspapers, four cable systems, a number of radio

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stations, videotext and electronic library services, and ventures in new communications technologies such as multipoint distribution service and cellular telephone. McClatchy has adopted a strategy of diversifying its traditional daily newspaper operations by developing new methods of delivering information that incorporate recent advances in communications technology.[1]

Legi-Tech is such a new service. Since 1981, it has been in the business of collecting and transmitting legislative and political information to its subscribers over telecommunications facilities. In California and New York, it markets a service known as the Legi-Tech System, which offers subscribers summaries of state legislation in plain terms, transmits the recorded votes on each bill, and provides the attendance record of state legislators. An important feature of the Legi-Tech System in California and New York is the transmission of information about political contributions to state legislators, including names and addresses of contributors, amounts of contributions, and the dates of the

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[1] Affidavit of Frank Washington, Vice President of McClatchy Newspapers and Legi-Tech, ¶¶ 3-4 ("Washington Affidavit"). This affidavit was submitted in connection with Legi-Tech's opposition to NRCC's motion for a preliminary injunction in the District Court proceeding, National Republican Congressional Committee v. Legi-Tech Corp., Civil Action No. 85-3106. A copy of the affidavit is attached as Exhibit 1 to this response.

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contributions. Legi-Tech originally began to offer this service in California at the request of its newspaper clients.[2]

Legi-Tech's operations in California and New York have been successful. Hundreds of customers subscribe to Legi-Tech's on-line services. The company has always targeted the print media as major customers, and its current and former subscribers include Newsday, the Los Angeles Times, Gannett News Service, The New York Times, Capital Newspapers Group, and the New York Post. Legi-Tech's other customers include lobbyists, corporations, local governments (including the New York City's mayor's office), state agencies, and trade associations. These customers rely on the Legi-Tech service to keep abreast of rapidly changing pending legislation, and to obtain a comprehensive and up-to-date picture of contributions to state legislators and campaign committees.[3]

Legi-Tech is expanding its electronic information services to include data maintained on the public files of the federal government. Under the trade name Washington On-Line, Legi-Tech offers two electronic information services: the Bill

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[2] Washington Affidavit ¶¶ 5-7.

[3] Washington Affidavit ¶ 8. The system is also popular with the political parties; in fact, its largest single private subscriber is the California Republican Party. Id.

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Text Tracking System ("Bill Text") and the Campaign Contribution Tracking Service ("CCTS").[4]

It is CCTS that triggered NRCC's complaint. CCTS offers a computerized data base containing all campaign contribution reports on file and available for public inspection at the FEC. Legi-Tech is developing this service in part because its contribution reports at the state level have generated significant customer demand, particularly among the news media, many of which cover the federal government in Washington.[5]

Through CCTS, a subscriber will be able to access through his personal computer a variety of data from the FEC reports. The data base will include information on (1) political contributions, including the amount, date, and cumulative total of the contributions; (2) contributors, including their name, address, occupation, employer, and in some cases telephone numbers; (3) contribution recipients,

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[4] Washington Affidavit ¶ 10. The Bill Text service permits Legi-Tech subscribers to obtain instantly a current copy of every bill and resolution introduced before Congress. This is the first computerized file of federal legislation that permits the user to call up this information at his desk. By using word or phrase searches, subscribers can locate every piece of legislation that refers to a particular topic. Legi-Tech will charge a single annual fee to subscribers, allowing unlimited searches at no extra cost. Washington Affidavit ¶ 11. A copy of the promotional materials for Bill Text is attached to this response as Exhibit 2.

[5] Washington Affidavit ¶ 12. A copy of the promotional materials for CCTS is attached to this response as Exhibit 3.

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including whether the recipient is a candidate committee or other political committee; and (4) disbursements, such as amounts of transfers to other committees, salaries, administrative expenses, and payments to suppliers.[6]

This information is obtained from public reports on file at the FEC. Legi-Tech creates its data base by purchasing the FEC microfilm reels, at $10 per reel, that contain all of the campaign contribution reports on file with the agency.[7] Legi-Tech then expends considerable effort and money to input this information into its data base.[8]

In performing its data gathering and reporting function, Legi-Tech has augmented the FEC materials in several ways. First, because of the software in Legi-Tech's system, a CCTS subscriber is capable of targeting precisely the information he desires -- for example, by contributor, time period or geographic area. A reporter working under deadline pressure can quickly research and acquire whatever data he needs.[9] In addition, Legi-Tech has added telephone numbers of

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[6] Washington Affidavit ¶ 13.

[7] Washington Affidavit ¶ 19.

[8] Legi-Tech estimates that its use of outside data processing organizations as well as internal staff to input the data has cost about $500,000.00. Washington Affidavit ¶ 20.

[9] Washington Affidavit ¶¶ 14, 16-17.

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individual contributors.[10] This feature was added because, in one of its first projects, the Los Angeles Times asked Legi-Tech to compile a list of contributors to the gubernatorial campaign of Mayor Tom Bradley, including their telephone numbers. This facilitated reporters' efforts to contact contributors directly for interviews. Legi-Tech decided that it would be useful to add this feature to its CCTS service in Washington, thereby providing another way in which Legi-Tech could distinguish itself from other information providers.[11]

Legi-Tech includes on its sales materials and data base warnings intended to inform its customers of the limitation in the Federal Election Campaign Act on the use of information from FEC reports. In its advertising materials, the warning reads as follows: "It is a violation of federal law to sell or use information copied from FEC reports for the purpose of

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[10] Plaintiff alleges that Legi-Tech's addition of telephone numbers will allow Legi-Tech or its subscribers to remove the pseudonymous names ("salts") inserted into the NRCC reports, that are designed to detect misuse of contributor lists. Complaint at 3, 5. See H. Rep. No. 422, 96th Cong., 1st Sess. 23 (1979). Legi-Tech in fact does not and cannot identify these salts, nor does it have any desire to do so. The system has telephone numbers for only half of the contributors listed in the reports. Thus, Legi-Tech's publication of the FEC reports does not in any way interfere with the FEC's ability to monitor illegal use of contributor lists. Washington Affidavit ¶ 21.

[11] Washington Affidavit ¶ 21.

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soliciting contributions from other than political committees." The warning on the CCTS data base states: "Any information copied from FEC reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes." This statement is precisely the same as that on the computerized data base offered by the FEC. The warning on the CCTS system appears every time a CCTS subscriber obtains access to the data base that contains individual contributor information.[12] In addition, in its standard contract for subscribers, Legi-Tech limits the uses to which the information received over its data base may be put.[13]

The primary benefit of CCTS is that it is the first service to make this massive amount of public information accessible in a convenient, computerized form. Until now, monitoring the flow of dollars to or from a candidate's committee or a political committee required a personal trip to the FEC to pore over hundreds of thousands of pages of reports to ferret out the desired information. For example, if a researcher wanted to identify all contributions made by a particular individual or by industry representatives mentioned

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[12] Washington Affidavit ¶¶ 22-23.

[13] Washington Affidavit ¶ 23.

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in a report to the FEC, he would have to search thousands of pages of reports, and then would still not be sure that he has an accurate total. Purchasing the microfilm from the agency does not alleviate this chore of reviewing large amounts of information in which the subscriber has no interest. With CCTS, a subscriber has the capability of using his personal computer or word processing equipment to call up such data in seconds.[14]

II. Proceedings To Date

Complainant NRCC is an unincorporated association of Republican Congressmen in the United States House of Representatives. NRCC makes contributions to the campaigns of Republican candidates for election to Congress, and supports their candidacy through media advertisements. Hence, NRCC files reports pursuant to FECA with the Clerk of the House of Representatives, who in turn submits them to the FEC.[15] Legi-Tech is electronically publishing only information from NRCC's public FEC reports.

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[14] Washington Affidavit ¶ 16. The Commission itself has recognized the need to make its data more readily accessible to the public. It has begun providing much of its campaign contribution information on a computer data base accessible under the Freedom of Information Act. Washington Affidavit ¶ 24.

[15] 2 U.S.C. § 432(g)(1), (3); 11 C.F.R. § 105.1.

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On September 19, 1985, NRCC applied for a copyright registration for its FEC reports with the Copyright Office. After initially expressing some reluctance to register these documents because they did not appear to be copyrightable, the Copyright Office relented and registered the documents, while indicating that the courts would ultimately determine whether they were copyrightable.

On September 27, 1985, NRCC filed a complaint before the United States District Court for the District of Columbia alleging that Legi-Tech had infringed NRCC's copyright in its FEC reports and had committed a tort of conversion and misappropriation arising from its electronic publication of the information in the NRCC reports. National Republican Congressional Committee v. Legi-Tech Corp., Civil Action No. 85-3106 (D.D.C. filed September 27, 1985). On October 15, 1985, Judge Gesell denied NRCC's motion for a preliminary injunction restraining the publication of information from the NRCC reports. The Court found that NRCC is not entitled to copyright protection for lists of contributors that it is required by statute to file with the FEC solely for the purpose of public disclosure. Accordingly, NRCC had shown "absolutely no likelihood of success on the merits in this case."[16]

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[16] Hearing Transcript at 6, Exhibit 4 hereto.

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In analyzing NRCC's claim that Legi-Tech had committed misappropriated information from the FEC reports, the Court observed:

> It is suggested in Count Two of the complaint that in some fashion as yet not fully explained to the Court defendant has been guilty of conversion of some kind. I have taken that to mean that in some fashion it is believed that the defendant is utilizing the information obtained from the public files in a manner inconsistent with the rules and regulations of the Federal Election Commission. As to that there is no evidence to support it. Indeed, all of the material before the Court would suggest that [Legi-Tech] is operating consistent with the rules and regulations of the Commission, but, in any event, if there is some violation of those rules and regulations the matter has to be addressed under the statute before the Commission administratively given, of course, limited statutory jurisdiction in such matters.[17]

The Court subsequently entered a final order in the case, denying all relief requested by NRCC.[18]

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[17] Hearing Transcript at 3 (emphasis supplied).

[18] NRCC has appealed that decision. The United States Court of Appeals for the District of Columbia Circuit recently granted an uncontested motion for an early briefing schedule submitted by NRCC, but denied NRCC's request for expedited argument, concluding that NRCC had not shown that it had suffered any irreparable injury as a result of Legi-Tech's actions.

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ARGUMENT

Legi-Tech Is Operating in Full Compliance with the Federal Election Campaign Act and FEC Regulations.

NRCC contends that Legi-Tech is violating 2 U.S.C. § 438(a)(4), which provides that reports and statements filed with the Commission are to be made public, except that:

> any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

This restriction is echoed in the regulations. See 11 C.F.R. § 104.15(a). The regulations, however, carve out an exception to this general restriction:

> The use of information, which is copied or otherwise obtained from reports filed under 11 C.F.R. Part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.

This exemption -- which NRCC never cites in its complaint -- reflects Congress's intent that legitimate news organizations be free to publish information from the public campaign contribution reports. The colloquy on the Senate floor in connection with the amendment was as follows:

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MR. BELLMON. Mr. President, the amendment is self-explanatory. I shall read it again. It provides that "any information copied from such reports and statements shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose."

. . . This amendment is intended to protect, at least to some degree, the men and women who make contributions to candidates or political parties from being victimized by that practice.

MR. NELSON. Do I understand that the only purpose is to prohibit the lists from being used for commercial purposes?

MR. BELLMON. That is correct.

MR. NELSON. The list is a public document, however.

MR. BELLMON. That is correct.

MR. NELSON. And newspapers may, if they wish, run lists of contributors and amounts.

MR. BELLMON. That is right; but the list brokers, under this amendment, would be prohibited from selling the list or using it for commercial solicitation.

117 Cong. Rec. S30058 (1971) (emphasis added).

The service offered by Legi-Tech plainly falls in the category of "newspapers, magazines, books, or other similar communications . . ." Legi-Tech is a subsidiary of McClatchy Newspapers. It provides in an electronic format information that might otherwise be carried in newspapers or newsletters, including a full range of legislative and political information. Legi-Tech's services include tracking the status of legislative bills, including their legislative history;

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identifying legislators voting for and against a particular measure; and providing the attendance records of legislators. The information on contributors to federal candidates and committees that Legi-Tech offers via CCTS complements the variety of legislative and political information already published by Legi-Tech on its electronic data bases.

Indeed, the federal courts have explicitly recognized Legi-Tech's status as a member of the media. In a recent dispute, the State of New York singled out Legi-Tech by statute and refused to provide it access to a competing state-run electronic legislative news service. Legi-Tech, Inc. v. Keiper, 766 F.2d 728 (2d Cir. 1985). Ruling that Legi-Tech is an "organ of the press," id. at 730, the Second Circuit found that the state had unlawfully denied access to the company. First, the court was concerned that the statute at issue might prevent Legi-Tech from publishing the full text of pending bills "in a package with relevant political information such as voting records and campaign contributions." Id. at 732. This was important, the court observed, because "information about legislative proceedings . . . is absolutely vital to the functioning of government and to the exercise of political speech, which is at the core of the First Amendment." Id.

The court noted that it is now technologically possible to transmit "electronic newspapers" to the public that contain not only legislative information but a variety of other data as

well. In an observation equally pertinent to this case, the court declared that it was dealing "in an area of rapidly developing technology and with novel and expanding forms of the exercise of the freedom of the press guaranteed by the First Amendment."[19] The Second Circuit's characterization of Legi-Tech's activities, standing alone, is sufficient authority for the FEC to determine that Legi-Tech falls within the exemption in 11 C.F.R. § 104.15(c) and to close the file on the matter. Indeed, a contrary ruling would place the Commission squarely in conflict with the Second Circuit.

Support for the conclusion that Legi-Tech falls within the exemption can also be found in past Commission findings. In re Virginia Political Report, MUR 1540, First General Counsel's Report 4 (1983), considered a complaint against a newsletter that published the surnames and initials of individual contributors to various state candidates, the amounts contributed, and their city and state of residence. The newsletter contained the warning that none of this information could be used for purposes of soliciting contributions from the individuals listed. Publication of contributors' names was one of several services offered by the

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[19] 766 F.2d at 732. See also P.A.M. News Corp. v. Butz, 514 F.2d 272 (D.C. Cir. 1975)(electronic news services exercise same First Amendment rights as print media).

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newsletter. Under those facts, the FEC's general counsel ruled that the newsletter qualified for the newspaper exemption.[20]

NRCC's position appears to be that any entity that uses information obtained from public FEC campaign contribution reports and that also makes a profit necessarily runs afoul of the "commercial use" provision of the statute and regulations. This result, however, is dictated by neither the text of the regulation nor the purposes underlying it. As the debate quoted above illustrates, the restriction on the use of information obtained from FEC reports was directed at list brokers who intend to use the information for solicitation or commercial purposes. It was not intended to bar news organizations, such as Legi-Tech, from publishing the information contained in those reports -- regardless of whether those entities sell their news publications for "commercial purposes" in the sense that they charge a fee for this service. There is no evidence, and NRCC does not allege, that Legi-Tech conducts list brokerage activities of any sort. Nor

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[20] FEC Advisory Opinion 1980-101, Fed. Election Campaign Fin. Guide (CCH) ¶ 5551 (1980), cited by NRCC, is not to the contrary. In that opinion, the Commission permitted publication of a directory of comprehensive information about political action committees specifically for the purpose of assisting in the solicitation of contributions. In its decision, the Commission also stated the obvious point that the copying and use of the names and addresses of individual contributors for the principal purpose of solicitation would not be consistent with FEC regulations.

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is there any evidence that Legi-Tech conducts its electronic publication activities "for the purpose of soliciting contributions or for other commercial purposes."[21]

Far from contravening FECA, Legi-Tech's activities effectively promote its disclosure objectives. As Justice Brandeis perceptively observed:

> Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light is the most efficient policeman.[22]

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[21] The exemption for news publications set forth in 11 C.F.R. § 104.15(c) would almost certainly be necessary to avoid constitutional problems. The Missouri Supreme Court, for example, has overturned a state statute providing that "no information copied from [state-required contribution reports] shall be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose." In ruling that the statute violated the First Amendment of the United States Constitution, the court observed:

> By placing the information in the public domain, the state must have presumed that the right of privacy gives way to public interest in this instance. Certainly, the right of privacy vanishes with the required public disclosure of the requisite information.

Ryan v. Fitzpatrick, 669 S.W. 2d 215, 218-19 (Mo. 1984) (en banc). The court also invoked the strong public interest underlying campaign contribution disclosure laws spelled out by the Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976).

[22] L. Brandeis, Other People's Money 92 (1914). This same observation was later cited in the legislative history of FECA as support for the extensive disclosure provisions of the bill: "In today's [1971] era of instant communication, Brandeis' statement is doubly relevant." S. Rep. No. 96, 92nd Cong., 2d Sess., reprinted in 1972 U.S. Code Cong. & Adm. News 1773, 1816 (Additional views of Senator Griffin).

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The Supreme Court has found that FECA's disclosure requirements serve three important governmental interests. First, they provide the public with information "as to where political campaign money comes from and how it is spent."[23] Second, the requirements deter actual corruption and avoid the appearance of corruption by "exposing large contributions and expenditures to the light of publicity."[24] Finally, they provide "an essential means of gathering the data necessary to detect violations of the contribution limitations."[25] These disclosure requirements reflect the principle that an "informed public opinion is the most potent of all restraints upon misgovernment."[26]

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[23] Buckley v. Valeo, 424 U.S. 1, 66-67 (1976). See also H. Rep. No. 564, 92nd Cong., 2d Sess. 4 (1971).

[24] 424 U.S. at 67; see also S. Rep. No. 689, 93rd Cong., 2d Sess. 2, reprinted in 1974 U.S. Code Cong. & Admin. News, 5587, 5588.

[25] 424 U.S. at 67-68.

[26] Grosjean v. American Press Co., 297 U.S. 233, 250 (1936). See also S. Rep. No. 229, 92nd Cong., 2d Sess., reprinted in 1972 U.S. Code Cong. & Adm. News 1821, 1861-62. (Supplemental views of Senators Prouty, Cooper and Scott) ("In this modern age where mass communications have created an information rich public, the [then] present ineffective disclosure laws have the effect of shrouding Federal campaign financing in unhealthy and unwarranted secrecy. The lack of complete and full disclosure erodes confidence in the entire elective process and if allowed to continue would only serve to generate pressures against our democratic form of government.")

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Congress has declared that there is a strong public interest in determining who has contributed what amounts to which candidates and committees. The Supreme Court has confirmed that this interest is "sufficiently important to outweigh the possibility of infringement [of the right of association], particularly when the 'free functioning of our national institutions' is involved."[27] Thus, Congress has resolved the issue of where the public interest lies in favor of disclosure. With CCTS, information from FEC reports is now available to other journalists and interested members of the public in a format that enables them to use the voluminous FEC data in a meaningful manner. There can be no substantial

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[27] Buckley v. Valeo, 424 U.S. at 66 (1976). In attempting to locate some support for its position in the Buckley decision, NRCC wrests from their context miscellaneous quotations regarding the need to protect private parties from harassment. For example, NRCC asserts that "political parties 'need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harrassment or reprisals from either Government officials or private parties' in order to qualify for an exemption from the Act's disclosure provisions." NRCC Complaint at 7 (emphasis original). This erroneously implies that NRCC could obtain an exemption from the Act's disclosure requirements on making such a showing. In fact, the Court was responding to a claim that minor parties -- not the Republicans -- should receive a blanket exemption from the Act's disclosure provisions. 424 U.S. at 69-74. The Court rejected this contention, noting that, although the governmental interest in disclosure is diminished when the contribution in question is made to a minor party, the parties had offered no specific evidence of harassment, and "the substantial public interest in disclosure outweighs the harm generally alleged." 424 U.S. at 72.

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government interest in curtailing the dissemination of information that Congress has ordered to be made public.

NRCC complains that Legi-Tech has not taken reasonable steps to ensure that the NRCC lists will not be used for solicitation purposes.[28] In fact, Legi-Tech places a warning on its data base that appears at the beginning of every contributor tracking search by a CCTS subscriber. That warning is identical to that used by the FEC on its computer on-line service. Legi-Tech also places warnings on its advertisements for CCTS service.[29] It is hard to see how NRCC could contend that these warnings are inadequate when they are precisely the same as those used by the FEC. And although NRCC at one point chastises Legi-Tech for its "unwillingness fully to police its customers," it recognizes in the same breath that only the FEC may impose sanctions on parties who violate the agency's regulations.[30]

NRCC also makes much of the fact that Legi-Tech includes telephone numbers for certain of the contributors listed on its data base. As noted in Mr. Washington's affidavit, Legi-Tech began to offer this service at the request of its newspaper

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[28] Complaint at 5.

[29] Washington Affidavit ¶¶ 22.

[30] Complaint at 5 nn.1, 2.

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customers whose reporters wanted a convenient way of contacting sources.[31] There is nothing about the provision of telephone numbers that suggests that Legi-Tech is actively encouraging solicitors to subscribe to its service. Nor does it make it easier for Legi-Tech or its subscribers to detect and possibly remove from their data base the pseudonyms in the NRCC lists. Legi-Tech does not remove any names from its lists. It hires an outside firm to track down telephone numbers of individual contributors, and does not make any adjustments in these numbers when they are added to Legi-Tech's data base. Through this process, Legi-Tech obtains telephone numbers for only about half of the individuals on the campaign contribution lists. With respect to the substantial number of individuals for whom telephone numbers cannot be found, Legi-Tech has no way of knowing -- and does not care -- whether this is because the name is a "salt" or for one of many other possible reasons.

The Commission should also pay little heed to NRCC's unsubstantiated claim that Legi-Tech's activities will cause NRCC and its contributors to suffer irreparable injury.[32]

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[31] Washington Affidavit ¶ 21.

[32] These allegations do not comply with the requirements in Section 111.4 that the complaint differentiate between statements based on personal knowledge and those based on information and belief, and that statements based on personal knowledge identify the source of the information. 11 C.F.R. § 111.4(c), (d)(2).

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NRCC asserts:

> In return for exercising their rights to participate in the political process, NRCC contributors will likely be harrassed by both commercial and political organizations. Moreover, if a contribution to NRCC will subject a contributor to further solicitation and harassment, there will be a significant disincentive to making such contributions to NRCC. The damage to NRCC and its contributors, and to the free flow of political speech from these effects is precisely what the Act sets out to avoid.[33]

First, this is the type of vague allegation of future injury that the Supreme Court in Buckley found insufficient to outweigh the strong public interest in disclosure of campaign contribution information.[34] Second, as Judge Gesell aptly put it, "NRCC's alleged irreparable injury, in the Court's view, is caused by the Federal Election Campaign Act, not by [Legi-Tech], and its remedies lie in the political arena and not in a court."[35] In other words, any harm caused to NRCC is attributable to the fact that the statute requires it to

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[33] Complaint at 3.

[34] See Buckley v. Valeo, 424 U.S. at 74 ("The proof may include, for example, specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats of specific manifestations of public hostility may be sufficient.") (Emphasis added).

[35] Hearing Transcript at 6.

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submit information about its contributors to the FEC for public disclosure -- not to the fact that Legi-Tech distributes that information in a more convenient and accessible form.

In sum, NRCC has not offered a shred of evidence to support its charges that Legi-Tech "is attempting to profit by facilitating the further unlawful use and copying of the FEC lists."[18] To the contrary, the evidence shows that Legi-Tech is offering an electronic news service whose subscribers includes members of the media, lobbyists, legislators, and others in a position to influence the political process. The Commission should find that there is no reason to believe that a violation of the statute or its regulations has been committed.

Conclusion

Legi-Tech believes it is furthering the public interest in disclosure that is embodied in FECA and that the FEC was created to administer. The FEC currently sells to the public copies of the NRCC's filings on microfilm. The FEC and other state disclosure agencies are making more of this information available to the public in computerized form. As the Information Age dawns, and the media gain new methods with

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[18] Complaint at 5.

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increased capacity to report upon and deliver information, Congress' goal of an informed electorate grows closer. If the New York Times -- or McClatchy's Sacramento Bee -- found that "all the news that's fit to print" included NRCC's entire report, a complaint charging that the news organization had violated FECA would be quickly thrown out. The fact that the form of information delivery is not "hard copy" does not change this result. The complaint should be dismissed, and the file should be closed now.

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VERIFICATION

Counsel for Legi-Tech swear that the facts included in this Response are true to the best of their knowledge, information, and belief.

Respectfully submitted,

Bruce D. Sokler

Bruce D. Sokler
Thomas J. Casey
Terrence J. Leahy
Karen Kao

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Washington, D.C. 20006
(202) 293-0500

Attorneys for Legi-Tech, Inc.

Subscribed and sworn before me this 15th day of November, 1985.

Catherine M Huba
Notary Public

My Commission Expires: My Commission Expires October 14, 1990

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Kleinfeld

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2094

NAME OF COUNSEL: Bruce D. Sokler

ADDRESS: Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.
1825 Eye Street, NW, Suite 1201
Washington, DC 20006

TELEPHONE: (202) 293-0500

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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.

11/14/85

Signature

RESPONDENT'S NAME: Frank Washington

ADDRESS: McClatchy Newspapers
2100 Q Street
Sacramento, California 95852

HOME PHONE: (916) 972-7241

BUSINESS PHONE: (916) 446-9731

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Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, Plaintiff, v. LEGI-TECH CORPORATION, Defendant.	Civil Action No. 85-3106

AFFIDAVIT OF FRANK WASHINGTON IN SUPPORT OF OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

I, Frank Washington, hereby state as follows:

1. I am submitting this affidavit in support of the opposition of Defendant Legi-Tech, Inc. ("Legi-Tech") to the motion of plaintiff National Republican Congressional Committee ("NRCC") for a preliminary injunction. I have personal knowledge of the matters discussed in this affidavit.

2. I am Vice President of McClatchy Newspapers ("McClatchy"). McClatchy is located at 21st and Q Streets, P.O. Box 15779, Sacramento, California 95852. McClatchy owns ninety percent of the stock of Legi-Tech. As Vice President, I am responsible for the day-to-day management of the affairs of the company. I am also Vice President of Legi-Tech.

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Nature of McClatchy's Operations

3. McClatchy is a diversified media company with holdings in the newspaper industry, radio, cable systems, and new communications technologies such as videotext and multipoint distribution service. These activities reflect McClatchy's fundamental business strategy of broadening its operations beyond traditional daily newspapers to include new information delivery services that take advantage of advanced technologies. McClatchy considers this approach necessary for it to compete effectively with other information providers in the coming decades.

4. McClatchy has a direct or indirect ownership interest in the Sacramento Bee, the Modesto Bee, the Fresno Bee, the Anchorage Daily News, and the Tri-City Herald. It is the licensee of stations KFBK (AM), Sacramento, California; KAER (FM), Sacramento, California; KMJ (AM), Fresno, California; and KNAX (FM), Fresno, California. It holds interests in several cable television systems, including Nor Cal Cablevision, Inc.; Telcab Communications, Inc.; Fresno Cable TV Limited; San Joaquin TV Services, Inc.; and Sequoia Cablevision, Inc. It holds an interest in the Fresno MDS Company, a multipoint distribution service, as well as several companies that currently have or have applied for cellular telephone licenses. McClatchy offers two videotext services, Grassroots California and El Dorado Teleguide. Finally, it markets an electronic newspaper library called Advanced Search Concepts.

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Nature of Legi-Tech's State Legislative Information Services

5. Legi-Tech's electronic publishing operations complement McClatchy's other information delivery activities. Legi-Tech began operations in 1981 and was incorporated under the laws of the State of California in 1982. McClatchy acquired its interest in the company in 1982. Legi-Tech's principal place of business is in California. In 1983, it began to provide services in the State of New York.

6. Legi-Tech is in the business of collecting and transmitting legislative and political information to its subscribers over telecommunications facilities. In California and New York, it markets a service known as the Legi-Tech System. The service offers subscribers summaries of state legislation in plain terms, transmits the recorded votes on each bill, and provides the attendance record of state legislators. Legi-Tech provides computer terminals to its subscribers to enable them to receive the service.

7. An important feature of the Legi-Tech System in California and New York is the transmission of information about political contributions to state legislators. Legi-Tech provides to its subscribers a variety of contribution information that must be filed with the state, including names and addresses of contributors, amounts of contributions, and the dates of the contributions. Legi-Tech originally began to offer this service in California at the request of its newspaper clients.

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8. Legi-Tech's operations in California and New York have been successful. Hundreds of customers subscribe to Legi-Tech's on-line services. The company has always targeted the print media as major customers, and its current and former subscribers include Newsday, the Los Angeles Times, Gannett News Service, The New York Times, Capital Newspapers Group, and the New York Post. The system is also popular with the political parties; in fact, the largest single private subscriber to the system is the California Republican Party. Legi-Tech's other customers include lobbyists, corporations, local governments (including the New York City's mayor's office), state agencies, and trade associations. These customers rely on the Legi-Tech service to keep abreast of rapidly changing pending legislation, and to obtain a comprehensive and up-to-date picture of contributions to state legislators and campaign committees.

9. Legi-Tech has encountered some resistance to its provision of electronic legislative information services. The State of New York, for example, recently enacted a statute that singled out Legi-Tech and denied us access to the state's electronic legislative retrieval system, effectively preventing us from obtaining copies of pending bills as fast as the general public was able to. We challenged that statute in federal court, and the Second Circuit Court of Appeals recently upheld our right to access the state's system on a

nondiscriminatory basis. The court rested that ruling on its conclusion that Legi-Tech was "an organ of the press." Legi-Tech, Inc. v. Keiper, 766 F.2d 728, 730 (2d Cir. 1985).

Legi-Tech's Development of Federal Information Services

10. Legi-Tech has decided to expand its electronic information services to include data maintained in the public files of the federal government. Under the trade name Washington On-Line, Legi-Tech will offer two electronic information services: the Bill Text Tracking System ("Bill Text") and the Campaign Contribution Tracking Service ("CCTS").

11. The Bill Text service will permit Legi-Tech subscribers to obtain instantly a current copy of every bill and resolution introduced before Congress. This is the first computerized file of federal legislation that permits the user to call up the information at his desk. By using word or phrase searches, subscribers can locate every piece of legislation that refers to a particular topic. Legi-Tech will charge a single annual fee to subscribers, allowing unlimited searches at no extra cost. A copy of the promotional materials for Bill Text is attached to Legi-Tech's Memorandum as Exhibit 2.

12. The second new service that Legi-Tech intends to offer, and the subject of this litigation, is CCTS. CCTS

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contains a computerized data base containing all campaign contribution reports on file and available for public inspection at the Federal Election Commission ("FEC"). Legi-Tech is developing this service in part because its contribution reports at the state level have generated significant customer demand, particularly among the news media, many of which cover the federal government in Washington.

13. Through CCTS, a subscriber will be able to call up on his personal computer a variety of data from the FEC reports. The data base will include information on (1) political contributions, including the amount, date, and cumulative total of the contributions; (2) contributors, including their name, address, occupation, employer, and in some cases telephone numbers; (3) contribution recipients, including whether the recipient is a candidate committee or a political action committee; and (4) payments and expenses, such as amounts of transfers to other committees, salaries, administrative expenses, and payments to suppliers..

14. The software on the CCTS system enables subscribers to request information in a wide variety of formats depending on the purpose of their search. Once the user is in the Contribution Tracking module, he can run a search based on the contributor's name, the contributor's employer, geographical location, or the recipient of the contribution. Thus, a subscriber might want to see all contributions made to the

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committee to re-elect a particular member of Congress. Alternatively, he might want to see which employees of a particular company gave money to a specific political action committee. Another search idea would be to focus on all of the contributors that live in a particular geographic area. All of these searches could be restricted to a particular time period. CCTS makes these information retrieval tasks simple and convenient.

15. Although there are many different ways of calling up data, one thing the system cannot do is reproduce a copy of NRCC's FEC report exactly as it was filed with the FEC. The NRCC's filings are organized alphabetically within each zip code. A CCTS subscriber could call up information limited to a particular zip code, but that search would disclose information from other FEC reports, not just the NRCC reports. Thus, there is no way to retrieve the NRCC's FEC reports as they appear on file at the FEC. Indeed, there would be no reason why Legi-Tech's customers would want such a service. The whole point of the system is to permit users to avoid going through each report on a piecemeal basis, enabling them to collect all of the information they need on a specific topic that is contained in all of the reports.

16. The primary benefit of CCTS is that it is the first service to make this massive amount of public information accessible in a convenient, computerized form. Until now,

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those who were interested in monitoring the flow of dollars to or from a candidate's committee or a political action committee had to take a personal trip to the FEC and pore over hundreds of thousands of pages of reports to ferret out the desired information. For example, if a researcher wanted to learn about all contributions made by a particular individual mentioned in a report to the FEC, he would have to go through thousands of pages of reports, and then would still not be sure that he has an accurate total. Purchasing the microfilm from the agency does not alleviate this chore of reviewing large amounts of information that the subscriber is not interested in. With CCTS, a subscriber has the capability of using his personal computer or word processing equipment to call up precisely the data he needs, in a matter of seconds.

17. Legi-Tech's subscribers use the political contribution information they receive for a variety of different purposes. Some use it to keep track of who is receiving contributions and from what sources. Some use it order to assist grass-roots political lobbying efforts. Some use the information to encourage individuals to participate in the political process for purposes of influencing public policy on a particular issue. CCTS will perform the same useful functions. In fact, Republican congressmen who are members of NRCC have indicated a great deal of interest in the new CCTS service.

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18. Members of the media have expressed particular interest in the great variety of ways in which users can format particular types of data and focus their searches quickly and easily. For example, some have mentioned to us that it is useful to have "financial profile" of a public figure who is giving a speech being covered by a reporter -- a profile that can be obtained instantaneously on CCTS. One prospective customer had the idea of using the system to trace a senator's receipts of contributions from defense-related PACs during the period when the defense bill was before his committee. In that case, the information obtained from CCTS would form the core of the story that the reporter was attempting to put together.

Legi-Tech's Efforts To Compile Its Data Base

19. Legi-Tech expends a considerable amount of effort and money in order to prepare its data base. First, it purchases from the FEC microfilm reels that contain all of the campaign contribution reports on file with the agency. These reels cost ten dollars each. A member of the public could purchase a complete record of every report filed during 1984, an election year, including the name and address of each contributor, for less than $1200.

20. Legi-Tech then contracts with an outside firm to have the microfilm transformed into hard copy print materials. The reports from 1983 through 1985 contained about 1.2 million

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pieces of paper. Our staff organizes these materials according to the way we want to format the information. We then send the papers to an outside data processing firm whose operators manually key punch each item of information from the reports. After the key-punched items are returned to Legi-Tech, our staff reviews the materials to ensure their accuracy. Legi-Tech has spent about $500,000 putting together its data base in this manner, including staff salaries and fees for outside service firms.

21. The FEC reports from which Legi-Tech compiles its data base do not include telephone numbers of individual contributors. Legi-Tech added this feature to the Campaign Contribution Tracking Service because it had a previous experience in which the company had been requested to provide telephone numbers. In one of its first projects, the Los Angeles Times asked Legi-Tech to gather a data base of contributors to the gubernatorial campaign of Mayor Tom Bradley. The newspaper asked Legi-Tech to include telephone numbers in order to facilitate their reporters' efforts to contact contributors directly for personal interviews. We have found that having telephone numbers available makes our service attractive not only to the media, but also to customers who wish to contact particular individuals as part of grass-roots lobbying efforts. CCTS contains telephone numbers for about half of the contributors listed in the FEC reports. Legi-Tech

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has no ability or incentive to remove the pseudonyms ("salts") that are inserted in NRCC lists to detect their misuse.

Restrictions on Subsequent Use of Information by Subscribers

22. Legi-Tech includes on its sales materials and its actual data base warnings designed to inform its customers of the limitation on the use of information from FEC reports found in the Federal Election Campaign Act. On its advertising materials, the warning reads as follows: "It is a violation of federal law to sell or use information copied from FEC reports for the purpose of soliciting contributions from other than political committees." The warning on the CCTS data base states: "Any information copied from FEC reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes." This wording is precisely the same as that on the FEC's own computerized data base. The warning on the CCTS system appears at the beginning of every contributor tracking search by a CCTS subscriber.

23. In its standard contract for subscribers, Legi-Tech limits the uses to which the information received over its data base may be put. The contract states that customers may not distribute the information they obtain over the system except to the extent that it is incidental to the conduct of the customer's business. The contract also indicates that the

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source of the information on CCTS is the FEC reports, and that "[i]t is a violation of federal law to sell or use information copied from such reports for the purpose of soliciting contributions from other than political committees."

The FEC's Computerized Data Base

24. The FEC itself has recognized the need for more convenient access to its reports. It now offers a Freedom of Information Act Direct Access Program under which a member of the public, after filing a request under FOIA, may obtain computerized access to some of the information on FEC reports. There are several differences between CCTS and the FEC's direct access program. First, the government's service includes only contributions of $500 or more, which represents only about one-third of the entries on the FEC reports carried by CCTS. Second, the user must file a FOIA request, which is both cumbersome and undesirable for those users who seek confidentiality. Third, the system is available only for limited time periods. Fourth, the FEC's system has an option of hourly charges which CCTS does not. Finally, the FEC's system does not afford flexibility to conduct a wide variety of inquiries quickly.

25. The FEC has issued a request for proposals to implement a revamped computerized data base. Indeed, after Legi-Tech demonstrated its system to FEC officials, the FEC

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requested Legi-Tech to submit a proposal in response to the RFP. In general, FEC has cooperated fully with Legi-Tech and its efforts to provide information services to the public.

Harm to Legi-Tech from the Injunction

26. Legi-Tech would be significantly and irreparably harmed in the event that the injunction requested by NRCC is issued. Such an injunction would prevent Legi-Tech from making available to its subscribers any of the information on the reports filed with the FEC by NRCC. This could significantly impair the company's marketing efforts at the critical start-up stage. Legi-Tech has advertised that it has available on its data base the full set of FEC reports. If the injunction is granted, that would no longer be true. Moreover, if NRCC is successful, any other political committee that files FEC reports could limit the distribution of those reports simply by registering for copyright status. That would further erode Legi-Tecn's data base and limit the utility of its service. This might occur at the state level as well, so that state political contribution information -- data that Legi-Tech has been publishing for the past several years -- would no longer be accessible to its subscribers.

27. Although Legi-Tech currently has no customers for CCTS they have several in final negotiations, and fully expect to have a customer by October 15, the date the TRO expires.

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Legi-Tech has engaged in intensive marketing efforts for the last several months, including an extensive direct mail and letter-writing campaign and approximately 100 personal demonstrations. A substantial number of potential customers are members of the media. The injunction would disrupt these marketing efforts by impairing Legi-Tech's ability to deliver the services it has promised.

28. The injunction, in my view, would also threaten the interests of McClatchy Newspapers and Legi-Tech as organs of the press. McClatchy must be constantly vigilant to ensure that government authorities do not overstep constitutional bounds by ordering us to refrain from publishing a particular type of news. I suspect that if McClatchy Newspapers decided to reprint FEC reports, it would be able to do so without fear that the organizations that were required by law to submit the reports would successfully bar their republication. An injunction, however, would preclude Legi-Tech from electronically publishing a set of public FEC reports. There is no justification for this restraint on the press.

29. On the other hand, I cannot see how NRCC suffers any harm from Legi-Tech's activities. To the extent that NRCC is concerned that publication of its subscriber lists will expose its contributors to harassment, that decision has already been made by Congress and has been resolved in favor of disclosure. The ready availability of the NRCC's reports at

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the FEC means that no significant additional harm will result from Legi-Tech's service.

30. Ultimately, it is the public that would suffer the most from issuance of an injunction. It is the public that Congress intended to benefit from campaign finance disclosure laws. All that Legi-Tech is doing is enhancing the speed, efficiency, and flexibility with which that information is delivered to the public. Even the government has recognized this need, since the FEC itself is now providing computerized access to its data. An injunction would stifle this flow of information and run directly contrary to the interests embodied in the disclosure laws.

Frank Washington

District of Columbia:

Subscribed and sworn to before me this 3rd day of October, 1985.

Phyllis P. Horton
Notary Public

My Commission Expires: July 14 1986.

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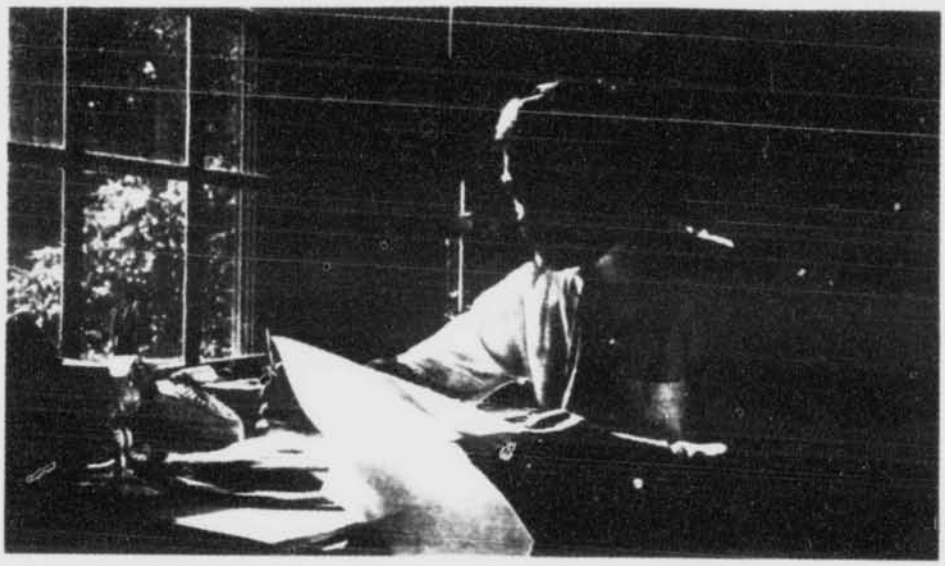
Exhibit 2



The Bill Text Tracking System™

Because the legislation you follow is too important to miss.

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The Bill Text Tracking System™ from Washington On-Line.

The Bill Text Tracking System gives you all the advantages of on-line information retrieval.

Speed.

You'll spend only a few moments at your computer telling the Bill Text Tracking System what to look for. Seconds later, you'll have the text you want.

Accuracy and completeness.

To avoid errors of manual keypunching, we use the latest optical scanning technology to enter each printed page of legislation directly into the Bill Text Tracking System. The system recognizes and records every character, including section and page numbers, and automatically highlights amendments. Nothing can be left out.

Low Cost.

Your annual subscription to the Bill Text Tracking System allows unlimited access. There are no hourly use charges or per-copy costs, so you can use the system as often and as long as you want. And print out all the copies of legislation that you need.

Easy to use.

We designed the system for people who need the exact language of federal legislation . . . not for computer technicians. That's why you give simple answers to simple questions to describe the information you're after. Every step of the way, the system helps you by clearly asking what you want to find, and listing your options.

Availability.

The system is ready to bring you the full text of current legislation 24 hours a day, 365 days a year.

From introduction to passage, the language of a bill can change. Washington On-Line keeps you up to date.

The perfect complement to your current legislative monitoring efforts.

One of the most important jobs for anyone who follows Congress is comparing what they *said* with what they *wrote*.

As bills are introduced, debated, and amended, you need to keep up with changes in the language: To see if the text fulfills original intent. To learn whether the compromises struck during markup have been captured. To determine how any measure—as currently drafted—affects you.

Going to the Hill for copies of bills or counting on the mail both mean waiting hours, days, or weeks, for legislation you really need *now*.

And if your bill is out of print, or if just one of your issues were buried in an apparently unrelated measure, you could miss a piece of legislation you need to know about.

In short, tracking legislative language has been a slow, tedious, and expensive process.

Until now.

Each Congress produces hundreds of bills: tens of thousands of pages of legislation. How can you be sure you have the current text? Or that you haven't missed a bill you need to know about?

© 1988 Washington On-Line

Our special scanning equipment accurately captures every word of legislation.

We bring you every bill... every amendment... every word.

Washington On-Line has created the first computerized file of federal legislation you can review at your own desk: The Bill Text Tracking System℠.

Now, using your PC, word processor, or any terminal that communicates over the telephone, you can obtain the current language of any bill, identify the latest amendments, or learn which issues are subjects of legislation—instantly.

Already available is the current version of every House and Senate bill from the 99th Congress: 25,000 pages of legislation containing over 4 million words, any one of which could be important to you.

What's that bill really about? Keyword searching lets you find out.

Experience tells you that bill titles don't always indicate bill content, which is why you could miss a bill that affects you or your clients.

Washington On-Line's Bill Text Tracking System lets you find and read *every* bill dealing with topics you're interested in *simply by entering any word or phrase that may appear in the text.*

In seconds, the system displays the exact text of each measure containing those words you've chosen.

Then you can print out as many copies as you, your associates, or clients may need.

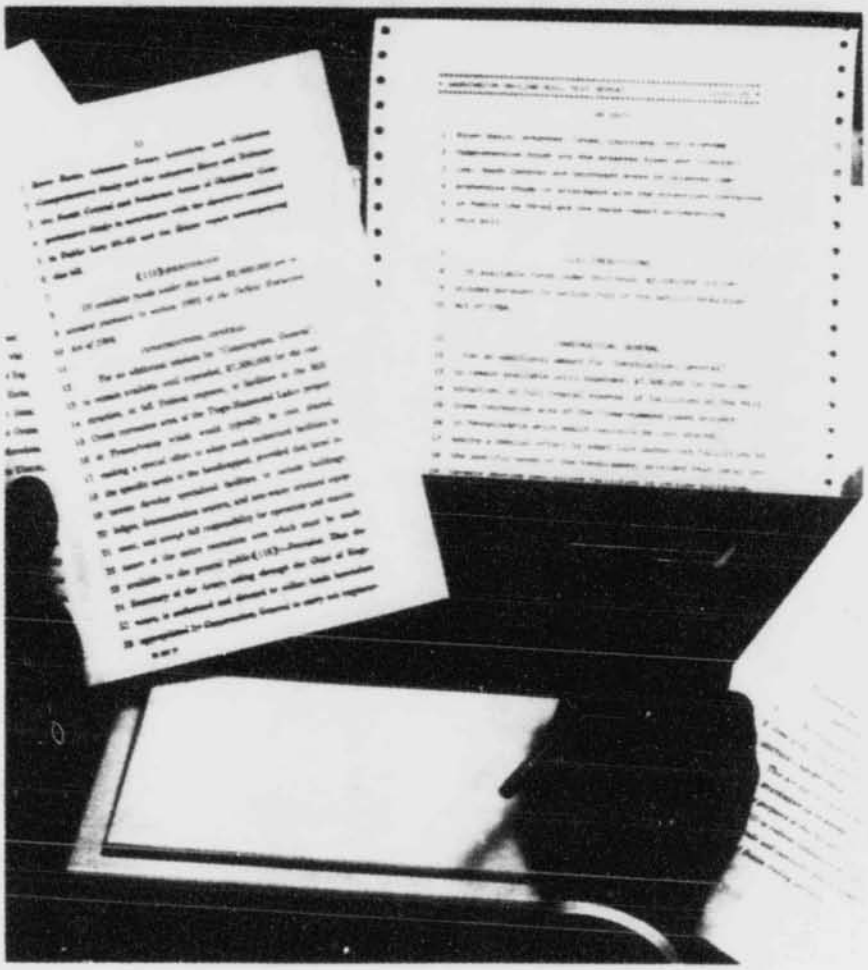
Of course, you can immediately display the bills you already know about by entering the House or Senate bill number.

A growing legislative resource. Available when you need it.

Not only is Washington On-Line's Bill Text Tracking System the most convenient, reliable, and timely way of getting the legislation you need, but with each new bill it becomes even more valuable. Because once a bill is in the system, it's instantly available.

Congress, on the other hand, publishes only limited quantities of most bills, which means the one you want could easily go out-of-print or become unavailable almost as soon as it's printed.

Washington On-Line's Bill Text Tracking System records every word of pending federal legislation... current text you can display on your computer, or print out if you need copies.



"Bill Text Tracking System" and the Washington On-Line logo are service marks of Washington On-Line

Our comprehensive service keeps you informed, on-line, and productive.

If you're already a subscriber to Washington On-Line, or any other on-line information retrieval system such as Legi-Slate® or Congressional Quarterly's Washington Alert Service, you already have all the equipment you need to begin using the Bill Text Tracking System.

But whether you're thoroughly experienced in on-line search procedures, or completely new to the use of electronic databases, we can help you get the most out of our one-of-a-kind system.

Training.

Our comprehensive service begins with hands-on training *in your office*. We'll review the system step-by-step. . .to familiarize you with the way legislation is organized for rapid retrieval and to show you how to obtain the specific text you want.

On-call customer support.

After that, we're available during normal working hours at 202/543-9101 to answer your questions or help in any way we can. . .whether you're having a technical problem, or need to know more about the information in the system.

Ready reference.

Our subscriber newsletter will keep you up-to-date on system changes and improvements, remind you of who to call for assistance at Washington On-Line, and offer ideas on new applications.

And you'll find a complete summary of system information in our easy-to-follow user's guide.

A leader in on-line information retrieval systems.

Washington On-Line is a service of Legi-Tech Corporation, the electronic publishing subsidiary of McClatchy Newspapers. Legi-Tech has been providing successful legislative tracking systems in New York and California since 1981.

With more than 500 subscribers, Legi-Tech has become the leading provider of on-line legislative information in those states.

See for yourself.

The only way to appreciate the convenience, timeliness, and accuracy of the Bill Text Tracking System is to watch a demonstration. To see the system at work—in your Washington office—or to learn more about subscribing, simply call or write: Washington On-Line, 507 Eighth Street, Southeast, Washington, D.C. 20003; telephone 202/543-9101.

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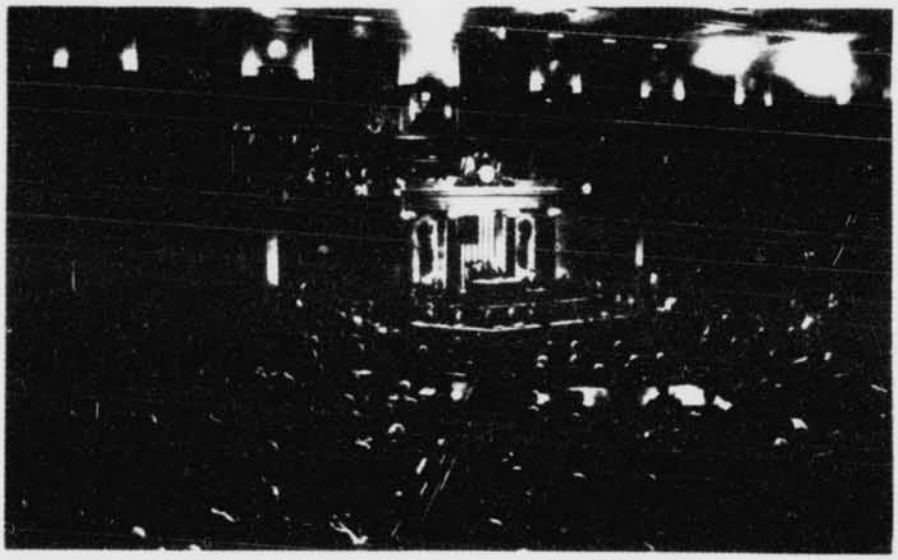
Exhibit 3



The Campaign Contribution Tracking System*

Now you can learn whose money talks.
And who listens.

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The Campaign Contribution Tracking System gives you all the advantages of on-line information retrieval.

Speed.

It takes only seconds for the system to find, organize, and report the information you want. You'll spend only a few minutes at your computer telling the system what to look for.

Accuracy.

The Campaign Contribution Tracking System includes every piece of relevant information from each FEC report. With several stages of automatic and manual error detection before the information becomes a part of the system, we can assure the highest levels of data accuracy and completeness.

Low cost.

Your annual subscription to the Campaign Contribution Tracking System allows unlimited access. There are no hourly use charges, connect fees, and other additional costs, so you can search the system as often and as long as you want. We've increased the system's value to you by offering it at a cost that encourages—rather than penalizes—extensive use.

Easy to use.

We designed this system for people who need campaign contribution information . . . not computer technicians. Therefore, it uses easy plain-English words or single-word answers to multiple-choice questions to describe the information you want. Every step of the search system leads you by choosing what you want to find, and then your options.

Always available.

The system is available 24 hours a day, 365 days a year.

Our comprehensive service keeps you informed, on-line, and productive.

If you subscribe to LEGI-SLATE®, Congressional Quarterly's Washington Alert, or any other on-line information retrieval service, you probably have all the equipment you need to begin using Washington On-Line's Campaign Contribution Tracking System.

But whether you're thoroughly experienced in on-line search procedures, or completely new to the use of electronic libraries, we can help you get the most out of our unique system.

Training.

Our comprehensive service begins with hands-on training *in your office*. We'll review the system step-by-step . . . to familiarize you with the wide range of information available and to show you how to obtain the reports of most use to you.

On-call customer support.

After that, we're available during normal working hours at 202/543-9101 to answer your questions or help in any way we can . . . whether you're having a technical problem or if you need to know more about the information in the system.

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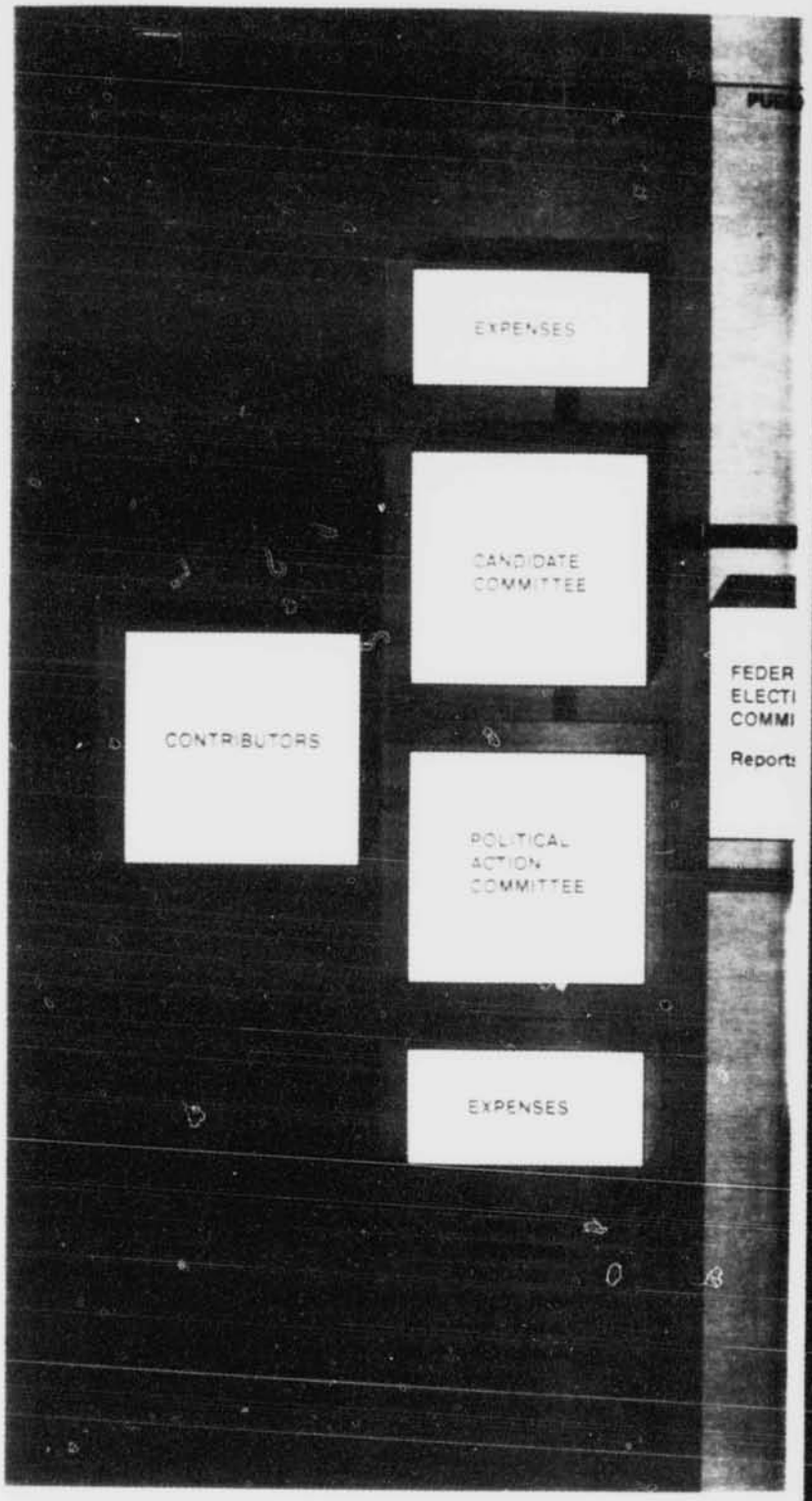
With more than 500 subscribers, Legi-Tech has become the leading provider of on-line legislative information retrieval in those states.

See for yourself.

The only way to appreciate the power, speed, and accuracy of the Campaign Contribution Tracking System is to watch a demonstration. To see the system at work—in your Washington office—or to learn more about subscribing, simply call or write: Washington On-Line, 507 Eighth Street, Southeast, Washington, D.C. 20003; telephone 202/543-9101.



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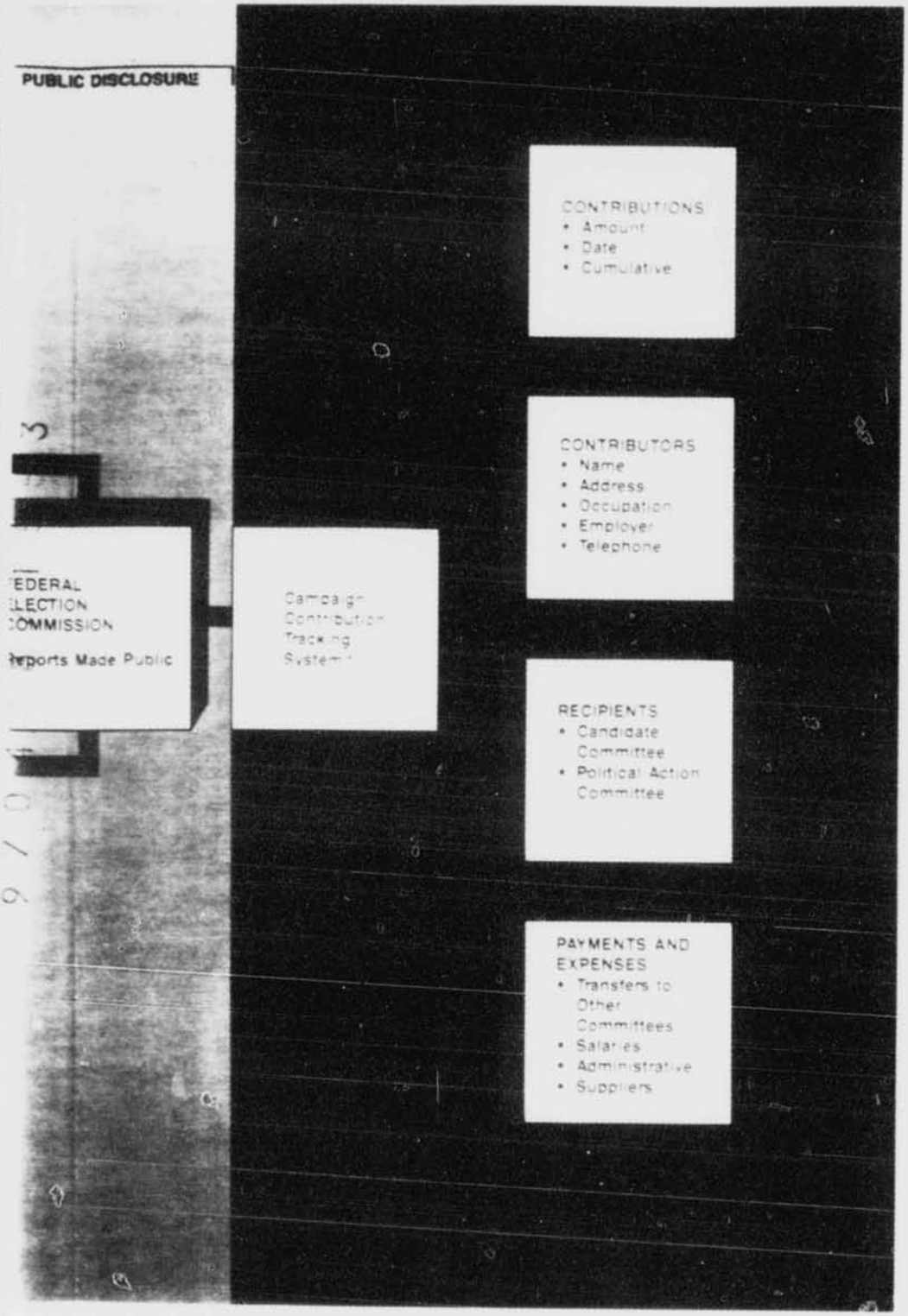
PUBLIC DISCLOSURE



Each election cycle, more than $1 billion in campaign contributions and expenses results in some 50,000 reports representing more than 1 million pages of information.

Individual contributors donate money to candidates, political parties, or PACs; but individuals are not required to make public disclosure.

Candidates, parties, and PACs contribute to each other, and incur campaign expenses.

All contributions over $200 and committee expenditures must be regularly reported to the FEC.

FEC makes reports public within two days of filing. Records are on paper and microfilm, available only at the FEC.

Washington On-Line obtains FEC reports and enters all relevant information into the Campaign Contribution Tracking System.

You call the system by phone and then search for and retrieve information on your own computer.

You can search by contributor or recipient. Either way, you have immediate access to every piece of campaign contribution and expense information in the system.

It is a violation of federal law to sell or use information copied from FEC reports for the purpose of soliciting contributions from other than political committees.

The Campaign Contribution Tracking System™ from Washington On-Line

The perfect complement to your current legislative monitoring efforts.

Whether you're a reporter working on a story, a lobbyist working for a cause, or anyone who tracks Congress or federal agencies, you need to know more than who voted how.

You need to know why.

Often the answer can be found in campaign contributions.

For most of you, monitoring the flow of dollars to and from a candidate committee or PAC begins with a trip to the Federal Election Commission, to obtain copies of the *Reports of Receipts and Disbursements.* And even though this information on federal campaign funding is publicly available, the sheer volume and lack of cross-referencing have made it nearly inaccessible.

Until now.

Putting you in touch with the information you need.

Washington On-Line has assembled the first computerized file of FEC reports available for unlimited use. The Campaign Contribution Tracking System™.

Now, using your PC, word processor, or any terminal that communicates over the telephone, you can find and analyze campaign funding information quickly and easily.

The system includes all FEC reports filed since 1983: more than 50,000 reports representing 1 million pages of information on 500,000 contributions exceeding $1 billion. Filings are continually updated as new reports become public.

Who gave how much money to whom? What did they do with it?

Enter the name of any candidate, party, or PAC and discover every contribution over $200 by source, date, and amount. Identify every reported campaign expense.

And for the first time, you can learn of all the contributions given by any individual, simply by entering that person's name.

Since individual contributors don't have to make public disclosures, information on them is only obtainable from the reports of recipients. Before the Campaign Contribution Tracking System, your only access to this information was by looking through millions of pages of committee filings for every reference to the person you're interested in.

Now you can find all the information you want instantly, without leaving your office.

And by combining several search qualifiers, you can make the information received as general or specific as you want.

For example, you may want a list of every contributor to a particular candidate. Or you could narrow that search to contributions made after the election.

The system will let you compare the salary and administrative expenses of various committees. Or find payments over certain dollar amounts.

If you prefer, you can obtain a complete summary from any committee's FEC report.

You can display this information on your computer's video screen, or print out a copy for closer examination.

And since your search will take only a few seconds, finding exactly what you want is always worth the effort.

Exhibit 4

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

- X

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE,

PLAINTIFF

-VERSUS-

CIVIL ACTION NO. 85-3106

LEGI-TECH CORPORATION, ET AL,

DEFENDANTS

- X

WASHINGTON, D. C.

OCTOBER 15, 1985

THE ABOVE-ENTITLED MATTER CAME ON FOR HEARING BEFORE THE HONORABLE GERHARD A. GESELL, UNITED STATES DISTRICT JUDGE, COMMENCING AT 4:00 P. M.

APPEARANCES:

FOR THE PLAINTIFF:

JAN W. BARAN, ESQUIRE
DAVID LADD, ESQUIRE
DAVID LEIBOWITZ, ESQUIRE
BRUCE G. JOSEPH, ESQUIRE
CARL R. FRANK, ESQUIRE

FOR THE DEFENDANTS:

JAY B. MYERSON, ESQUIRE
BRUCE D. SOKLER, ESQUIRE
TERRY J. LEAHY, ESQUIRE

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SANTA THERESA ZIZZO
OFFICIAL COURT REPORTER
U. S. COURTHOUSE
WASHINGTON, D. C. 20001

PENGAD CO., BAYONNE, N.J. 07002 9 FOLD 7 FOR 0 4 3 8 4 1 5 5 5

P R O C E E D I N G S

THE DEPUTY CLERK: CIVIL ACTION 85-3106, NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE VERSUS LEGI-TECH CORPORATION, ET AL. MR. BARAN, MR. LADD, MR. JOSEPH, MR. FRANK AND MR. LEIBOWITZ FOR THE PLAINTIFF. MR. MYERSON, MR. SOKLER AND MR. LEAHY FOR THE DEFENDANTS.

THE COURT: I INDICATED TO BOTH SIDES BY TELEPHONE FROM CHAMBERS THIS MORNING THAT IT SEEMED BEST FOR ME TO GIVE YOU MY RULING ON THE PENDING MOTION FOR A PRELIMINARY INJUNCTION ORALLY.

THAT RESULTS FROM TWO CIRCUMSTANCES. FIRST, THE IMMINENT EXPIRATION OF THE TEMPORARY RESTRAINING ORDER, WHICH WAS EXTENDED BY AGREEMENT OF THE PARTIES, AND, SECOND, PERHAPS MORE IMPORTANTLY, BY THE FACT THAT MY SECRETARY HAS BEEN ILL NOW FOR SOMETIME AND I'VE BEEN CONTINUOUSLY ON THE BENCH.

THIS CASE IS BEFORE ME ON THE MOTION FOR A PRELIMINARY INJUNCTION SUPPORTED BY AFFIDAVITS ON THE FIRST AMENDMENT COMPLAINT RECENTLY FILED.

BASICALLY WHAT IS INVOLVED IS THAT THE NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE IS SEEKING TO ENJOIN THE ACTIVITIES OF THE -- I DON'T KNOW I'M SURE HOW TO PRONOUNCE IT BUT IT'S LEHI-TECH, IS THAT RIGHT?

MR. SOKLER: LEGI-TECH, YOUR HONOR.

THE COURT: LEGI-TECH CORPORATION, WHICH IS ENGAGED IN THE BUSINESS OF DEVELOPING AN ELECTRONIC DISTRIBUTION OF

PENGAD CO. BAYONNE, N.J. 07002 FORM 140 9704384156

FACTUAL INFORMATION OBTAINED INITIALLY FROM THE FEDERAL ELECTION COMMISSION PUBLIC FILES WITH INFORMATION ADDED, DEVELOPED BY THE DEFENDANT LTC FROM OTHER SOURCES.

THERE ARE TWO PRELIMINARY ASPECTS TO THE CASE THAT I WANT TO GET OUT OF THE WAY BEFORE I COME TO THE CENTRAL QUESTION, WHICH IS THE COPYRIGHT QUESTION ON WHICH NRCC, THE PLAINTIFF, PRIMARILY DEPENDS.

IT IS SUGGESTED IN COUNT TWO OF THE COMPLAINT THAT IN SOME FASHION AS YET NOT FULLY EXPLAINED TO THE COURT DEFENDANT HAS BEEN GUILTY OF CONVERSION OF SOME KIND. I HAVE TAKEN THAT TO MEAN THAT IN SOME FASHION IT IS BELIEVED THAT THE DEFENDANT IS UTILIZING THE INFORMATION OBTAINED FROM THE PUBLIC FILES IN A MANNER INCONSISTENT WITH THE RULES AND REGULATIONS OF THE FEDERAL ELECTION COMMISSION. AS TO THAT THERE IS NO EVIDENCE TO SUPPORT IT. INDEED, ALL OF THE MATERIAL BEFORE THE COURT WOULD SUGGEST THAT LTC CORPORATION IS OPERATING CONSISTENT WITH THE RULES AND REGULATIONS OF THE COMMISSION, BUT, IN ANY EVENT, IF THERE IS SOME VIOLATION OF THOSE RULES AND REGULATIONS THE MATTER HAS TO BE ADDRESSED UNDER THE STATUTE BEFORE THE COMMISSION ADMINISTRATIVELY GIVEN, OF COURSE, LIMITED STATUTORY JURISDICTION IN SUCH MATTERS. SO I HAVE NOT FURTHER ADDRESSED COUNT TWO.

WITH RESPECT TO NRCC'S CONTENTION THAT THE DISTRIBUTION OF THIS FACTUAL INFORMATION IS CONTRARY TO THE COPYRIGHT LAWS THERE IS A DEFENSE RAISED BY LTC WHICH SEEMS TO ME TOTALLY OUT OF ORDER. I DO NOT SEE THIS TO BE A FIRST

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AMENDMENT CASE IN ANY FORM, SHAPE OR MANNER. THE FIRST AMENDMENT DOESN'T AUTHORIZE LTC, IF IT IS CONSIDERED A QUASI-JOURNALISTIC ENDEAVOR OF SOME KIND, TO VIOLATE THE COPYRIGHT LAWS ANY MORE THAN ANYBODY ELSE. FROM MY POINT OF VIEW I HAVE TOTALLY REJECTED THE FIRST AMENDMENT CLAIMS. NEWSPAPERS THEMSELVES FREQUENTLY COPYRIGHT THEIR OWN MATERIAL TO KEEP OTHER PAPERS FROM USING IT WITHOUT A FEE.

I THINK THE BASIC QUESTION AND THE ONLY QUESTION THAT IS REALLY DECISIVE IN THIS CASE IS WHETHER OR NOT NRCC IS ENTITLED TO COPYRIGHT PROTECTION WITH RESPECT TO THE DATA THAT IT'S FILED. THIS IS THE PRINCIPAL CLAIM OF NRCC AND THEY ASSERT THEIR PRECLUSIVE RIGHT ALLEGEDLY ARISING FROM THEIR OWNERSHIP OF REGISTERED COPYRIGHTS COVERING THE DEVELOPMENT OF ITS PROSPECT LIST, ITS MANNER OF LISTING, AND DONORS AND POTENTIAL DONORS, AND THE USEFULNESS OF SUCH DATA IN THE CONDUCT OF THE COMMISSION'S ENTERPRISES.

NRCC ASSERTS THAT ITS FILINGS WITH THE COMMISSION REPRESENT ORIGINAL WORK DEVELOPED BY THE SWEAT OF ITS BROW, IDENTIFYING ITS CAREFULLY INFORMED MANNER AND METHODS OF DEVELOPING POTENTIAL DONORS. I ACCEPT THE DESCRIPTION GENERALLY OF THIS SWEAT OF THE BROW EFFORT AS CONTAINED IN THE SEPTEMBER 26, 1985 LETTER, THE FIRST PARAGRAPH AT THE TOP OF THE SECOND PAGE, THAT CAME FROM THE WILEY AND REIN FIRM ADDRESSED TO THE REGISTER OF COPYRIGHTS. IT APPEARS TO THE COURT, HOWEVER, THAT NRCC STRETCHES ITS COPYRIGHT POSITION

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TOTALLY BEYOND ANY ACCEPTABLE LIMITS.

NRCC HAS FILED NOTHING THAT DISCLOSES HOW IT'S DEVELOPED ITS PROSPECT LIST. IT HAS DISCLOSED THE NAME OF NO PROSPECTS, ONLY DONORS. APPARENTLY ABOUT ONE PERCENT OF ITS LIST. THE ONLY LIMITED TECHNIQUE OF ANY KIND THAT PERHAPS HAS BEEN DISCLOSED IS THE GROUPING OF NAMES BY ZIP CODE, WHICH IS THE MOST COMMON PRACTICE OF ALL DIRECT MAILERS, AND OF LITTLE OR NO CONSEQUENCE.

FURTHERMORE, THE COMMISSION DID NOT REQUIRE NRCC TO MAKE ANY FILING LISTING ITS PEOPLE BY ZIP CODE. NRCC SIMPLY DECIDED THAT WAS A COMFORTABLE WAY FOR THEM TO PROVIDE THE NAMES. THEY DIDN'T HAVE TO.

NO CASE HAS BEEN CITED TO THE COURT BY EITHER SIDE AND THE COURT HAS NOT BEEN ABLE TO FIND ANY CASE THAT SUPPORTS THE PROPOSITION THAT FACTS FILED WITH A GOVERNMENTAL AGENCY REQUIRED TO BE FILED AS A MATTER OF LAW FOR THE PURPOSE OF PUBLIC DISCLOSURE CAN, AS FACTS, BE COVERED BY THE COPYRIGHT STATUTE. AND THAT'S EXACTLY WHAT WE HAVE HERE.

A FEDERAL STATUTE REQUIRES THAT THE NAMES OF DONORS IN CERTAIN AMOUNTS BE FILED. THE PURPOSE OF THE STATUTE IS THE PUBLIC DISCLOSURE AND DISSEMINATION OF THOSE NAMES FOR INFORMATIONAL PURPOSES.

IT WOULD TOTALLY FRUSTRATE THE FEDERAL ELECTION CAMPAIGN ACT AND OTHER FEDERAL DISCLOSURE STATUTES TO RECOGNIZE ANY RIGHT IN ANY PERSON REGULATED UNDER SUCH DISCLOSURE

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1 STATUTES TO AVOID DISCLOSURE BY COPYRIGHTING THE VERY FACTS
2 THAT ARE REQUIRED TO BE FILED IN THE PUBLIC INTEREST.
3 THUS THE COURT SEES ABSOLUTELY NO LIKELIHOOD OF
4 SUCCESS ON THE MERITS IN THIS CASE AND IT IS CLEAR THAT THE
5 PUBLIC INTEREST FAVORS DISCLOSURE.
6 NRCC'S ALLEGED IRREPARABLE INJURY, IN THE COURT'S
7 VIEW, IS CAUSED BY THE FEDERAL ELECTION CAMPAIGN ACT, NOT BY
8 LTC, AND ITS REMEDIES LIE IN THE POLITICAL ARENA AND NOT IN A
9 COURT.
10 ACCORDINGLY, THE MOTION FOR PRELIMINARY INJUNCTION
11 MUST BE AND IS DENIED.
12 I WILL WANT TO HEAR FROM THE PARTIES AS TO WHAT
13 THE NEXT COURSE IN THIS MATTER IS EXPECTED TO BE. I MUST SAY
14 THAT, RIGHTLY OR WRONGLY BUT AS RESPONSIBLY AS I KNOW HOW TO
15 DO IT, I HAVE TRIED TO DECIDE AND EXPLORE THIS COPYRIGHT
16 MATTER AND IT OCCURS TO THE COURT THAT THE BASIC FACTS ARE
17 IN THIS RECORD NOW. IT SEEMS UNLIKELY TO ME THAT ADDITIONAL
18 FACTS WOULD DEVELOP BY DISCOVERY WHICH WOULD IN ANY WAY ALTER
19 THE COURT'S VIEW OF THE SCOPE AND NATURE OF COPYRIGHTABLE
20 MATERIAL AND IT MAY BE THAT THE PARTIES WILL FEEL THAT THE
21 APPROPRIATE THING TO DO IS TO CHANGE AN ORDER DENYING THE
22 PRELIMINARY INJUNCTION INTO A FINAL ORDER TO ENCOURAGE PROMPT
23 RESOLUTION OF IT BY HIGHER AUTHORITY. I THINK THAT WOULD
24 DEPEND ON THE VIEWS OF BOTH SIDES. I DON'T WANT TO FORECLOSE
25 ANYBODY FROM SUBMITTING DATA BUT I THINK COUNSEL HAVE BEEN

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EXTREMELY ENERGETIC AND COMPETENT AND HAVE PRESENTED THE BASIC MATERIALS TO THE RECORD THAT YOU MIGHT WANT.

THE WAY I'D LIKE TO LEAVE IT IS THAT PERHAPS COUNSEL WOULD GET IN TOUCH WITH ME WITHIN -- I'LL ISSUE AN ORDER DENYING THE REPLIMINARY INJUNCTION, AND I'LL AWAIT TO HEAR WITHIN A WEEK HOW THE PARTIES FEEL ABOUT WHETHER ANY FURTHER PROCEEDINGS IN THE CASE ARE REQUIRED OR NOT. AND IF THEY'RE NOT THEN I'LL MAKE THAT ORDER FINAL AND IF NOT, I'LL GET YOU IN AND WE'LL SCHEDULE THOSE PROCEEDINGS IN WHATEVER WAY WE CAN, AGAINST THE COURT'S CALENDAR.

THANK YOU.

(WHEREUPON, THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER WERE CONCLUDED AT 4:15 P. M.)

CERTIFICATE OF OFFICIAL REPORTER

IT IS CERTIFIED BY THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA THAT THE FOREGOING IS THE OFFICIAL RECORD OF THE PROCEEDINGS INDICATED.

Santa Theresa Ziezo

SANTA THERESA ZIZZO

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SENSITIVE

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

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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 # 2094
DATE COMPLAINT RECEIVED
BY OGC October 24, 1985
DATE OF NOTIFICATION TO
RESPONDENT October 29, 1985
STAFF Eric Kleinfeld

COMPLAINANT'S NAME: National Republican Congressional Committee

RESPONDENT'S NAME: Legi-Tech, Inc.

RELEVANT STATUTES: 2 U.S.C. § 438(a)(4); 11 C.F.R. § 104.15
Advisory Opinions 1980-78, 101; 1981-5,31

INTERNAL REPORTS CHECKED: MURs 1523, 1540, 1549, 1634

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

On October 24, 1985, the Office of General Counsel received a signed, sworn and notarized complaint from the National Republican Congressional Committee (hereinafter "NRCC" or "complainant") and Jan Baran, General Counsel, alleging violations of the Federal Election Campaign Act of 1971, as amended (hereinafter the "Act") by Legi-Tech, Inc. (hereinafter "Legi-Tech" or "respondent"). Complainants allege that Legi-Tech is using contribution information obtained from FEC reports for commercial purposes, in violation of the sale and use restriction of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15.

FACTUAL AND LEGAL ANALYSIS

a. Factual Background

The subject of NRCC's complaint is a campaign contribution

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tracking system developed by Legi-Tech marketed under the trade name "Washington On-Line." According to complainant, Washington On-Line enters information obtained from FEC reports, including the names and addresses of NRCC's contributors, into a data base. Access to the Washington On-Line computer service is then sold to the public for a fee of approximately $4,000.

Complainant alleges that Legi-Tech's use of the information obtained from FEC reports in such a "patently commercial" manner knowingly and willfully violates the sale and use restriction of 2 U.S.C. § 438(a)(4). NRCC claims that continued use of this information by Legi-Tech will irreparably injure NRCC and its contributors by exposing the latter to further solicitations of contributions, harassment and invasion of privacy. According to the complaint this will make the contributors less likely to contribute to NRCC.

Notification of complaint letters were sent to respondent on October 29, 1985. Legi-Tech responded in writing to the allegations of the complaint on November 15, 1985, with an extensive discussion of the factual background and legal arguments of this matter.

Legi-Tech is a subsidiary of McClatchy Newspapers, a diversified media company. Legi-Tech states that it developed a campaign contribution tracking service under the trade name Washington On-Line, consisting of a computerized data base containing all campaign contribution reports on file and available for public inspection at the FEC. Legi-Tech further states that anyone who purchases its service will be able to access through a personal computer information on

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(1) political contributions, including the amount, date, and cumulative total of the contributions; (2) contributors, including their name, address, occupation, employer and in some cases telephone numbers; (3) contribution recipients, including whether the recipient is a candidate committee or other political committee; and (4) disbursements, such as amounts of transfers to other committees, salaries, administrative expenses, and payments to suppliers. Legi-Tech obtains this information by purchasing FEC microfilm reels which become the source of the data base.

Legi-Tech argues that its operations are in full compliance with the Act and its accompanying regulations. This argument is based on the assertion that Legi-Tech is a "legitimate news organization," providing in an electronic format information that might otherwise be carried in newspapers and newsletters. In support of their claim of the media exempton to the sale and use restriction, as set out in the Commission's regulations at 11 C.F.R. § 104.15 (c), Legi-Tech makes several arguments. First, Legi-Tech argues that since the Second Circuit Court of Appeals has characterized its service as an "organ of the press," the Commission is bound by that finding. Second, Legi-Tech cites MUR 1540, which it claims stands for the proposition that the publication of contributor names in a newsletter qualifies for the media exemption.

Third, Legi-Tech argues that the purpose behind the sale and use restriction is not to bar legitimate news organizations from publishing information obtained from FEC reports, but is to

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prevent list brokers from using the information for commercial purposes. Additionally, Legi-Tech contends that its inclusion of a warning on its advertisements and data base, in language similar to that contained in the Act, is intended to insure that the information is not used for solicitation purposes.

Finally, Legi-Tech makes a constitutional argument that its service promotes the Act's disclosure objectives and in doing so serves the governmental interests behind the Act by providing the public with campaign information, deterring corruption and the appearence of corruption, and aiding in the detection of violations.

b. Legal Analysis

The basis of the complaint is the "sale and use restriction" contained in 2 U.S.C. § 438(a)(4) of the Act. This provision requires the Commission to make all reports and statements available for public inspection, except that

> any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

"Person" is defined under the Act to include any individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. § 431(11).

The Commission's regulations at 11 C.F.R. § 104.15 augments the statutory restriction:

> Any information copied, or otherwise obtained, from any report...shall not be sold

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> or used by any person for the purpose of soliciting contributions or for any commercial purpose....11 C.F.R. § 104.15(a).

The media exemption to the sale and use restriction is set out at 11 C.F.R. § 104.15(c):

> The use of information, which is copied or otherwise obtained from reports filed under 11 C.F.R. Part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.

Section 438(a)(4) was designed to prevent the disclosure reports filed with the Commission from becoming a vehicle whereby the contributor names contained on those reports would be used for solicitation or commercial purposes. In a number of Advisory Opinions the Commission has focused on the congressional intent behind 2 U.S.C. § 438(a)(4). Citing to the language of the proponents of this provision, those opinions recognize that the principal, if not sole, purpose of the restriction on use of information is to protect contributor information and lists from being used for commercial purposes. 1/ See Advisory Opinions

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1/ Congress' purpose, as reflected in the Senate debate on 2 U.S.C. § 438(a)(4), was to prevent the invasion of contributors' privacy stemming from the commercial use of contributor lists:

> Mr. Bellmon."...the purpose of this amendment is to protect...citizens who are generous and public spirited enough to support our political activities [from] all kinds of harassment..."
> 117 Cong. Rec. 530058(1971).

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1980-78,101; 1977-66. It appears from the legislative history to the 1979 Amendments to the Act, that a commercial vendor may compile the names and addresses of political committees for the purpose of selling those names, but that the prohibition on the copying and use of names and addresses of individual contributors is crucial and so was maintained. H.R. Rep. No. 422, 96th Cong., 1st Sess 23 (1979). Thus, it was the opinion of the Commission that the commercial republication of FEC data on political action committees in the form of a directory and the subsequent sale of those directories would be permissible under the Act, as long as the publication did not include any information identifying individual contributors. Advisory Opinion 1980-101.

The current matter presents a situation where a corporation is copying FEC reports into a data base and then selling that information to "subscribers." This activity appears to facially violate the sale and use restriction of 2 U.S.C. § 438(a)(4). Legi-Tech is directly copying information from FEC reports and then selling/using it for commercial purposes, i.e. selling it to the public for profit. The key issue in this matter is whether Legi-Tech falls under the news media exemption to the sale and use restriction, with the result that its activities would be permissible under the Act.

The media exemption of 11 C.F.R. § 104.15(c) has two aspects. First, the use of the information copied from FEC reports must be for a newspaper, magazine, book or "other similar communication." Second, the principal purpose of the use must

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not be the communication of contributor information for solicitation or commercial purposes.

Legi-Tech, in its response, argues that it operates as a "legitimate news organization" and points to several factors in support of this contention. First, Legi-Tech is a subsidiary of McClatchy Newspapers, a "diversified media company," which itself owns, among other things, newspapers, radio stations, cable systems and electronic library services. Second, Legi-Tech refers to itself as a news service, specifically in the business of collecting and transmitting legislative and political information to "hundreds of subscribers." Legi-Tech is thus self-described as a "new method of delivering information," i.e. an electronic newspaper. Third, Legi-Tech claims to target the print media as its major subscribers.

Fourth, Legi-Tech claims to be performing a reporting function by augmenting the information collected from FEC reports. Two examples of this cited by respondent are the addition of telephone numbers of individual contributors and the presentation of information in a format different from that of the reports.

Finally, Legi-Tech claims that the federal courts have explicitly recognized its status as a member of the news media, citing Legi-Tech, Inc. v. Keiper, 766 F.2d 728 (2d Cir. 1985), in which the court called Legi-Tech an "organ of the press."

None of the factors cited by Legi-Tech either individually or collectively conclusively establish Legi-Tech's status as a member of the news media. The mere fact that Legi-Tech is a

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subsidiary of a media company does not qualify Legi-Tech as a member of the media, especially where, by its own admission, McClatchy Newspapers is involved in such non-news businesses such as cellular telephones.

The characterization of Legi-Tech as a news organ by the second circuit Court of Appeals likewise carries little weight in this matter, notwithstanding the fact that Legi-Tech would have the Commission bound by such a characterization. The court in Legi-Tech, Inc., supra makes no explicit finding or characterization of Legi-Tech as a news organ, but merely refers to Legi-Tech as a press organ. Indeed, such reference is not made in the context of 2 U.S.C. § 438(a)(4) or the Act at all, but merely concerns Legi-Tech's activities within New York State, which are substantially different from Washington On-Line. 2/

The issue of whether Legi-Tech's service falls within the media exemption of 11 C.F.R. § 104.15 is a matter of first impression for the Commission and is one for which there is no clear cut answer. This report does not attempt to comprehensively define for the Commission either the news media in general or what is meant by "newspapers, magazines, books or other similar communications." However, Legi-Tech's service is not characteristic of what is commonly thought of as a newspaper.

2/ The Legi-Tech, Inc. supra, case involved Legi-Tech's publication of a package of information including summaries of pending state legislation combined with relevant political information such as legislators' voting records and campaign contributions. The court found that New York had denied Legi-Tech access to a competing state-run legislative news service.

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Contributor lists in and of themselves do not involve a news story, and Legi-Tech makes no attempt to utilize the lists as news. There is no description of the raw data in the form of news articles. There are no editorials assessing the importance of the data. No authorship is involved at all, just the mere presentation of FEC information. 3/

Respondent cites In re Virginia Political Report, MUR 1540, as supporting the proposition that Legi-Tech falls within the media exemption. In that matter, the Commission determined there was no reason to believe that a political newsletter which published the names of individual contributors and the amounts contributed, violated 2 U.S.C. § 438(a)(4). However, the newsletter in MUR 1540 is factually distinguishable from Legi-Tech's computer service. The former contained more than just a contributor list, including election returns, book reviews, campaign analysis, and items of political interest. 4/ None of these items are provided by Legi-Tech's service.

Thus, it is the opinion of the Office of General Counsel that Legi-Tech is not included within the exemption's language of "newspapers, magazines, books or other similar communications."

3/ The addition of telephone numbers to some contributors' names is not characteristic of an ordinary notion of the reporting function.

4/ The specific newsletter issue which was the subject of MUR 1540 contained Virginia state election results and biographical information about the candidates, as well as a general discussion of Virginia politics.

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Additionally, Legi-Tech fails to avoid the commercial purpose portion of the exemption, i.e. that the principal purpose of the communication not be commercial. Legi-Tech argues that merely selling a service for a profit does not constitute a commercial purpose, especially where, in its view, the statute was specifically intended to prevent list brokering and not the dissemination of information. Legi-Tech also argues that the warnings which it places on its data base and advertisements are intended to ensure that the contributor lists not be used by its subscribers for solicitation or commercial purposes. Finally, Legi-Tech includes a constitutional argument that "commercial purposes" should be read to exclude its activities, otherwise 2 U.S.C. § 438(a)(4) would violate the First Amendment. 5/

Clearly, there is a commercial purpose to Legi-Tech's operations. The campaign contribution tracking system is a profit-making venture developed by Legi-Tech.

5/ Respondent cites Ryan v Kirkpatrick, 699 S.W. 22 215, (Mo. 1984) as supporting this proposition. In this case a Missouri statute similar to 2 U.S.C. § 438(a)(4) was declared unconstitutional by the Missouri Supreme Court. However, the Missouri statute did not contain the media exemption applicable in this MUR, and the court did not address the issue of who qualifies for this exemption.

Additionally, it should be noted that Federal agencies are without the power or expertise to pass upon the constitutionality of legislative acts. See Oestereich v. Selective Service System Local Board No. 11, 393 U.S. 233, 242 (1968) (Harlan J., concurring); Engineer Public Service Company v. SEC, 138 F.2d 936, 952-3 (D.C. Cir.), remanded per curiam with direction to dismiss as moot 332 U.S. 788 (1947). See 3 K. Davis Administrative Law Treatise, § 20.04 at 74 (1958). Indeed, serious constitutional questions would arise if a agency sought first to nullify a Congressional directive on the grounds of its own constitutional doubt. See, e.g., Johnson v. Robinson, 415 U.S. 361, 368 (1974); Spiegal, Inc. v. FTC, 540 F.2d 287, 294 (7th Cir. 1976).

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Legi-Tech is basically making the FEC's contributor lists available to the public for its own commercial advantage. Its operations can be looked at as computerized list brokering.

Legi-Tech's warnings on its advertisements that contributor information not be used for solicitation purposes does not exculpate its activities, since Legi-Tech itself is using the contributor lists for its own commercial purpose. 6/ Legi-Tech's warnings on its data base, although using the language of the Act, are directed only toward the secondary use of the contributor information by Legi-Tech's subscribers, and fail to consider Legi-Tech's own commercial use of the information. 7/

Classification of Legi-Tech's activities as falling under the "commercial purpose" language of the statute is consistent with past enforcement actions considered by the Commission. For example, in In the Matter of Contributions, Inc., MUR 1523, the Commission determined there was reason to believe that respondent,

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6/ The warnings on the advertisements state,
"It is a violation of federal law to sell or use information copied from FEC reports for the purpose of soliciting contributions from other than political committees."

No language is included that prohibits use for commercial purposes.

7/ The warning on the data base states,
"Any information copied from FEC reports or statements may not be sold or used by any person for the purpose of soliticing contributions or for commercial purposes."

Contributions, Inc., knowingly and willfully violated 2 U.S.C. § 438(a)(4), by publishing for sale a four volume set of books containing, among other items, the names and employers of individual contributors as copied from FEC reports.

In conclusion, the Office of General Counsel is of the opinion that Legi-Tech's service is not characteristic of a "newspaper, magazine, book or other similar communication," but rather is principally a business service with a strictly commercial purpose, to sell contributor and other FEC information.

Accordingly, the Office of General Counsel recommends that the Commission find reason to believe that Legi-Tech, Inc. violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15. 8/

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Find reason to believe that Legi-Tech, Inc. violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15.

2. Approve the attached letter.

Charles N. Steele
General Counsel

16 December 1985
Date

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

Attachments
1. Response from Legi-Tech, Inc.
2. Letter to respondent.

8/ Although the complaint alleges that Legi-Tech's violation was knowing and willful, the evidence at this stage is insufficient to support a recommendation to this effect, especially in light of the novel and complex legal issues presented in this MUR.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2094
Legi-Tech, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 2, 1986, the Commission decided by a vote of 6-0 to take the following actions in MUR 2094:

1. Find reason to believe that Legi-Tech, Inc. violated 2 U.S.C. § 438(a)(4) and 11 C.F.R § 104.15.

2. Approve the letter attached to the First General Counsel's Report signed December 16, 1985.

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

Attest:

1-3-86
Date

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

Received in Office of Commission Secretary:	Wed.,	12-18-85,	9:02
Circulated on 48 hour tally basis:	Wed.,	12-18-85,	4:00
Deadline for vote:	Thurs.,	1-2-86,	4:00

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 13, 1986

Bruce D. Sokler, Esquire
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C
1825 Eye Street, N.W.
Suite 1201
Washington, D.C. 20006

RE: MUR 2094
Legi-Tech, Inc.

Dear Mr. Sokler:

The Federal Election Commission notified your client on October 29, 1985, 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.

Upon further review of the allegations contained in the complaint, the Commission, on January 2 , 1986, determined that there is reason to believe that your client has violated 2 U.S.C. § 438(a)(4), a provision of the Act, and 11 C F.R. § 104.15 of the Commission's Regulations. Specifically, it appears that Legi-Tech, Inc. is directly copying information from FEC reports into its data base and is then using that information for commercial purposes by selling it to the public under the trade name "Washington-On-Line," in violation of the sale and use restriction of 2 U.S.C. § 438(a)(4).

You may submit any factual and legal materials that you believe are relevant to the Commission's analysis of this matter. Please file any such response within fifteen days of your receipt of this notification.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so

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that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent will not be entertained.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

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 your client wishes the matter to be made public.

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

Sincerely,

Joan D Aikens

Joan D. Aikens
Chairman

Enclosures
Procedures

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86 JAN 24 A8:52

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
1825 Eye Street, N.W.
Washington, D.C. 20006

One Financial Center
Boston, Massachusetts 02111
Telephone: 617/542-6000
Telex: 94-0198
Telecopier: 617/542-2241

Telephone: 202/293-0500
Telecopier: 202/466-5479
Telex: 753689

January 23, 1986

86 JAN 24 A10:27
RECEIVED
OFFICE OF THE
GENERAL COUNSEL

Eric Kleinfeld, Esquire
Federal Election Commission
Washington, D.C. 20463

Re: Legi-Tech, Inc., MUR 2094

Dear Mr. Kleinfeld:

Respondent Legi-Tech, Inc. ("Legi-Tech") hereby requests an extension of time within which to submit factual and legal materials in response to the Commission's determination that there is reason to believe that Legi-Tech has violated the Federal Election Campaign Act of 1971. Legi-Tech received notification of the Commission's finding on January 15, 1986. Its response is currently due January 30, 1986. Although Legi-Tech could submit some materials by that date, it would be unable to produce all of the materials it would like to submit in its defense. The reason for the delay is that the company is gathering information about its operations in several states, and senior management has been pre-occupied with management meetings during several weeks in January.

Accordingly, Legi-Tech hereby requests an extension of time until February 6, 1986 to submit its response. If you have any questions, please do not hesitate to call.

Sincerely,

Terrence J. Leahy

Terrence J. Leahy
Counsel for Respondent
Legi-Tech, Inc.

1248m

97043841577

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 24, 1986

Terrence J. Leahy, Esquire
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
1825 Eye Street, N.W.
Washington, D.C. 20006

Re: MUR 2094
Legi-Tech, Inc.

Dear Mr. Leahy:

This is in reference to your letter dated January 23, 1986, requesting an extension of time until February 6, 1986, to respond to the Commission's reason to believe determination. 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 February 6, 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: Kenneth A. Gross
Associate General Counsel

9704384157 8

GEC#9659

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
1825 Eye Street, N.W.
Washington, D.C. 20006

One Financial Center
Boston, Massachusetts 02111
Telephone: 617/542-6000
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Telephone: 202/293-0500
Telecopier: 202/466-5479
Telex: 753689

February 6, 1986

86 FEB 6 P2:50
FEC
GENERAL COUNSEL

Eric Kleinfeld, Esquire
Federal Election Commission
Office of General Counsel
999 E Street, N.W.
6th Floor
Washington, D.C. 20463

Re: Legi-Tech, Inc., MUR 2094

Dear Mr. Kleinfeld:

Enclosed for filing with the Commission are an original and two copies of the submission of Respondent Legi-Tech, Inc. in response to the Commission's notification that it has found reason to believe that Legi-Tech has violated 2 U.S.C. §438(a)(4) and 11 C.F.R. §104.15.

If you have any questions, please do not hesitate to call.

Sincerely,

Terrence J. Leahy

Terrence J. Leahy

Enclosures

1289m

9704384579

GCC#9659

BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

In the Matter of NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE and LEGI-TECH, INC.	MUR NO. 2094

86 FEB 6 P2:50

GENERAL COUNSEL

SUBMISSION OF RESPONDENT

Bruce D. Sokler
Thomas J. Casey
Terrence J. Leahy
Karen Kao

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY & POPEO, P.C.
1825 Eye Street, N.W.
Suite 1201
Washington, D.C. 20006
(202) 293-0500

Attorneys for Respondent
Legi-Tech, Inc.

February 6, 1986

BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

In the Matter of NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE and LEGI-TECH, INC.	MUR NO. 2094

SUBMISSION OF RESPONDENT

In response to the notification that the Federal Election Commission has found reason to believe that respondent Legi-Tech, Inc. ("Legi-Tech") has violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15, Legi-Tech submits the following factual and legal materials. As we show below, Legi-Tech uses information from FEC reports only in "newspapers, magazines, books or other similar communications" and does not distribute the information for the purpose of soliciting contributions. Accordingly, its operations fall squarely within the exemption to the restriction on the use of information for commercial purposes set forth in 11 C.F.R § 104.15(c). The General Counsel should conclude that there is no probable cause to find that Legi-Tech has violated the Federal Election Campaign Act or the Commission's regulations under that statute, and this investigation should be terminated.

In this submission, we first outline the background of this and related proceedings. We then describe in some detail the operations and marketing of Legi-Tech and its parent company, McClatchy Newspapers. Finally, we provide legal support for the conclusion that Legi-Tech's Washington operations qualify for the media exemption.[1]

I. Proceedings to Date

A. FEC Proceeding

On October 24, 1985, the National Republican Congressional Committee ("NRCC") filed the complaint in this proceeding alleging that Legi-Tech had violated 2 U.S.C. § 438(a)(4). That provision states in part that information copied from FEC reports "may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee." The basis for the complaint was Legi-Tech's Campaign Contribution Tracking Service, offered under the trade name Washington On-Line, which provides computer access to campaign contribution reports on file at the FEC, including those filed by the NRCC.

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[1] Legi-Tech's verification of the factual material in the submission is included at the end of the pleading.

On October 29, 1985, the Commission notified Legi-Tech of the filing of the complaint. On November 15, 1985, Legi-Tech filed a response, contending that its publication activities fall within the media exemption in 11 C.F.R. § 104.15(c) and do not constitute an unlawful commercial use.

On January 13, 1986, the Commission notified Legi-Tech that it had determined that there is reason to believe that Legi-Tech has violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15 of the Commission's regulations. Specifically, the Commission stated that "it appears that Legi-Tech, Inc. is directly copying information from FEC reports into its data base and is then using that information for commercial purposes by selling it to the public under the trade name 'Washington On-Line,' in violation of the sale and use restriction of 2 U.S.C. § 438(a)(4)."

On January 23, 1986, Legi-Tech requested a one-week extension for the submission of factual and legal materials in support of its position. By letter dated January 27, 1984, the Office of the General Counsel granted this request.

B. Federal Court Proceeding

Before filing the complaint in this action, the NRCC initiated a proceeding before the United States District Court for the District of Columbia that raised some of the same

issues involved in this dispute. National Republican Congressional Committee v. Legi-Tech Corp., Civil Action No. 85-3106 (D.D.C. filed Sept. 27, 1985), appeal docketed, Nos. 85-6037, 85-6041 (D.C. Cir. filed Oct. 25, 1985). NRCC alleged that Legi-Tech had infringed a copyright in the campaign contribution reports NRCC is obligated to file with the FEC. NRCC also contended that Legi-Tech had committed a tort of conversion and misappropriation arising from the electronic publication of the NRCC reports allegedly in violation of FEC regulations.

On October 15, 1985, Judge Gesell denied NRCC's motion for a preliminary injunction restraining the publication of information from the NRCC reports. The Court found that NRCC is not entitled to copyright protection for lists of contributors that it is required by statute to file with the FEC solely for the purpose of public disclosure. Accordingly, NRCC had shown "absolutely no likelihood of success on the merits," and the Court found that "it is clear that the public interest favors disclosure."[2] In analyzing NRCC's claim that Legi-Tech had misappropriated information from the FEC reports, the Court observed:

> It is suggested in Count Two of the complaint that in some fashion as yet not fully explained

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[2] Hearing Transcript at 6, Exhibit 1 hereto.

> to the Court defendant has been guilty of conversion of some kind. I have taken that to mean that in some fashion it is believed that the defendant is utilizing the information obtained from the public files in a manner inconsistent with the rules and regulations of the Federal Election Commission. As to that there is no evidence to support it. Indeed, all of the material before the Court would suggest that [Legi-Tech] is operating consistent with the rules and regulations of the Commission, but, in any event, if there is some violation of those rules and regulations the matter has to be addressed under the statute before the Commission administratively given, of course, limited statutory jurisdiction in such matters.[3]

The Court then entered a final order in the case, denying all relief requested by NRCC.[4]

II. Nature of Legi-Tech's Operations

Legi-Tech offers to its subscribers an electronic news service that includes, among other items, information on campaign contributions obtained from public disclosure reports filed with the Federal Election Commission. The dissemination of campaign contribution information, however, constitutes only

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[3] Exhibit 1 at 3 (emphasis supplied).

[4] NRCC has appealed that decision, and oral argument has been set for March 10, 1986. The United States Court of Appeals for the District of Columbia Circuit granted NRCC's uncontested motion for an early briefing schedule, but denied its request for expedited argument, concluding that NRCC had not shown that it had suffered any irreparable injury as a result of Legi-Tech's actions.

a small part of Legi-Tech's operations in California, New York and Washington. A description of those operations shows that Legi-Tech's federal contribution tracking system complements its other electronic publishing activities at the state and federal level, as well as the journalistic enterprises of its parent company, McClatchy Newspapers.

A. McClatchy Newspapers

McClatchy is a diversified media company with holdings in the newspaper industry, radio, cable systems, and new communications technologies such as videotext and multipoint distribution service. These activities reflect McClatchy's fundamental business strategy of broadening its operations beyond traditional daily newspapers to include new information delivery services that take advantage of advanced technologies. McClatchy considers this approach necessary for it to compete effectively with other information providers in the coming decades.

McClatchy has a direct or indirect ownership interest in several municipal daily newspapers, including the Sacramento Bee, the Modesto Bee, the Fresno Bee, the Anchorage Daily News, and the Tri-City Herald. Collectively, these newspapers have a circulation of hundreds of thousands of residents. McClatchy is the licensee of stations KFBK (AM) and KAER-FM in Sacramento, California, and KMJ (AM) and KNAX-FM in Fresno,

California. It holds interests in several cable television systems, including NorCal Cablevision, Inc. in Yuba City, California; Telcab Communications, Inc. in Reno, Nevada; Fresno Cable TV Limited in Fresno, California; and Sequoia Cablevision, Inc. in Tulare, California. It holds interests in a multipoint distribution service venture, as well as in several companies that currently have or have applied for cellular telephone licenses. McClatchy offers two videotext services, Grassroots California and El Dorado Teleguide. Finally, it markets an electronic newspaper library called Advanced Search Concepts.[3]

B. Legi-Tech's State Operations

Legi-Tech began operations in California in 1981 and was incorporated under the laws of the State of California in 1982. McClatchy acquired its interest in the company in 1982. In 1983, Legi-Tech began to provide services in New York State, and in 1985 expanded to Washington, D.C.

Services. Legi-Tech is in the business of collecting and transmitting legislative and political information to its subscribers over telecommunications facilities. In California

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[3] The summary of McClatchy's interests that appeared in the latest issue of "Inner View," McClatchy's internal magazine for its employees, is attached as Exhibit 2.

and New York, it markets a service known as the Legi-Tech System. The service offers subscribers summaries of state legislation in plain terms, transmits the recorded votes on each bill, provides the attendance record of state legislators, reports the text of bills, and publishes legislative calendars and agendas. Legi-Tech provides computer terminals to its subscribers to enable them to receive the service. A brochure describing the service is attached as Exhibit 3.

A significant feature of the Legi-Tech System in California and New York is the transmission of information about political contributions. Legi-Tech provides to its subscribers a variety of contribution information on file with the state government, including names and addresses of contributors, amounts of contributions, and the dates of the contributions. Legi-Tech originally began to offer this service in California at the request of its newspaper clients.

Customers. Legi-Tech's operations in California and New York have been successful. Hundreds of customers subscribe to Legi-Tech's on-line services. The company has always targeted the print media as major customers, and its current and former subscribers include Newsday, the Los Angeles Times, Gannett News Service, The New York Times, Capital Newspapers Group, and the New York Post. The system is also popular with the political parties; in fact, the largest single private subscriber to the system is the California Republican Party.

Legi-Tech's other customers include lobbyists, corporations, local governments (including the New York City Mayor's office), state agencies and trade associations.[5] These customers rely on Legi-Tech's services to keep abreast of rapidly changing pending legislation, and to obtain a comprehensive and up-to-date picture of contributions to state legislators.

Operations. Legi-Tech operates much like a daily newspaper. Its staff in Sacramento includes eight to ten people who gather legislative and political information for publication in Legi-Tech's data base. Similarly, the Albany staff includes seven to nine reporters who cover the legislative "beat." The job of these reporters is to attend assembly meetings and legislative sessions and to record decisions and actions at those meetings. This information is then quickly input into the Legi-Tech data base where it becomes available for transmission to the company's subscribers. Legi-Tech reporters also seek out the text of bills, legislative calendars, contribution information, and

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[5] The approximate breakdown of customers in New York is trade associations, slightly over thirty percent; government agencies, about thirty percent; corporations, over ten percent; lobbyists, about fifteen percent; media, about ten percent; and political organizations, about three percent. In California, the figures are trade associations, about forty percent; government agencies, about forty percent; corporations, about fifteen percent; lobbyists, about thirteen percent; media groups, about six percent; and political organizations, about nine percent.

other items from a variety of sources in the state legislatures. In short, Legi-Tech journalists cover events, gather information, check on sources, double-check the accuracy of their information, and prepare and present it in a usable form -- activities no different in substance from those of their colleagues who work for print publications.

C. Legi-Tech's Federal Information Services

Legi-Tech has expanded its electronic information services to offer data maintained in the public files of the federal government in Washington, D.C. Under the trade name Washington On-Line, Legi-Tech currently offers two electronic information services: the Bill Text Tracking System ("Bill Text") and the Campaign Contribution Tracking System ("CCTS").

Bill Text. The Bill Text service is the first computerized file of federal legislation that enables a subscriber to call up the desired information at his desk. Bill Text permits Legi-Tech subscribers to obtain instantly a current copy of every bill and resolution introduced before Congress. By using word or phrase searches, subscribers can locate every piece of legislation that refers to a particular topic. Legi-Tech will charge a single annual fee to subscribers, allowing unlimited searches at no extra cost. A copy of the promotional brochure for Bill Text is attached as Exhibit 4.

CCTS. It is CCTS that triggered NRCC's complaint. CCTS contains a computerized data base with all campaign contribution reports on file and available for public inspection at the Federal Election Commission. Legi-Tech has developed this service in part because its contribution reports at the state level have generated significant customer demand, particularly among the news media, many of which cover the federal government in Washington. A copy of the promotional brochure for CCTS is attached as Exhibit 5.

Through CCTS, a subscriber is able to call up on his personal computer a variety of data from the FEC reports. The data base includes information on (1) political contributions, including the amount, date, and cumulative total of the contributions; (2) contributors, including their name, address, occupation, employer, and in some cases telephone numbers; (3) contribution recipients, including whether the recipient is a candidate committee or a political action committee; and (4) payments and expenses, such as amounts of transfers to other committees, salaries, administrative expenses, and payments to suppliers.

The software on CCTS enables subscribers to request information in a wide variety of formats depending on the purpose of the search. Once the user is in the Contributor Tracking module, for example, he can run a search based on the contributor's name, his employer, geographical location, or the

recipient of the contribution. Thus, a subscriber might want to analyze all contributions made to the committee to re-elect a particular member of Congress. The system would enable him to conduct such a search quickly and easily. Alternatively, he might want to report on which employees of a particular company gave money to a specific political action committee. A reporter could focus on all of the contributors that live in the geographic area covered by his newspaper. All of these searches could be restricted to a particular time period. CCTS makes these information retrieval tasks simple and convenient.[2]

The primary benefit of CCTS is that it is the first service to make this massive amount of public information accessible in a convenient, computerized form. Until now, those who were interested in monitoring the flow of dollars to or from a candidate's committee or a political action committee had to take a personal trip to the FEC and pore over hundreds of thousands of pages of reports to ferret out the desired information. For example, if a researcher wanted to learn about all contributions made by a particular individual mentioned in a report to the FEC, he would have to go through

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[2] Legi-Tech has performed a demonstration of the system for some Federal Election Commission officials. The company would be happy to provide a similar demonstration for the General Counsel's office.

thousands of pages of reports, and then would still not be sure that he has an accurate total. Purchasing the microfilm from the agency does not alleviate this chore of reviewing large amounts of information that the subscriber is not interested in. With CCTS, a subscriber can use his personal computer or word processing equipment to call up precisely the data he needs, in a matter of seconds.

The need for such a service has become even more compelling in light of imminent Gramm-Rudman budget cuts that have hampered the ability of the Commission to distribute campaign contribution information to the public and the press. Recent reports indicate that the Commission will eliminate from its computer files all congressional campaign records from 1976 to 1982, as well as all lists of individual contributors to congressional candidates, loans to campaigns, and transfers from political action committees.[8] Information that is still processed will be recorded through a slower, less sophisticated computer system that is more error-prone, according to these reports. The private services offered by Legi-Tech will be able to satisfy the public's demand for information that, because of budget constraints beyond its control, the Commission can no longer meet.

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[8] See "FEC's Budget Bite," Washington Post, Jan. 30, 1986, p. A23, col. 6.

The Commission reports from which Legi-Tech compiles its data base do not include the telephone numbers of individual contributors. Legi-Tech added this feature to CCTS because of its previous experience at the state level. In one of its first projects, the Los Angeles Times asked Legi-Tech to gather a data base of contributors to the gubernatorial campaign of Mayor Tom Bradley. The newspaper asked Legi-Tech to include telephone numbers in order to facilitate their reporters' efforts to contact contributors directly for personal interviews. Legi-Tech decided that it would be useful to add this feature to its CCTS service in Washington, thereby providing another way in which Legi-Tech could distinguish itself from other information providers. In conversations with sales staff, some media customers have singled out the availability of telephone numbers as a particularly attractive feature of the system.

Sales and Marketing. Legi-Tech began to market its federal services in late 1985. With the assistance of an advertising and market research firm, Legi-Tech defined a target market consisting of four major groups:

1. The Media. This group was defined to include reporters, researchers, correspondents, editors, and executives of local and national newspapers; general interest, news, business, and trade magazines and newsletters; Washington newsbureaus, services, and agencies, both print and broadcast; news directors and assignment editors at local radio and television stations and the major networks; columnists, special

correspondents, and other news "personalities" in both print and broadcast; directors and producers of broadcast news/feature programming, such as "60 Minutes" magazine formats and "Meet the Press" interviews.

2. Special Interest Groups. These include not only such special interest groups but also their lobbyists; lawyers working within such organizations; law firms, accounting/management consulting firms, public relations agencies and other consultants; senior executives and government relations staffers at associations, unions and the U.S. Chamber of Commerce.

3. The "Political Establishment." This group encompasses elected national officials (Congress, the President and Vice President) and their office and campaign staffs; national political parties; political action committees (PAC's); government agencies; political image and management consultants.

4. Corporate Groups. This includes government and defense contractors; large and medium size national corporations interested in the effects of government policy; issue study and research firms ("think-tanks"); and other profit or non-profit organizations with a special interest in the affairs of government.

Legi-Tech also launched a major advertising campaign, consisting of direct mail, periodical and radio advertisements, and personal demonstrations. Legi-Tech selected advertising media on the basis of which were most likely to reach the target audiences described above. First, Legi-Tech has sent tens of thousands of brochures through the mail. The names of the recipients were selected from standard reference books containing names of law firms, lobbyists, media groups, political consulting firms, and trade associations.

Second, Legi-Tech has advertised on local radio stations during news and public affairs broadcasts, which attract its target market. The radio advertisements emphasize the role of

Legi-Tech as a provider of an electronic information service. For example, radio advertisements characterized Washington On-Line as "electronic publishers of government information." Copies of the scripts of several such advertisements are attached as Exhibit 6.

Third, Legi-Tech has advertised Bill Text and CCTS in a series of print media that reach its target audience. These have included weekly newsmagazines and more specialized journals that reach trade associations, lawyers, the legislative community, and reporters. Print advertisements have stressed the usefulness of Legi-Tech's services to monitor legislative activity. Both the CCTS and Bill Text advertisements, for example, describe Legi-Tech's services as "the perfect complement to your current legislative monitoring efforts." The CCTS advertisement states that the service "helps you understand the link between contributions and who won or lost. Or which legislation passed or failed." The Bill Text display makes a direct pitch to corporations and newspapers: "If the wrong word could cost you millions of dollars -- or the right angle on a story -- the Bill Text Tracking System was designed for you." Copies of the advertisements used in magazines are attached as Exhibit 7.

Fourth, an important aspect of Legi-Tech's marketing activities in Washington has been personal demonstrations of the capabilities of the system to prospective clients. These

demonstrations are provided either at the request of a customer who has responded to an advertisement, or as a result of a contact initiated by Washington On-Line's sales staff. From August 1985 through January 1986, Legi-Tech's personnel had performed several hundred demonstrations for potential clients. The vast majority of those demonstrations were performed for potential subscribers who are affected by, who seek to influence, or who report about the legislative process. For example, twenty-five percent of these were presented to law firms and lobbyists; twenty percent percent to corporations; fifteen percent to government agencies; ten percent to trade associations; eight percent to the media; two percent to foreign embassies; and the remaining twenty percent to miscellaneous other potential clients, such as special interest groups.

As of January 28, 1986, CCTS customers included several major newspaper organizations; several trade associations; a union headquarters; law firms; several corporations; and some lobbying groups. The subscribers to Bill Text included several law firms and the U.S. Department of Justice.

In addition, Legi-Tech has begun to offer customers in California the opportunity to subscribe to the federal Bill Text and CCTS services. Several customers have already signed up for Washington services, including a major telephone company and a leading metropolitan newspaper. Other California clients

have indicated their interest in subscribing to the Washington services. This feature will soon become available to New York subscribers.

Uses of the System. Legi-Tech does not keep track of the frequency with which its subscribers use the federal services, nor does it monitor the uses to which the system is put. Some subscribers use CCTS to keep track of who is receiving contributions and from what sources. Some use it in coordination with the Bill Text service to find links between contributions to legislators and their introduction or support of particular pieces of legislation. Some use the system to assist grass-roots political lobbying efforts. Some use the information to encourage individuals to participate in the political process for purposes of influencing public policy on a particular issue.

Members of the media have expressed particular interest in the great variety of ways in which users can format particular types of data and focus their searches quickly and easily. For example, some have mentioned to us that it is useful to have a "financial profile" of a public figure who is giving a speech being covered by a reporter -- a profile that can be obtained instantaneously on CCTS. Also, the ability of journalists to report the amounts of campaign contributions from particular sources and then to compare this data to the voting records of members of Congress is one of the outstanding

features of the system. One prospective customer had the idea of using the system to trace a senator's receipts of contributions from defense-related PACs during the period when the defense bill was before his committee. In that case, the information obtained from CCTS would form the core of the story that the reporter was attempting to put together. As this election year gets underway, journalists can be expected to intensify their attempts to monitor the legislative and campaign processes, triggering an even greater demand for Legi-Tech's services.

Operations. From the outset, Legi-Tech has been completely open about the nature and purpose of its activities. Legi-Tech has provided demonstrations of the system to upper level Commission officials. The Commission's Public Information Bureau has been very cooperative in providing information to Legi-Tech, while having full knowledge of the nature of Legi-Tech's business.

As in California and New York, a significant portion of Legi-Tech's Washington staff -- about eight reporters -- spend their time covering the "beat" and gathering legislative data. Legi-Tech creates its data base for CCTS by purchasing the FEC microfilm reels, at $10 per reel, that contain all of the campaign contribution reports on file with the agency. The Commission makes these reels available to Legi-Tech (and other entities) usually on the same day that the reports are filed and the film is prepared.

Legi-Tech expends considerable effort and money to input this information into its data base. It first organizes the information according to the way that Legi-Tech wants to format the information. It then sends the papers to an outside data processing firm whose operators manually key punch each item of information from the reports. After the key-punched items are returned to Legi-Tech, the company's staff reviews the materials to ensure their accuracy. Legi-Tech has spent over half a million dollars putting together its data base in this manner, including staff salaries and fees for outside service firms.

Legi-Tech hires an outside firm to track down the telephone numbers of the contributors (the same firm, incidentally, that is used by the Internal Revenue Service), and ends up with telephone numbers for about half of the contributors listed in the FEC reports. Legi-Tech does not remove the pseudonyms, or "salts," that organizations are permitted to insert into their FEC reports in order to detect their misuse. Indeed, Legi-Tech has no ability or incentive to do so.

Restrictions on the Use of Information Obtained from CCTS. Legi-Tech includes on its sales materials and data base warnings intended to inform subscribers of the limitation in the Federal Election Campaign Act on the use of information from FEC reports. In its advertising materials, the warning

reads as follows: "It is a violation of federal law to sell or use information copied from FEC reports for the purpose of soliciting contributions from other than political committees." The warning on the CCTS data base states: "Any information copied from FEC reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes." This statement is precisely the same as that on the computerized data base offered by the FEC. The warning on the CCTS system appears every time a CCTS subscriber obtains access to any of the modules on the system, including the "contributor," "candidate," and "PAC" modules.

In its standard contract for subscribers, Legi-Tech limits the uses to which the information received over its data base may be put. The contract states that customers may not distribute the information they obtain over the system except to the extent that it is incidental to the conduct of the customer's business. The contract also indicates that the source of the information on CCTS is the reports filed with the Federal Election Commission, and that "[i]t is a violation of federal law to sell or use information copied from such reports for the purpose of soliciting contributions from other than political committees." Copies of the standard subscriber subscription agreement and master service agreement are attached as Exhibit 8.

III. Legi-Tech Is Operating in Full Compliance with the Federal Election Campaign Act and FEC Regulations.

NRCC contends that Legi-Tech is violating 2 U.S.C. § 438(a)(4), which provides that reports and statements filed with the Commission are to be made public, except that:

> any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

This restriction is echoed in the regulations. See 11 C.F.R. § 104.15(a). The regulations, however, carve out an exception to the general ban on commercial use:

> The use of information, which is copied or otherwise obtained from reports filed under 11 C.F.R. Part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.

As we explain below, Legi-Tech's electronic publication activities fall squarely within this exemption. First, Legi-Tech's electronic news service constitutes "other similar communications" that closely resemble printed newspapers, magazines and newsletters. Second, the purpose of Legi-Tech's publications is not list-brokering or similar "commercial purposes" within the meaning of the statute and regulation.

Third, a ruling that Legi-Tech's activities do not qualify for the media exemption and are barred by the statute would unquestionably be unconstitutional -- particularly since the Second Circuit Court of Appeals has squarely held that Legi-Tech is "an organ of the press." See Legi-Tech, Inc. v. Keiper, 766 F.2d 728 (2d Cir. 1985).

A. Legi-Tech Offers a News Service Within the Meaning of the Media Exemption.

The regulation exempts from the strictures of the Act "newspapers, magazines, books or other similar communications." The purpose of the exemption is to provide the constitutionally-required breathing space for press organizations that seek to publicize data from FEC reports in the normal course of their journalistic operations. Legi-Tech's activities are well within the traditional notion of press organizations whose activities are protected.

It should be emphasized that Legi-Tech's Campaign Contribution Tracking Service cannot be viewed in a vacuum. CCTS constitutes only a small, albeit important, segment of the publication activities of Legi-Tech and its parent company. For example, as noted above, McClatchy Newspapers operates an extensive array of media activities, including four municipal newspapers. Legi-Tech's electronic information services are a logical outgrowth of those news operations, and complement the more traditional forms of news reporting. Legi-Tech's other

operations are extensive and include the transmission of information at the state level on legislative activity, including bill status, legislators' voting records, campaign contributions, legislative calendars, and bill text. At the federal level, an important feature of Legi-Tech's system is its Bill Text Tracking Sysytem, which provides instantaneous and comprehensive access to all pending federal legislation. Thus, Legi-Tech electronically publishes a wide variety of legislative and political information -- not just the contribution reports on file at the FEC.

Even if Legi-Tech were to publish only campaign contribution information, however, its activities would be shielded by the media exemption. In Legi-Tech, Inc. v. Keiper, the court of appeals specifically addressed whether Legi-Tech's activities should receive the same constitutional protections afforded the print media. The court decided that Legi-Tech is an "organ of the press," entitled to the full panoply of press freedoms. 766 F.2d at 730. These rights must include the ability to publish information on file with the FEC for its subscribers without fear that the government will take steps to interdict the dissemination of this information. Any contrary ruling by the Commission would place it squarely in conflict with the Second Circuit.

The fact that Legi-Tech distributes information to its subscribers over telecommunications circuits rather than by

means of printed publications in no way mitigates its ability to rely on the media exemption. The electronic press has for many years been accorded the same rights as printed publications.[9] As new ways to transmit information are discovered, constitutional protections continue to apply to those innovations. In Legi-Tech, for example, the Second Circuit observed that the fact that Legi-Tech distributes information to its subscribers electronically rather than through traditional printing methods in no way undercuts its constitutional rights:

> [W]e note that we are dealing in an area of rapidly developing technology and with novel and expanding forms of the exercise of the freedom of the press guaranteed by the First Amendment. . . . Legi-Tech . . . use[s] technology that is particularly well-suited to transmitting large amounts of rapidly-changing information. . . .
>
> It is even now technologically possible to offer an "electronic newspaper" to subscribers who own personal computers. Such a service might transmit news items just as other services transmit stock market quotations or other information.

766 F.2d at 732. Because the media exemption from the sale and use rule accommodates constitutional concerns of freedom of

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[9] See, e.g., P.A.M. News Corp. v. Butz, 514 F.2d 272, 277 (D.C. Cir. 1975) ("[w]ire services fall within the protective umbrella of the first amendment press guarantee.").

speech and of the press, it must be interpreted to encompass Legi-Tech's activities.

The FEC itself has recognized the need for convenient electronic access to the massive amount of information in its files. It now offers a Freedom of Information Direct Access Program under which a member of the public, after filing a request under FOIA, may obtain computerized access to some of the information on the FEC reports.[10] As the Commission explained in announcing the service:

> This is a continuation of the Commission's efforts to expand public disclosure of campaign finance information filed with it by Federal candidates and political committees, those making independent expenditures and the communications costs of corporations and labor unions. The FEC is the only source of all those reports.[11]

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[10] There are several differences between Legi-Tech's CCTS and the Commission's direct access program. First, the government's service includes only information on contributions of $500 or more, which represents only about one-third of the entries on the FEC reports carried by CCTS. Second, the user must file a FOIA request, which is both cumbersome and undesirable for those users who, for whatever reason, desire confidentiality. Third, the system is available only during limited time periods. Fourth, the FEC's system has an option of hourly charges which CCTS does not. Finally, the FEC's system does not have software that affords flexibility to conduct a wide variety of inquiries quickly.

[11] Federal Election Commission Press Release (July 23, 1985) (emphasis added), Exhibit 9 hereto.

As the Commission recognizes, this type of computerized service promotes the interests underlying the campaign disclosure laws by making contribution information more readily available. The same holds true for Legi-Tech's on-line service.

B. Legi-Tech Is Not Publishing Information for the Purpose of Soliciting Contributors or for Commercial Purposes.

The media exemption in Section 104.15(c) of the Commission's rules does not purport to shield all dissemination of campaign contribution information by newspapers. Rather, it protects such publication only "as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes." Legi-Tech does not publish information from the public FEC reports for a "commercial purpose" within the meaning of the regulation. Specifically, the sale for profit of a publication that includes campaign contribution information does not by itself constitute a forbidden "commercial purpose."

Although there is little history behind Section 104.15(c), the regulation was obviously adopted to ensure that the limited sale and use restriction in 2 U.S.C. § 438(a)(4) would not be stretched to interfere with the traditional and constitutionally protected journalistic activity of publishing information from campaign contribution reports. As the debate

on the Senate floor shows, the sole purpose of the sale and use provision was to prevent the use of FEC reports by list brokers who might harass individual contributors. Congress confirmed its intent that news organizations be totally free to publish information from those reports:

> MR. BELLMON. Mr. President, the amendment is self-explanatory. I shall read it again. It provides that "any information copied from such reports and statements shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose."
>
> . . . This amendment is intended to protect, at least to some degree, the men and women who make contributions to candidates or political parties from being victimized by that practice.
>
> MR. NELSON. Do I understand that the only purpose is to prohibit the lists from being used for commercial purposes?
>
> MR. BELLMON. That is correct.
>
> MR. NELSON. The list is a public document, however.
>
> MR. BELLMON. That is correct.
>
> MR. NELSON. <u>And newspapers may, if they wish, run lists of contributors and amounts.</u>
>
> MR. BELLMON. That is right; but the list brokers, under this amendment, would be prohibited from selling the list or using it for commercial solicitation.

117 Cong. Rec. S30058 (1971) (emphasis added).

This debate makes clear that Congress equated "commercial purposes" with activities by list brokers, such as

purchase or sale of the lists in connection with the solicitation of contributors. Congress did not intend to bar all "commercial" use of the reports in the sense of prohibiting any transmission or republication of information from the reports for profit. Such an interpretation would wipe out the media exemption, since virtually all "newspapers, magazines, books or other similar communications" are operated for "commercial purposes" in the sense that their publications are offered for sale and their operators hope to make a profit. Accordingly, the commercial distribution of news that includes campaign contribution information does not reflect an unlawful "commercial purpose" under the statute.[12]

The initial version of the regulation implementing the statutory prohibition on commercial use contained a fairly specific description of prohibited activities:

> No information copied or obtained from reports and statements shall be sold or used by any person for the

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[12] This interpretation is consistent with a long line of cases in which the Supreme Court has held that First Amendment protections of publishers are not lost or diminished because they sell their publications for money instead of giving them away for free. See, e.g., Metromedia, Inc. v. San Diego, 453 U.S. 490, 504 n.11 (1981) (and cases cited therein); Smith v. California, 361 U.S. 147 (1959); Home Box Office, Inc. v. FCC, 567 F.2d 9 (D.C. Cir.), cert. denied, 434 U.S. 829 (1977). As the Court has said, those with "commercial interests" are frequently also "those with the highest interest and the largest stake in a First Amendment controversy." Metromedia, Inc., 453 U.S. at 504 n.11.

> purpose of soliciting contributions or for any commercial purpose. For purposes of this subchapter, "soliciting contributions" means requesting gifts or donations of money, or anything of value for any cause or organization -- political, social, charitable, religious, or otherwise. For purposes of this subchapter, "any commercial purpose" means any sale, trade, or barter of any list of names or addresses taken from such reports and statements and any use of any such lists for any surveys or sales promotion activity.

11 C.F.R. § 20.3 (1972), published in 37 Fed. Reg. 6167 (1972) (emphasis added). Legi-Tech's activities would not have violated this regulation, since it does not use any of the information for surveys or sales promotions.

The next incarnation of the commercial use regulation (and the predecessor to the current regulation) explicitly recognized that media publications do not distribute campaign contribution information for "commercial purposes" within the meaning of the statutory prohibition. "Commercial purpose" was defined to exclude the media altogether:

> Any information copied, or otherwise obtained, from any report or statement, or copy, reproduction, or publication thereof, filed with the Commission, Clerk of the House, Secretary of the Senate, or any Secretary of State or other equivalent chief State election officer, shall not be sold or utilized by any person for the purpose of soliciting contributions, or any commercial purpose. For purposes of this section, "any commercial purpose" does not include the sale of newspapers, magazines, books, or other similar communications, the principal purpose of which is not to communicate lists or other information obtained from a report filed as noted above.

11 C.F.R. § 104.13 (1976), published in 41 Fed. Reg. 35,944 (1976) (emphasis added).[11]

In 1980, the regulation was revised to its current form. 47 Fed. Reg. 15,115 (1980). "Commercial purpose" is no longer defined. Section 104.15(a) states that any information copied or otherwise obtained from campaign contribution reports filed with the FEC "shall not be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose . . ." Section 104.15(c) provides the exception:

> The use of information, which is copied or otherwise obtained from reports filed under 11 CFR Part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.

The Commission explained that it had not intended to make any major changes in this provision:

> This section [104.15] essentially follows current regulation 11 CFR 104.13. It specifically states that the use of information copied from the FEC reports in newspapers, magazines, and similar communications is permissable so long as the

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[11] This provision appeared without comment in the final version of the regulations enacted by the Commission. No similar provision had appeared in the earlier notice of proposed rulemaking. See 41 Fed. Reg. 21,572 (1976).

> principal purpose is not to communicate contributor information for any commerical [sic] purpose.

45 Fed. Reg. 15,087 (1980).

Thus, the regulation continues to reflect the obvious point that a news service could sell information from FEC reports for a fee and for profit without being tainted as having an unlawful "commercial purpose." It can only be read to preclude access by those who engage in list brokering or who harass individual contributors. But there is no evidence that Legi-Tech conducts list brokerage activities of any sort. Nor is there any evidence that Legi-Tech conducts its electronic publication activities "for the purpose of soliciting contributions or for other commercial purposes." Its primary customer targets are the media, special interest groups, and the political and corporate establishment. Its current and potential subscribers include members of the media, lobbying groups, law firms, corporations, government agencies, and others who have a vital interest in the operations of the government and a compelling need for timely and accurate information about campaign contributions. The Department of Justice, a major client, is not a list broker.

In its complaint, NRCC makes much of the fact that Legi-Tech includes telephone numbers for certain of the contributors listed on its data base. As noted previously, Legi-Tech began to offer this service at the request of its

newspaper customers whose reporters wanted a convenient way of contacting sources. There is nothing about the provision of telephone numbers that suggests that Legi-Tech is actively encouraging solicitors to subscribe to its service. Nor does it make it easier for Legi-Tech or its subscribers to detect and possibly remove from their data base the pseudonyms in the NRCC lists. Legi-Tech does not remove any names from its lists. It hires an outside firm to track down telephone numbers of individual contributors, and does not make any adjustments in these numbers when they are added to Legi-Tech's data base. Through this process, Legi-Tech obtains telephone numbers for only about half of the individuals on the campaign contribution lists. With respect to the substantial number of individuals for whom telephone numbers cannot be found, Legi-Tech has no way of knowing -- and does not care -- whether this is because the name is a "salt" or for one of many other possible reasons.[14]

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[14] NRCC also complains that Legi-Tech has not taken reasonable steps to ensure that the NRCC lists will not be used for solicitation purposes. Complaint at 5. In fact, Legi-Tech places a warning on its data base that appears at the beginning of every contributor tracking search by a CCTS subscriber. That warning is identical to that used by the FEC on its computer on-line service. Legi-Tech also places warnings on its advertisements for CCTS service. It is hard to see how NRCC could contend that these warnings are inadequate when they are precisely the same as those used by the FEC.

The General Counsel's office has consistently recognized the distinction between publication for commercial purposes -- i.e., list brokering -- and the transmission of political news. In re Virginia Political Report, MUR 1540, First General Counsel's Report 4 (1983), considered a complaint against a newsletter that published the surnames and initials of individual contributors to various state candidates, the amounts contributed, and their city and state of residence. The newsletter contained the warning that none of this information could be used for purposes of soliciting contributions from the individuals listed. Publication of contributors' names was one of several services offered by the newsletter. Under those facts, the FEC's general counsel ruled that the newsletter qualified for the newspaper exemption. The report stated that "'[t]he prevention of list brokering, not the suppression of financial information, is the purpose of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15.'"[13]

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[13] Decision at 3, quoting Advisory Opinion 1980-78. Advisory Opinion 1980-101, Fed. Election Campaign Fin. Guide (CCH) ¶ 5551 (1980), cited by NRCC, is not to the contrary. In that opinion, the Commission permitted publication of a directory of comprehensive information about political action committees specifically for the purpose of assisting in the solicitation of contributions. In its decision, the Commission also stated the obvious point that the copying and use of the names and addresses of individual contributors for the principal purpose of solicitation would not be consistent with FEC regulations.

Ultimately, NRCC's quarrel is not with Legi-Tech, but with the technological advances that permit the electronic transmission of campaign contribution information. The position NRCC would have the Commission adopt, apparently, is that any sale of an electronic news service with data from FEC reports necessarily violates the statute, because the ease and convenience of such a system facilitates list brokering. But the fact that some might misuse the information from Legi-Tech's data base -- or, for that matter, from the Commission's on-line Direct Access system or the microfilm it offers for sale -- cannot be used to stifle the flow of information to the hundreds of current and potential subscribers who have a legitimate need for the information. Legi-Tech has no more of a "commercial purpose" when it offers CCTS to the public than does the Commission when it sells campaign contribution information on microfilm and over computer facilities. Nothing in FECA or the regulations suggests that Congress intended the media exemption to be frozen in time, protecting only those news technologies that existed when the statute was adopted in 1971. The First Amendment, of course, would not permit such a result.

C. To Prohibit Legi-Tech's Electronic Publication Activities Would Violate the United States Constitution.

If Section 438(a)(4) is to survive constitutional scrutiny, application of the media exemption to protect Legi-Tech's publication activities is not only advisable, but mandatory. The Commission has been cautioned to tread lightly when it investigates activities of the press.[16] There is little doubt that it would be unconstitutional to prohibit Legi-Tech from publishing in electronic form information obtained from campaign contribution reports. A ban on publication would directly interfere with three distinct interests: (1) Legi-Tech's rights of freedom of speech and of the press; (2) the public's right to disclosure of campaign contribution information; and (3) the First Amendment rights of solicitors who seek to use the reports. Moreover, the ostensible purpose of the statute -- to protect individual

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[16] See Reader's Digest Ass'n v. Federal Election Commission, 509 F. Supp. 1210 (S.D.N.Y. 1981) (Commission could only engage in limited investigation to determine whether press exemption from campaign expenditure limitation was applicable). Cf. Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue, 460 U.S. 575 (1983) (taxing the press differently from other businesses violates the First Amendment); Legi-Tech v. Keiper, supra (state could not deny private press access to state-owned electronic news service).

contributors from harassment -- is by no means a compelling government interest that would justify the interference with Legi-Tech's right to publish. See Federal Election Commission v. Massachusetts Citizens for Life, 769 F.2d 13 (1st Cir. 1985), appeal filed, No. 85-701 (U.S. Oct. 25, 1985) (where anti-abortion group's expenditure of corporate funds in connection with publication of special edition of newsletter did not qualify for press exemption from expenditure limitations, statute was unconstitutional if applied to prohibit such expenditures).

First, application of the ban to Legi-Tech would constitute a prior restraint, interfering with the company's freedom of speech and of the press. The Second Circuit has explicitly declared Legi-Tech to be "an organ of the press." 766 F.2d at 730. The Supreme Court has declared time and again that any "system of prior restraints comes to this Court bearing a heavy presumption against its constitutional validity."[17] Prior restraints are constitutionally permissible only in "exceptional cases," such as to prevent the disclosure of military deployments in wartime.[18]

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[17] New York Times Co. v. United States (Pentagon Papers Case), 403 U.S. 713, 714 (1971) (per curiam); Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 556-59 (1976).

[18] Near v. Minnesota, 283 U.S. 697, 716 (1931).

Such a restraint on publication would be especially suspect here because it would be based on the content of the message being delivered by the publisher. Those who disseminate information from the campaign contribution reports fall within the statutory bar, while those who distribute other types of information do not. As a rule, "the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."[19] Here, the information being suppressed lies at the core of the legislative and political process. The Second Circuit sought to protect Legi-Tech's right to publish a package of legislative information that includes campaign contribution information. The court pointedly declared that "information about legislative proceedings, and in particular, pending legislation, is absolutely vital to the functioning of government and to the exercise of political speech, which is at the core of the First Amendment." 766 F.2d at 732. The sale and use provision of Section 438(a)(4), if applied to Legi-Tech, would impinge on these First Amendment interests by restraining the company's electronic publication of political information.

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[19] Consolidated Edison Co v. Public Service Commission, 447 U.S. 530, 537 (1980), quoting Police Department of Chicago v. Mosley, 408 U.S. 92, 96 (1972).

Second, halting Legi-Tech's publishing activities would directly thwart the public's interest in the disclosure of information about the political process, which is the cornerstone of FECA. To enhance the public availability of campaign reports, FECA states that the Commission shall "within 48 hours after the time of the receipt by the Commission of reports and statements filed with it, make them available for public inspection, and copying."[20] The Supreme Court has found that FECA's disclosure requirements serve three important governmental interests. They provide the public with information "as to where political campaign money comes from and how it is spent."[21] The requirements deter actual corruption and avoid the appearance of corruption by "exposing large contributions and expenditures to the light of publicity."[22] Finally, they provide "an essential means of gathering the data necessary to detect violations of the contribution limitations."[23] These disclosure requirements reflect the principle that an "informed public opinion is the

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[20] 2 U.S.C. § 438(a)(4) (emphasis supplied).

[21] Buckley v. Valeo, 424 U.S. 1, 66-67 (1976). See also H. Rep. No. 564, 92nd Cong., 2d Sess. 4 (1971).

[22] 424 U.S. at 67. See also S. Rep. No. 689, 93rd Cong., 2d Sess. 2, reprinted in 1974 U.S. Code Cong. & Admin. News, 5587, 5588.

[23] 424 U.S. at 67-68.

most potent of all restraints upon misgovernment."[24] As the FEC has recognized by developing its own electronic service, these substantial interests would be undermined if the public were to be denied access to the most efficient and economical method of reaching the information that Congress has decided should be disclosed.

Third, to terminate Legi-Tech's electronic information service would infringe the First Amendment rights of those who need access to information from the reports to exercise their own rights of association and speech. One state supreme court has invoked solicitors' rights to overturn on federal constitutional grounds a state statute identical to Section 438(a)(4). Ryan v. Fitzpatrick, 669 S.W. 2d 215 (Mo. 1984) (en banc). The provision at issue stated that "no information copied from [state-required contribution reports] shall be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose." The court ruled

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[24] Grosjean v. American Press Co., 297 U.S. 233, 250 (1936). See also S. Rep. No. 229, 92nd Cong., 2d Sess., reprinted in 1972 U.S. Code Cong. & Adm. News 1821, 1861-62 (supplemental views of Senators Prouty, Cooper and Scott) ("In this modern age where mass communications have created an information rich public, the [then] present ineffective disclosure laws have the effect of shrouding Federal campaign financing in unhealthy and unwarranted secrecy. The lack of complete and full disclosure erodes confidence in the entire elective process and if allowed to continue would only serve to generate pressures against our democratic form of government.").

that the statute violated the First Amendment rights of a political candidate who sought access to the names on the reports so that he could solicit contributions from those who shared his political ideology. The court also invoked the strong public interest underlying campaign contribution disclosure laws spelled out by the Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976).[25]

"Where a government restricts the speech of a private person, the state action may be sustained only if the government can show that the regulation is a precisely drawn means of serving a compelling state interest." Consolidated Edison Co. v. Public Service Commission, 447 U.S. at 540. The

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[25] Unlike Legi-Tech, the plaintiff in Ryan did not assert that his rights of publication were affected by the state statute. However, if the Commission were to attempt to invoke Section 438(a)(4) to prevent Legi-Tech from conducting its business, the company would have no alternative but to attack head-on the validity of the sale and use restriction. In that attack, Legi-Tech would be able to assert challenges on behalf of others whose rights are affected by the statute but who are not before the court. "[W]here the claim is that a statute is overly broad in violation of the First Amendment, the Court has allowed a party to assert the rights of another without regard to the ability of the other to assert his own claims and 'with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite specificity.'" Secretary of State of Md. v. Joseph H. Munson Co., 104 S. Ct. 2839, 2847-48 (1984), quoting Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973). This is because facial challenges to statutes "are allowed not primarily for the benefit of the litigant, but for the benefit of society -- to prevent the statute from chilling the First Amendment rights of other parties not before the Court." Id. at 2848.

only interest that could conceivably justify the statute is the protection of the privacy interests of contributors. This falls far short of the compelling interest necessary to uphold a prior restraint. The Supreme Court has confirmed that the public's interest in disclosure, standing alone, is "sufficiently important to outweigh the possibility of infringement [of the right of association], particularly when the 'free functioning of our national institutions' is involved."[26] Regulations that are intended to prevent mere public annoyance with those exercising First Amendment rights have frequently been declared invalid.[27]

Even if the prevention of harassment might in theory justify some form of restriction on publication, Section 438(a)(4) could not survive because it is not carefully drafted to promote that interest. Other provisions of FECA ensure the public availability of campaign contribution reports, and the Commission itself distributes this information widely through

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[26] Buckley v. Valeo, 424 U.S. at 66.

[27] See, e.g., Schaumberg v. Citizens for a Better Environment, 444 U.S. 620 (1980) (ordinance prohibiting door-to-door or on-street solicitation of contributions by organizations not using 75 percent of their receipts for charitable purposes was unconstitutionally overbroad); Consolidated Edison Co. v. Public Service Commission, 447 U.S. at 540-43 & n.11 (overturning utility's ban on bill inserts that discussed controversial issues of public policy; offended recipients could simply dispose of the mailings).

microfilm sales and on-line access. Because the names of individual contributors are already freely available, the sale and use restriction does nothing to increase their privacy. As the court declared in the Ryan decision:

> By placing the information in the public domain, the state must have presumed that the right of privacy gives way to public interest in this instance. Certainly, the right of privacy vanishes with the required public disclosure of the requisite information.

669 S.W. 2d at 218-19. Here, as in Ryan, any "compelling interest in protecting the privacy of contributors fades fast in the light of the publicity which the act generates through operation of its provisions." Id. at 217.

In any event, there is an obvious way in which contributors whose names appear on solicitation lists can avoid offensive material without affecting the First Amendment rights of others. They can transfer the offensive material "from envelope to wastebasket,"[28] or they can hang up the phone. Accordingly, the Commission should pay little attention to NRCC's unsubstantiated claim that Legi-Tech's activities will

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[28] Consolidated Edison Co., 447 U.S. at 542.

cause NRCC and its contributors to suffer irreparable injury.[29]

Finally, the sale or use provision is vulnerable on grounds of vagueness and overbreadth. The "commercial purposes" provision is so vague that the public does not have adequate notice of the circumstances under which information

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[29] NRCC asserts:

> In return for exercising their rights to participate in the political process, NRCC contributors will likely be harrassed by both commercial and political organizations. Moreover, if a contribution to NRCC will subject a contributor to further solicitation and harassment, there will be a significant disincentive to making such contributions to NRCC. The damage to NRCC and its contributors, and to the free flow of political speech from these effects is precisely what the Act sets out to avoid.

Complaint at 3. First, this is the type of vague allegation of future injury that the Supreme Court in Buckley found insufficient to outweigh the strong public interest in disclosure of campaign contribution information. See Buckley v. Valeo, 424 U.S. at 74 ("The proof may include, for example, specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats of specific manifestations of public hostility may be sufficient.") (Emphasis added). Second, as Judge Gesell aptly put it, "NRCC's alleged irreparable injury, in the Court's view, is caused by the Federal Election Campaign Act, not by [Legi-Tech], and its remedies lie in the political arena and not in a court." Exhibit 1, at 6. In other words, any harm caused to NRCC is attributable to the fact that the statute requires it to submit information about its contributors to the FEC for public disclosure -- not to the fact that Legi-Tech distributes that information in a more convenient and accessible form.

from campaign contribution reports may be republished.[10] The law is also overbroad. It "does not aim specifically at evils within the allowable area of [government] control, but . . . sweeps within its ambit other activities that constitute an exercise" of protected rights of expression.[11] The sale or use restriction does not simply discourage harassment of individual contributors; it also impedes constitutionally protected publishing activities that are beyond the reach of permissible government action.

Conclusion

Congress adopted the federal election campaign laws to ensure that the electorate knows when, where and how political campaign money is being spent. The campaign contribution filing requirements and public disclosure provisions are the cornerstone of this statutory scheme. Legi-Tech's electronic publication of information from campaign contribution reports incorporates new technologies in a way that fulfills the spirit and purpose of these laws. As with any other statute, FECA should be interpreted to give it "'the most harmonious,

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10/ See, e.g., Papachristou v. Jacksonville, 405 U.S. 156, 162 (1972) (holding unconstitutional a vagrancy ordinance drafted in archaic language).

11/ Thornville v. Alabama, 310 U.S. 88, 97 (1940) (voiding statute prohibiting all picketing).

comprehensive meaning possible' in light of the legislative policy and purpose."[12] The sale or use provision in 2 U.S.C. § 438(a)(4) constitutes a small limitation on the overriding policy in favor of disclosure -- an exception that must be carefully construed to avoid both infringing the constitutional rights of publishers and defeating the thrust of the disclosure provisions.

In this case, the facts and the law dictate that no action be taken against Legi-Tech. The Second Circuit has declared that Legi-Tech is a member of the press. The District Court, before which the Commission would have to initiate any enforcement action, has already stated its view -- based on virtually all of the evidence now before the Commission -- that Legi-Tech has acted properly under the statute and regulations. The implication of a Commission ruling against Legi-Tech would be that any electronic news service that publishes all campaign contribution information on file with the FEC would necessarily violate the sale or use restriction in 2 U.S.C. § 438(a)(4). Such a result would distort the statute beyond recognition.

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[12] Weinberger v. Hynson, Westcott and Dunning, Inc., 412 U.S. 609, 631-32 (1973), quoting Clark v. Uebersee Finanz-Korp., 332 U.S. 480, 488 (1947).

NRCC's complaint lies not with Legi-Tech, but with the technological advances of the Information Age. Rather than penalizing those who take advantage of new information technologies, the Commission should embrace these developments. For the reasons stated above, the General Counsel should conclude that no probable cause exists to find that Legi-Tech has violated FECA or the regulations thereunder, and this investigation should be terminated.

Respectfully submitted,

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Attorneys for Respondent
Legi-Tech, Inc.

Dated: February 6, 1986

1279m/1265m

VERIFICATION

I, Frank Washington, hereby affirm that I am Vice President of Respondent Legi-Tech, Inc., that I am familiar with the factual statements contained in this submission, and that, to my knowledge, those factual statements are true.

Subscribed and sworn before me this 3rd day of February, 1986.

Frank Washington, Vice President

Jill Johnstone
Notary Public

My Commission Expires: 2/21/86

1238m/1265m

OFFICIAL SEAL
JILL JOHNSTONE
NOTARY PUBLIC - CALIFORNIA
SACRAMENTO COUNTY
My comm. expires FEB 21, 1986

9 7 0 4 3 8 4 1 6 2 9

Exhibit 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

- X

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE,

PLAINTIFF

-VERSUS-

LEGI-TECH CORPORATION, ET AL,

DEFENDANTS

CIVIL ACTION NO. 85-3106

- X

WASHINGTON, D. C.

OCTOBER 15, 1985

THE ABOVE-ENTITLED MATTER CAME ON FOR HEARING BEFORE THE HONORABLE GERHARD A. GESELL, UNITED STATES DISTRICT JUDGE, COMMENCING AT 4:00 P. M.

APPEARANCES:

FOR THE PLAINTIFF:

JAN W. BARAN, ESQUIRE
DAVID LADD, ESQUIRE
DAVID LEIBOWITZ, ESQUIRE
BRUCE G. JOSEPH, ESQUIRE
CARL R. FRANK, ESQUIRE

FOR THE DEFENDANTS:

JAY B. MYERSON, ESQUIRE
BRUCE D. SOKLER, ESQUIRE
TERRY J. LEAHY, ESQUIRE

7 PP

SANTA THERESA ZIZZO
OFFICIAL COURT REPORTER
U. S. COURTHOUSE
WASHINGTON, D. C. 20001

P R O C E E D I N G S

THE DEPUTY CLERK: CIVIL ACTION 85-3106, NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE VERSUS LEGI-TECH CORPORATION, ET AL. MR. BARAN, MR. LADD, MR. JOSEPH, MR. FRANK AND MR. LEIBOWITZ FOR THE PLAINTIFF. MR. MYERSON, MR. SOKLER AND MR. LEAHY FOR THE DEFENDANTS.

THE COURT: I INDICATED TO BOTH SIDES BY TELEPHONE FROM CHAMBERS THIS MORNING THAT IT SEEMED BEST FOR ME TO GIVE YOU MY RULING ON THE PENDING MOTION FOR A PRELIMINARY INJUNCTION ORALLY.

THAT RESULTS FROM TWO CIRCUMSTANCES. FIRST, THE IMMINENT EXPIRATION OF THE TEMPORARY RESTRAINING ORDER, WHICH WAS EXTENDED BY AGREEMENT OF THE PARTIES, AND, SECOND, PERHAPS MORE IMPORTANTLY, BY THE FACT THAT MY SECRETARY HAS BEEN ILL NOW FOR SOMETIME AND I'VE BEEN CONTINUOUSLY ON THE BENCH.

THIS CASE IS BEFORE ME ON THE MOTION FOR A PRELIMINARY INJUNCTION SUPPORTED BY AFFIDAVITS ON THE FIRST AMENDMENT COMPLAINT RECENTLY FILED.

BASICALLY WHAT IS INVOLVED IS THAT THE NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE IS SEEKING TO ENJOIN THE ACTIVITIES OF THE -- I DON'T KNOW I'M SURE HOW TO PRONOUNCE IT BUT IT'S LEHI-TECH, IS THAT RIGHT?

MR. SOKLER: LEGI-TECH, YOUR HONOR.

THE COURT: LEGI-TECH CORPORATION, WHICH IS ENGAGED IN THE BUSINESS OF DEVELOPING AN ELECTRONIC DISTRIBUTION OF

FACTUAL INFORMATION OBTAINED INITIALLY FROM THE FEDERAL ELECTION COMMISSION PUBLIC FILES WITH INFORMATION ADDED, DEVELOPED BY THE DEFENDANT LTC FROM OTHER SOURCES.

THERE ARE TWO PRELIMINARY ASPECTS TO THE CASE THAT I WANT TO GET OUT OF THE WAY BEFORE I COME TO THE CENTRAL QUESTION, WHICH IS THE COPYRIGHT QUESTION ON WHICH NRCC, THE PLAINTIFF, PRIMARILY DEPENDS.

IT IS SUGGESTED IN COUNT TWO OF THE COMPLAINT THAT IN SOME FASHION AS YET NOT FULLY EXPLAINED TO THE COURT DEFENDANT HAS BEEN GUILTY OF CONVERSION OF SOME KIND. I HAVE TAKEN THAT TO MEAN THAT IN SOME FASHION IT IS BELIEVED THAT THE DEFENDANT IS UTILIZING THE INFORMATION OBTAINED FROM THE PUBLIC FILES IN A MANNER INCONSISTENT WITH THE RULES AND REGULATIONS OF THE FEDERAL ELECTION COMMISSION. AS TO THAT THERE IS NO EVIDENCE TO SUPPORT IT. INDEED, ALL OF THE MATERIAL BEFORE THE COURT WOULD SUGGEST THAT LTC CORPORATION IS OPERATING CONSISTENT WITH THE RULES AND REGULATIONS OF THE COMMISSION, BUT, IN ANY EVENT, IF THERE IS SOME VIOLATION OF THOSE RULES AND REGULATIONS THE MATTER HAS TO BE ADDRESSED UNDER THE STATUTE BEFORE THE COMMISSION ADMINISTRATIVELY GIVEN, OF COURSE, LIMITED STATUTORY JURISDICTION IN SUCH MATTERS. SO I HAVE NOT FURTHER ADDRESSED COUNT TWO.

WITH RESPECT TO NRCC'S CONTENTION THAT THE DISTRIBUTION OF THIS FACTUAL INFORMATION IS CONTRARY TO THE COPYRIGHT LAWS THERE IS A DEFENSE RAISED BY LTC WHICH SEEMS TO ME TOTALLY OUT OF ORDER. I DO NOT SEE THIS TO BE A FIRST

AMENDMENT CASE IN ANY FORM, SHAPE OR MANNER. THE FIRST AMENDMENT DOESN'T AUTHORIZE LTC, IF IT IS CONSIDERED A QUASI-JOURNALISTIC ENDEAVOR OF SOME KIND, TO VIOLATE THE COPYRIGHT LAWS ANY MORE THAN ANYBODY ELSE. FROM MY POINT OF VIEW I HAVE TOTALLY REJECTED THE FIRST AMENDMENT CLAIMS. NEWSPAPERS THEMSELVES FREQUENTLY COPYRIGHT THEIR OWN MATERIAL TO KEEP OTHER PAPERS FROM USING IT WITHOUT A FEE.

I THINK THE BASIC QUESTION AND THE ONLY QUESTION THAT IS REALLY DECISIVE IN THIS CASE IS WHETHER OR NOT NRCC IS ENTITLED TO COPYRIGHT PROTECTION WITH RESPECT TO THE DATA THAT IT'S FILED. THIS IS THE PRINCIPAL CLAIM OF NRCC AND THEY ASSERT THEIR PRECLUSIVE RIGHT ALLEGEDLY ARISING FROM THEIR OWNERSHIP OF REGISTERED COPYRIGHTS COVERING THE DEVELOPMENT OF ITS PROSPECT LIST, ITS MANNER OF LISTING, AND DONORS AND POTENTIAL DONORS, AND THE USEFULNESS OF SUCH DATA IN THE CONDUCT OF THE COMMISSION'S ENTERPRISES.

NRCC ASSERTS THAT ITS FILINGS WITH THE COMMISSION REPRESENT ORIGINAL WORK DEVELOPED BY THE SWEAT OF ITS BROW, IDENTIFYING ITS CAREFULLY INFORMED MANNER AND METHODS OF DEVELOPING POTENTIAL DONORS. I ACCEPT THE DESCRIPTION GENERALLY OF THIS SWEAT OF THE BROW EFFORT AS CONTAINED IN THE SEPTEMBER 26, 1985 LETTER, THE FIRST PARAGRAPH AT THE TOP OF THE SECOND PAGE, THAT CAME FROM THE WILEY AND REIN FIRM ADDRESSED TO THE REGISTER OF COPYRIGHTS. IT APPEARS TO THE COURT, HOWEVER, THAT NRCC STRETCHES ITS COPYRIGHT POSITION

TOTALLY BEYOND ANY ACCEPTABLE LIMITS.

NRCC HAS FILED NOTHING THAT DISCLOSES HOW IT'S DEVELOPED ITS PROSPECT LIST. IT HAS DISCLOSED THE NAME OF NO PROSPECTS, ONLY DONORS. APPARENTLY ABOUT ONE PERCENT OF ITS LIST. THE ONLY LIMITED TECHNIQUE OF ANY KIND THAT PERHAPS HAS BEEN DISCLOSED IS THE GROUPING OF NAMES BY ZIP CODE, WHICH IS THE MOST COMMON PRACTICE OF ALL DIRECT MAILERS, AND OF LITTLE OR NO CONSEQUENCE.

FURTHERMORE, THE COMMISSION DID NOT REQUIRE NRCC TO MAKE ANY FILING LISTING ITS PEOPLE BY ZIP CODE. NRCC SIMPLY DECIDED THAT WAS A COMFORTABLE WAY FOR THEM TO PROVIDE THE NAMES. THEY DIDN'T HAVE TO.

NO CASE HAS BEEN CITED TO THE COURT BY EITHER SIDE AND THE COURT HAS NOT BEEN ABLE TO FIND ANY CASE THAT SUPPORTS THE PROPOSITION THAT FACTS FILED WITH A GOVERNMENTAL AGENCY REQUIRED TO BE FILED AS A MATTER OF LAW FOR THE PURPOSE OF PUBLIC DISCLOSURE CAN, AS FACTS, BE COVERED BY THE COPYRIGHT STATUTE. AND THAT'S EXACTLY WHAT WE HAVE HERE.

A FEDERAL STATUTE REQUIRES THAT THE NAMES OF DONORS IN CERTAIN AMOUNTS BE FILED. THE PURPOSE OF THE STATUTE IS THE PUBLIC DISCLOSURE AND DISSEMINATION OF THOSE NAMES FOR INFORMATIONAL PURPOSES.

IT WOULD TOTALLY FRUSTRATE THE FEDERAL ELECTION CAMPAIGN ACT AND OTHER FEDERAL DISCLOSURE STATUTES TO RECOGNIZE ANY RIGHT IN ANY PERSON REGULATED UNDER SUCH DISCLOSURE

1 STATUTES TO AVOID DISCLOSURE BY COPYRIGHTING THE VERY FACTS
2 THAT ARE REQUIRED TO BE FILED IN THE PUBLIC INTEREST.
3 THUS THE COURT SEES ABSOLUTELY NO LIKELIHOOD OF
4 SUCCESS ON THE MERITS IN THIS CASE AND IT IS CLEAR THAT THE
5 PUBLIC INTEREST FAVORS DISCLOSURE.
6 NRCC'S ALLEGED IRREPARABLE INJURY, IN THE COURT'S
7 VIEW, IS CAUSED BY THE FEDERAL ELECTION CAMPAIGN ACT, NOT BY
8 LTC, AND ITS REMEDIES LIE IN THE POLITICAL ARENA AND NOT IN A
9 COURT.
10 ACCORDINGLY, THE MOTION FOR PRELIMINARY INJUNCTION
11 MUST BE AND IS DENIED.
12 I WILL WANT TO HEAR FROM THE PARTIES AS TO WHAT
13 THE NEXT COURSE IN THIS MATTER IS EXPECTED TO BE. I MUST SAY
14 THAT, RIGHTLY OR WRONGLY BUT AS RESPONSIBLY AS I KNOW HOW TO
15 DO IT, I HAVE TRIED TO DECIDE AND EXPLORE THIS COPYRIGHT
16 MATTER AND IT OCCURS TO THE COURT THAT THE BASIC FACTS ARE
17 IN THIS RECORD NOW. IT SEEMS UNLIKELY TO ME THAT ADDITIONAL
18 FACTS WOULD DEVELOP BY DISCOVERY WHICH WOULD IN ANY WAY ALTER
19 THE COURT'S VIEW OF THE SCOPE AND NATURE OF COPYRIGHTABLE
20 MATERIAL AND IT MAY BE THAT THE PARTIES WILL FEEL THAT THE
21 APPROPRIATE THING TO DO IS TO CHANGE AN ORDER DENYING THE
22 PRELIMINARY INJUNCTION INTO A FINAL ORDER TO ENCOURAGE PROMPT
23 RESOLUTION OF IT BY HIGHER AUTHORITY. I THINK THAT WOULD
24 DEPEND ON THE VIEWS OF BOTH SIDES. I DON'T WANT TO FORECLOSE
25 ANYBODY FROM SUBMITTING DATA BUT I THINK COUNSEL HAVE BEEN

EXTREMELY ENERGETIC AND COMPETENT AND HAVE PRESENTED THE BASIC MATERIALS TO THE RECORD THAT YOU MIGHT WANT.

THE WAY I'D LIKE TO LEAVE IT IS THAT PERHAPS COUNSEL WOULD GET IN TOUCH WITH ME WITHIN -- I'LL ISSUE AN ORDER DENYING THE REPLIMINARY INJUNCTION, AND I'LL AWAIT TO HEAR WITHIN A WEEK HOW THE PARTIES FEEL ABOUT WHETHER ANY FURTHER PROCEEDINGS IN THE CASE ARE REQUIRED OR NOT. AND IF THEY'RE NOT THEN I'LL MAKE THAT ORDER FINAL AND IF NOT, I'LL GET YOU IN AND WE'LL SCHEDULE THOSE PROCEEDINGS IN WHATEVER WAY WE CAN, AGAINST THE COURT'S CALENDAR.

THANK YOU.

(WHEREUPON, THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER WERE CONCLUDED AT 4:15 P. M.)

CERTIFICATE OF OFFICIAL REPORTER

IT IS CERTIFIED BY THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA THAT THE FOREGOING IS THE OFFICIAL RECORD OF THE PROCEEDINGS INDICATED.

Santa Theresa Zizzo

SANTA THERESA ZIZZO

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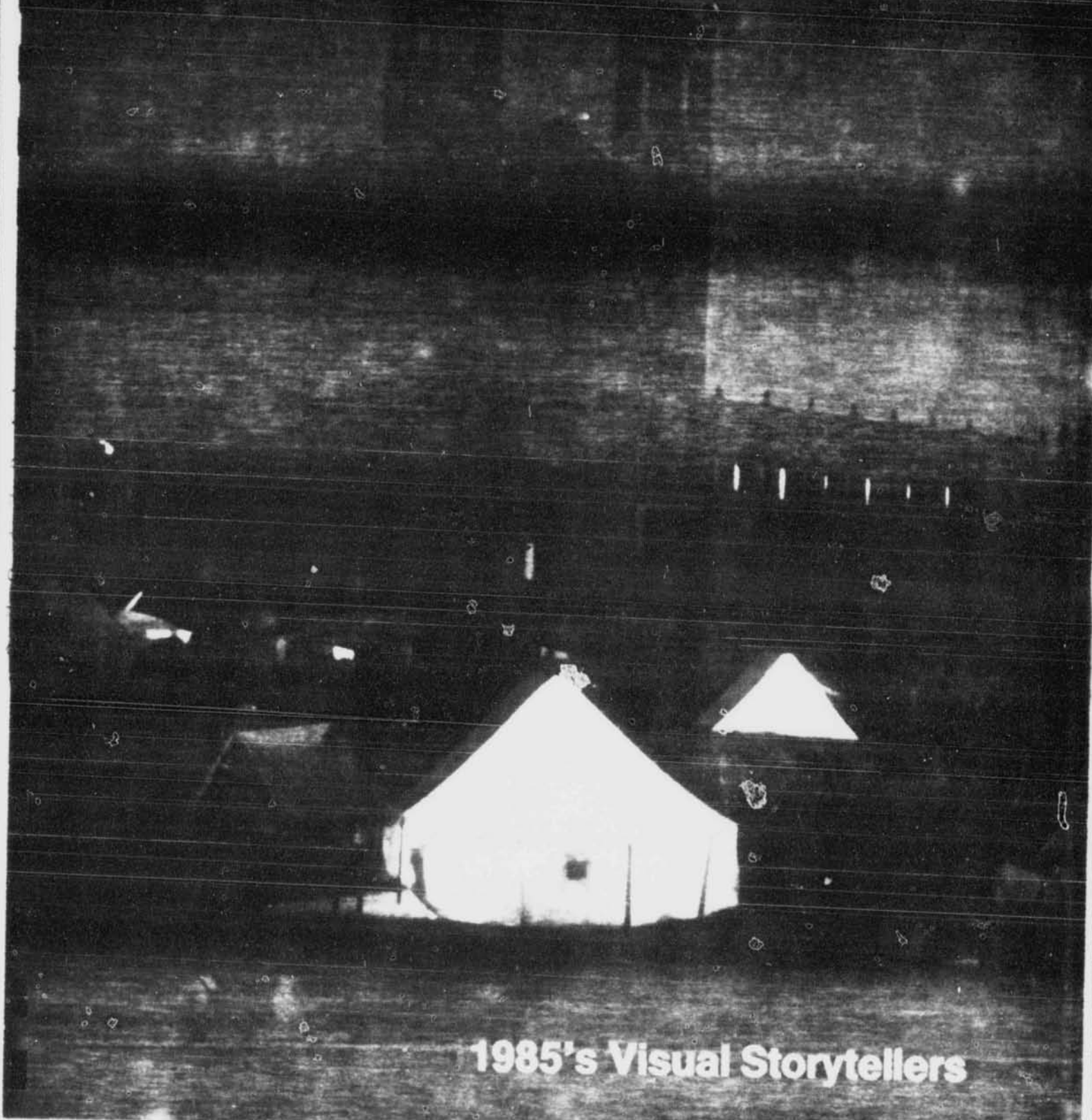
Exhibit 2

McClatchy

InnerView

January/February 1986 Volume 3, Number 1



1985's Visual Storytellers

The Sacramento Bee/Sacramento CA
The Fresno Bee/Fresno CA
The Modesto Bee/Modesto CA
Anchorage Daily News/Anchorage AK
Tri-City Herald/Kennewick WA

The Dispatch/Gilroy CA
Evening Free Lance/Hollister CA
The Clovis Independent/Clovis CA
Morgan Hill Times/Morgan Hill CA
Lincoln News Messenger/Lincoln CA
El Dorado Web Graphics/Clovis CA

Fresno Cable TV Limited/Fresno CA
Sequoia Cablevision, Inc./Tulare CA
Telcab Communications, Inc./Reno NV
NorCal Cablevision, Inc./Yuba City CA

KFBK/KAER-FM/Sacramento CA
KMJ/KNAX-FM/Fresno CA

Legi-Tech/Sacramento CA
Legi-Tech/Albany NY
El Dorado Teleguide/Sacramento CA
Washington On-Line/Washington D.C.

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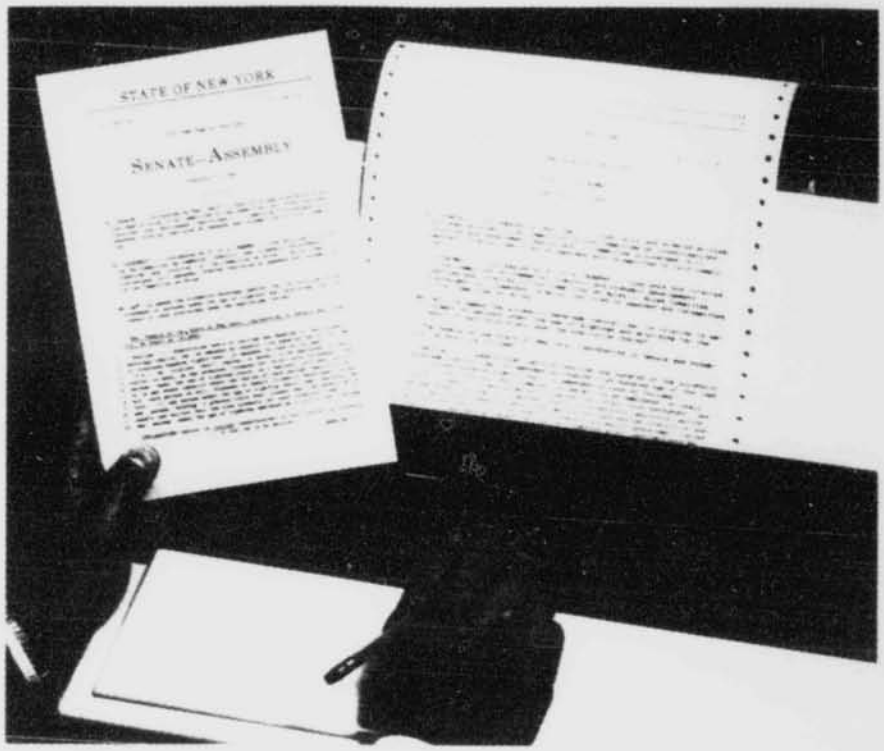
LegiTech

Exhibit 3



The Accurate Legislative Tracking System for New York

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The Legi-Tech System gives you all the advantages of on-line information retrieval.

Speed.

You'll spend only a few moments at your computer telling the Legi-Tech System what information you want. Seconds later, you'll have your report.

Accuracy and completeness.

We cover the state capital so you can concentrate on what you do best: analyzing legislation and monitoring the workings of government. Legi-Tech staff attends each and every committee meeting and records each legislative action as it occurs.

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Your annual subscription to the Legi-Tech System allows unlimited access. There are no hourly use charges or per-copy costs, so you can use the system as often and as long as you want. And print out as many reports or copies of legislation as you need.

Ease of use.

We designed the system for people who need accurate information about the state government . . . not for computer technicians. That's why you give simple answers to simple questions to describe the information you're after. Every step of the way, the system helps you by clearly asking what you want to find, and listing your options.

Availability.

The system is ready to serve you 24 hours a day, 365 days a year.

Four modules comprise the Legi-Tech System.

Bill Tracking

Do you know where your bill is? Legi-Tech's Bill Tracking Module has the answer.

In seconds, you can discover everything you need to know about a bill—summary, actions, companion bill, section of law affected, votes, scheduled hearings, current status.

We record all legislative actions into the system the day they occur. Introductions, committee and floor votes, amendments. You decide the content of any **Action Report** you need: review all bills or only those of interest to you.

A daily **Calendar**, showing that day's committee and floor schedule, is available first thing each morning.

Status Reports can tell where your bill is at any one point in time.

Bill Text Tracking

Which piece of legislation can you afford to miss? Legi-Tech brings you every word.

Use the Bill Text Tracking module to get a current copy of every bill moving through the legislature—instantly—without ever leaving your office. Rather than relying on your own legislative knowledge and resources to be sure of tracking every bill that could affect you, the Legi-Tech System takes only seconds to provide the current language of any bill, or to help you learn which issues are subjects of legislation.

This is because our powerful **keyword searching** feature lets you find and read every bill dealing with topics you're interested in simply by entering any word or phrase that may appear in the text.

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Vote Tracking

Who's really on your side? With Legi-Tech's Vote Tracking Module, you may be surprised to find out.

The Vote Tracking Module of the Legi-Tech System makes it easy for you to learn who voted how—in the 25,000 or more committee and floor votes expected in the current legislative session.

In a **Vote Table** you can display the entire recorded vote on any measure, organized by Yes, No, and Not Voting. Combine a group of members with a list of votes to produce a **Vote Series** report showing the votes of those members only on the bills of your choice.

Simply indicating your position on a series of bills will produce a **Rating** report which compares your positions with the votes cast by members of the legislature.

Produce a **Member Record** to analyze the votes of any member during any period of time. Besides showing you all eligible and actual votes, the system can rank all members by percentage of Not Voting.

Contribution Tracking.

Who gave how much money to whom?

Legi-Tech gives you immediate access to all current campaign contribution reports legislators and constitutional officers have filed with the Board of Elections. Information on more than $30 million in contributions yearly.

You can combine any number of qualifiers to make the contribution reports you produce as general or specific as you want. For example, you can search for all contributions to a particular candidate... just those over a certain amount... or between specific dates.

And only with Legi-Tech can you discover all the contributions made by any individual.

Before Legi-Tech's Contribution Tracking Module, the only way to do this would have been to search manually through hundreds of thousands of pages looking for every reference to the person you're interested in. Now your automated search takes only seconds, and yields the exact information you want.

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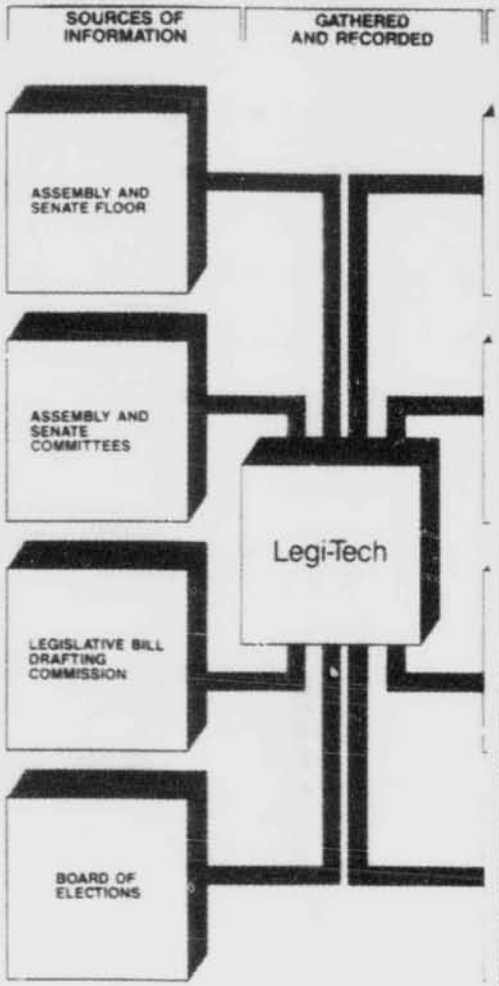

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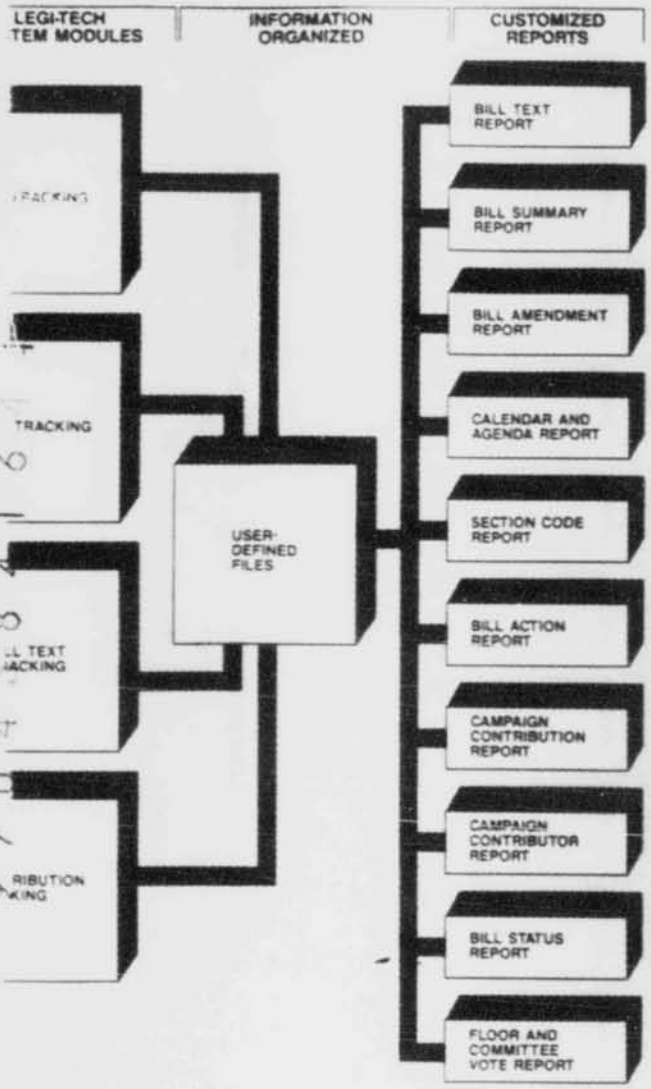
LegiTech

-TECH SYSTEM



User-Defined Files: You make Legi-Tech fill your needs.

Unlike any other legislative tracking service, the Legi-Tech System does more than just provide information. We let you create your own computerized files that give you the power to organize and use information in ways that are most meaningful to you.

Capacity.

There is no limit to the amount of legislative information you can file. Your Legi-Tech System files can store as many or as few bills, notes, or votes as you need. Create separate files for each of your users.

Organization.

You organize the information in your files under category headings you name. Subject, analyst, department, division, position, priority, client... the possibilities are truly limitless.

Sorting Ability

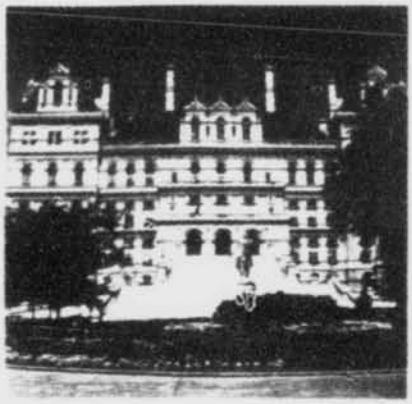
You can produce customized reports that include or cross-reference information however you want by combining any number of category headings. Display this information on your computer's screen or print out copies for closer examination.

Modification

Legi-Tech gives you the flexibility to change or update the information in your files. You can delete bills you're no longer following, add legislators whose positions you wish to monitor, change the subjects of interest to your clients, and more. As often as you wish. Plus you can add your own comments about bills in your files.

Legi-Tech

If what happens in Albany affects you, subscribe to Legi-Tech.



Keeping current on the activities of the New York State Legislature can be a monumental task for even the most experienced Capitol watcher. Each year, hundreds of bills change status thousands of times. From the pre-filing period before the legislative session begins, through the annual rush to completion as the end draws near.

Just as important as staying up-to-date on the introduction, consideration, and passage of bills is having only accurate information on what's happening in Albany.

That's why growing numbers of corporations, law firms, lobbyists, unions, associations, state government agencies, and local governments throughout New York subscribe to the Legi-Tech System.

Legi-Tech is an electronic legislative tracking service providing subscribers accurate and timely information on bill introductions, legislative activity, calendars, committee agendas, votes, and campaign contributions.

The information you need. Presented in ways you can use.

The Legi-Tech System brings complete information on the state legislature right to your desk, electronically. Using your own PC or word processor—or equipment we provide—Legi-Tech lets you:

- Find out exactly where your bill is now
- Learn what's on schedule for today
- Review every action on every bill of interest to you
- Discover who contributes to which legislators
- Obtain the current full text of every bill
- See the voting record of any member or group of members

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LegiTech

Our comprehensive service keeps you informed, on-line, and productive.

Whether you're thoroughly experienced in on-line search procedures, or completely new to the use of electronic databases, we can help you get the most out of our unique legislative resource.

Training.

Our comprehensive service begins with hands-on training in your office. We'll review the system step-by-step — to familiarize you with the wide range of information available and to show you how to obtain the specific reports you want.

On-call customer support.

After that, we're available during normal working hours at 518/434-2242 to answer your questions or help you in any way we can — whether you're having a technical problem, or need to know more about the information in the system.

Ready reference.

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See for yourself.

The only way to appreciate the convenience, timeliness, and—above all—accuracy of the Legi-Tech System is to watch a demonstration. To see the system at work—in your Albany office—or to learn more about subscribing, simply call or write: Legi-Tech, One Steuben Place, Mezzanine Level, Albany, New York 12207; telephone 518/434-2242.

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One Steuben Place
Mezzanine Level
Albany, New York 12207

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Exhibit 4

The Bill Text Tracking System™

Because the legislation you follow is too important to miss.

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Speed.

You'll spend only a few moments at your computer telling the Bill Text Tracking System what to look for. Seconds later, you'll have the text you want.

Accuracy and completeness.

To avoid errors of manual keypunching, we use the latest optical scanning technology to enter each printed page of legislation directly into the Bill Text Tracking System. The system recognizes and records every character, including section and page numbers, and automatically highlights amendments. Nothing can be left out.

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Easy to use.

We designed the system for people who need the exact language of federal legislation. . .not for computer technicians. That's why you give simple answers to simple questions to describe the information you're after. Every step of the way, the system helps you by clearly asking what you want to find, and listing your options.

Availability.

The system is ready to bring you the full text of current legislation 24 hours a day, 365 days a year.

From introduction to passage, the language of a bill can change many times. Washington On-Line brings it to you in [illegible]

The perfect complement to your current legislative monitoring efforts.

One of the most important jobs for anyone who follows Congress is comparing what they *said* with what they *wrote*.

As bills are introduced, debated, and amended, you need to keep up with changes in the language: To see if the text fulfills original intent. To learn whether the compromises struck during markup have been captured. To determine how any measure—as currently drafted—affects you.

Going to the Hill for copies of bills or counting on the mail both mean waiting hours, days, or weeks, for legislation you really need *now*.

And if your bill is out of print, or if just one of your issues were buried in an apparently unrelated measure, you could miss a piece of legislation you need to know about.

In short, tracking legislative language has been a slow, tedious, and expensive process.

Until now.

Each Congress produces hundreds of bills: tens of thousands of pages of legislation. How can you be sure you have the current text? Or that you haven't missed a bill you need to know about?

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Our optical scanning equipment accurately captures every word of legislation.

We bring you every bill...every amendment...every word.

Washington On-Line has created the first computerized file of federal legislation you can review at your own desk: The Bill Text Tracking System℠.

Now, using your PC, word processor, or any terminal that communicates over the telephone, you can obtain the current language of any bill, identify the latest amendments, or learn which issues are subjects of legislation—instantly.

Already available is the current version of every House and Senate bill from the 99th Congress: 25,000 pages of legislation containing over 4 million words, any one of which could be important to you.

What's that bill really about? Keyword searching lets you find out.

Experience tells you that bill titles aren't always indicate bill content, which is why you could miss a bill that affects you or your clients.

Washington On-Line's Bill Text Tracking System lets you find and read *every* bill dealing with topics you're interested in *simply by entering any word or phrase that may appear in the text.*

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Of course, you can immediately display the bills you already know about by entering the House or Senate bill number.

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Not only is Washington On-Line's Bill Text Tracking System the most convenient, reliable, and timely way of getting the legislation you need, but with each new bill it becomes even more valuable. Because once a bill is in the system, it's instantly available.

Congress, on the other hand, publishes only limited quantities of most bills, which means the one you want could easily go out-of-print or become unavailable almost as soon as it's printed.

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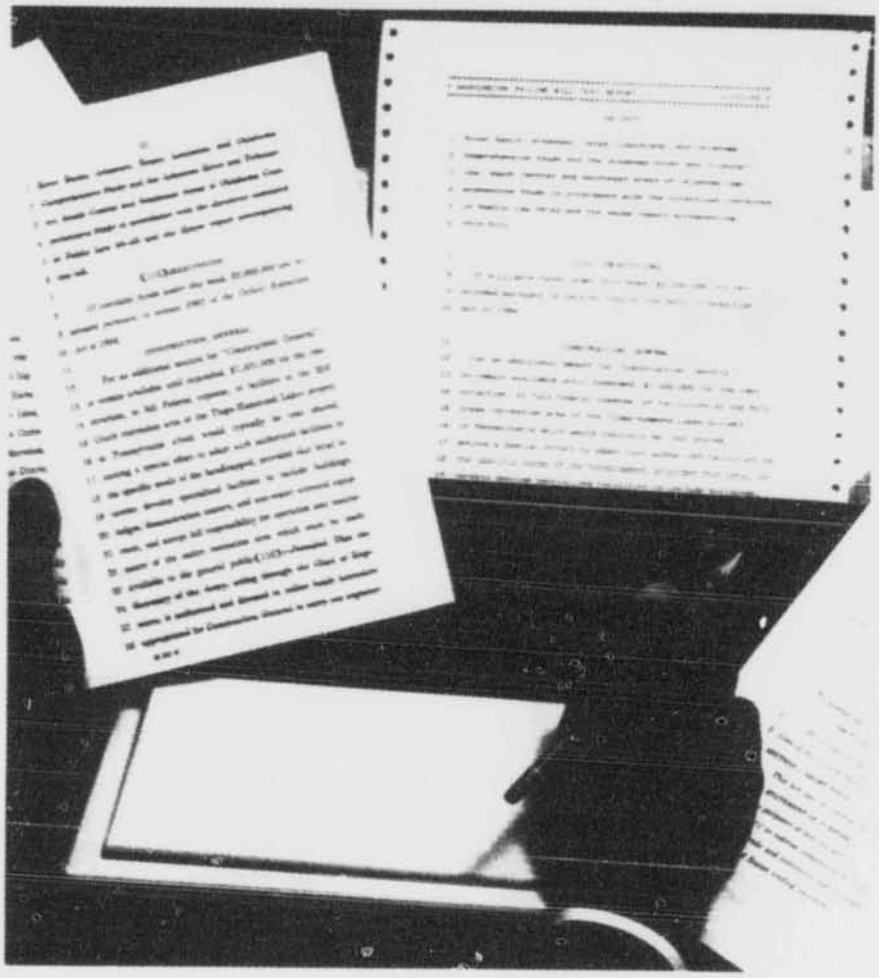

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Our comprehensive service keeps you informed, on-line, and productive.

If you're already a subscriber to Washington On-Line, or any other on-line information retrieval system such as Legi-Slate® or Congressional Quarterly's Washington Alert Service, you already have all the equipment you need to begin using the Bill Te Tracking System.

But whether you're thoroughly experienced in on-line search procedures, or completely new to the use of electronic databases, we can help you get the most out of our one-of-a-kind system.

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Our comprehensive service begins with hands-on training *in your office*. We'll review the system step-by-step...to familiarize you with the way legislation is organized for rapid retrieval and to show you how to obtain the specific text you want.

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507 Eighth Street, Southeast, Washington, D.C. 20003 202/543-9101

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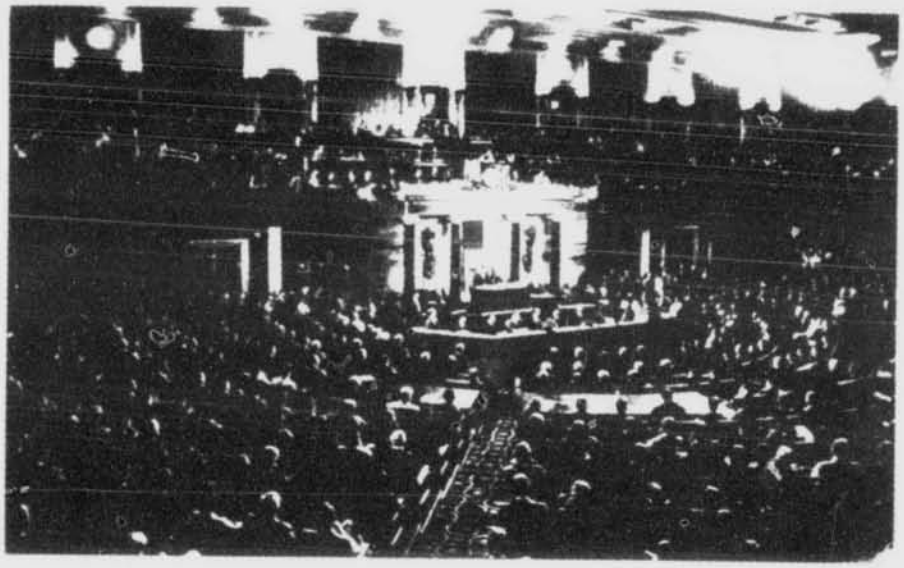
Exhibit 5



The Campaign Contribution Tracking System

Now you can learn whose money talks.
And who listens.

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Speed.

It takes only seconds for the system to find, organize, and report the information you want. You'll spend only a few minutes at your computer telling the system what to look for.

Accuracy.

The Campaign Contribution Tracking System includes every piece of relevant information from each FEC report. With several stages of automatic and manual error detection before the information becomes a part of the system, we can assure the highest levels of data accuracy and completeness.

Low cost.

Your annual subscription to the Campaign Contribution Tracking System allows unlimited access. There are no hourly use charges, connect fees, and other additional costs, so you can search the system as often and as long as you want. We've increased the system's value to you by offering it at a cost that encourages—rather than penalizes—extensive use.

Easy to use.

We designed this system for people who need campaign contribution information . . . not for computer technicians. That's why you enter plain-English words, names, or single-letter answers to multiple-choice questions to describe the information you're after. Every step of the way, the system helps you by clearly asking what you want to find, and listing your options.

Availability.

The system is available for searching 24 hours a day, 365 days a year.

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But whether you're thoroughly experienced in on-line search procedures, or completely new to the use of electronic libraries, we can help you get the most out of our unique system.

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Our comprehensive service begins with hands-on training *in your office*. We'll review the system step-by-step. . .to familiarize you with the wide range of information available and to show you how to obtain the reports of most use to you.

On-call customer support.

After that, we're available during normal working hours at 202/543-9101 to answer your questions or help in any way we can. . .whether you're having a technical problem or if you need to know more about the information in the system.

Ready reference.

Our subscriber newsletter will keep you up-to-date on system changes and improvements, remind you of who to call for assistance at Washington On-Line, and offer ideas on new applications.

And you'll find a complete summary of system information in our easy-to-follow user's guide.

9704384164

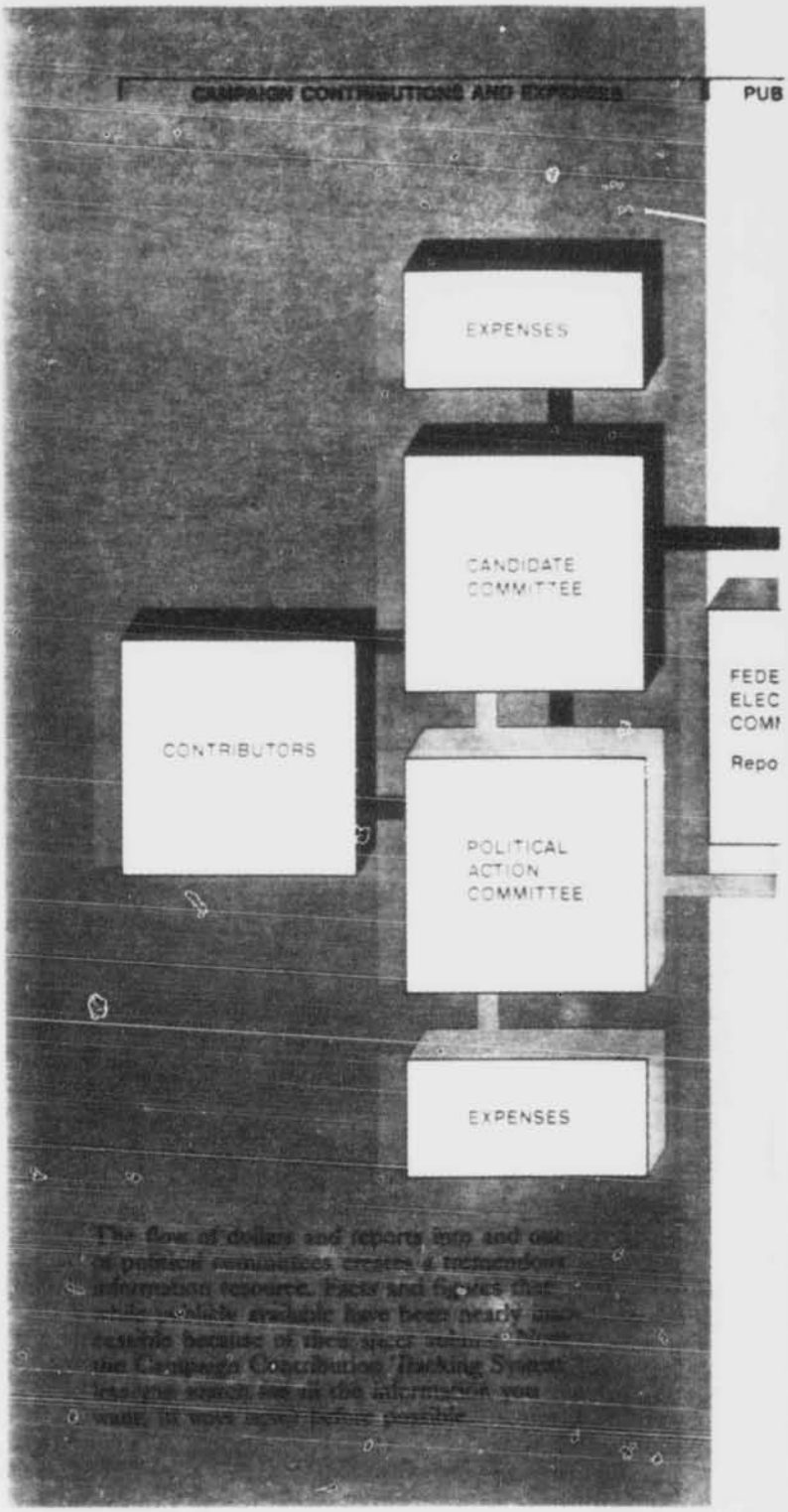
A leader in on-line information retrieval systems.

Washington On-Line is a service of Legi-Tech Corporation, an established electronic publisher and subsidiary of McClatchy Newspapers. Legi-Tech has been providing highly successful contribution monitoring systems in New York and California since 1981.

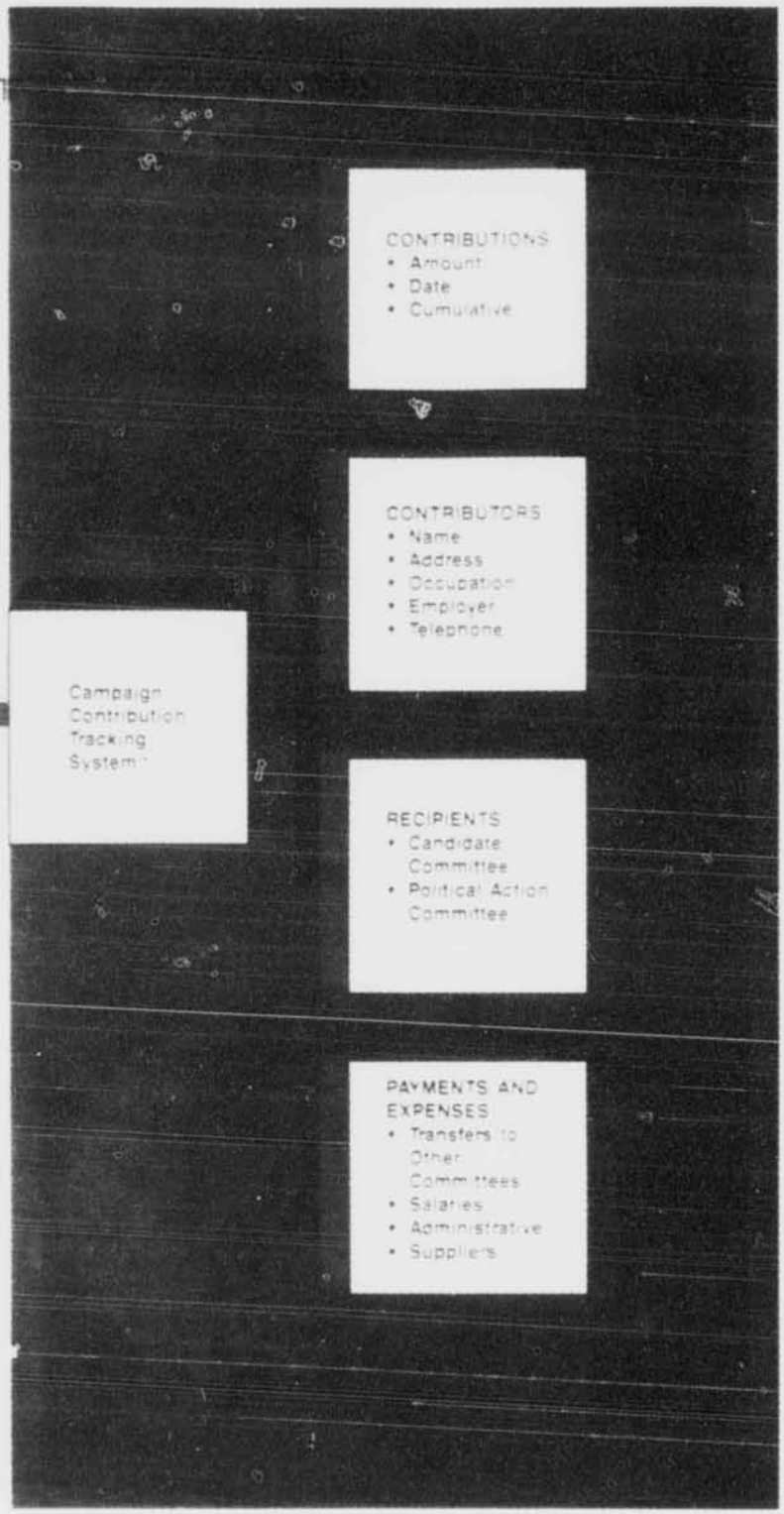
With more than 500 subscribers, Legi-Tech has become the leading provider of on-line legislative information retrieval in those states.

See for yourself.

The only way to appreciate the power, speed, and accuracy of the Campaign Contribution Tracking System is to watch a demonstration. To see the system at work—in your Washington office—or to learn more about subscribing, simply call or write: Washington On-Line, 507 Eighth Street, Southeast, Washington, D.C. 20003; telephone 202/543-9101.



9704384165 5



Each election cycle, more than $1 billion in campaign contributions and expenses results in some 50,000 reports representing more than 1 million pages of information.

Individual contributors donate money to candidates, political parties, or PACs; but individuals are not required to make public disclosure.

Candidates, parties, and PACs contribute to each other, and incur campaign expenses.

All contributions over $200 and committee expenditures must be regularly reported to the FEC.

FEC makes reports public within two days of filing. Records are on paper and microfilm, available only at the FEC.

Washington On-Line obtains FEC reports and enters all relevant information into the Campaign Contribution Tracking System.

You call the system by phone and then search for and retrieve information on your own computer.

You can search by contributor or recipient. Either way, you have immediate access to every piece of campaign contribution and expense information in the system.

It is a violation of federal law to sell or use information copied from FEC reports for the purpose of soliciting contributions from other than political committees.

The Campaign Contribution Tracking System™ from Washington On-Line

The perfect complement to your current legislative monitoring efforts.

Whether you're a reporter working on a story, a lobbyist working for a cause, or anyone who tracks Congress or federal agencies, you need to know more than who voted how.

You need to know why.

Often the answer can be found in campaign contributions.

For most of you, monitoring the flow of dollars to and from a candidate committee or PAC begins with a trip to the Federal Election Commission to obtain copies of the *Reports of Receipts and Disbursements*. And even though this information on federal campaign funding is publicly available, the sheer volume and lack of cross-referencing have made it nearly inaccessible.

Until now.

Putting you in touch with the information you need.

Washington On-Line has assembled the first computerized file of FEC reports available for unlimited use. The Campaign Contribution Tracking System™.

Now, using your PC, word processor, or any terminal that communicates over the telephone, you can find and analyze campaign funding information quickly and easily.

The system includes all FEC reports filed since 1983: more than 50,000 reports representing 1 million pages of information on 500,000 contributions exceeding $1 billion. Filings are continually updated as new reports become public.

Who gave how much money to whom? What did they do with it?

Enter the name of any candidate, party, or PAC and discover every contribution over $200 by source, date, and amount. Identify every reported campaign expense.

And for the first time, you can learn of all the contributions given by any individual, simply by entering that person's name.

Since individual contributors don't have to make public disclosures, information on them is only obtainable from the reports of recipients. Before the Campaign Contribution Tracking System, your only access to this information was by looking through millions of pages of committee filings for every reference to the person you're interested in.

Now you can find all the information you want instantly, without leaving your office.

And by combining several search qualifiers, you can make the information received as general or specific as you want.

For example, you may want a list of every contributor to a particular candidate. Or you could narrow that search to contributions made after the election.

The system will let you compare the salary and administrative expenses of various committees. Or find payments over certain dollar amounts.

If you prefer, you can obtain a complete summary from any committee's FEC report.

You can display this information on your computer's video screen, or print out a copy for closer examination.

And since your search will take only a few seconds, finding exactly what you want is always worth the effort.

507 Eighth Street, Southeast, Washington, D.C. 20003 202/543-9101 © 1985 Washington On-Line

9704384168

"Campaign Contribution Tracking System" and the Washington On-Line logo are service marks of Washington On-Line.

Printed in USA

LT-5-C002

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Exhibit 6

COPY

DATE: September 23, 1985
CLIENT: Legi-Tech Washington On-Line
PROJECT: Full Text Radio Spot
NUMBER: 75-35
DRAFT: 1

BY: Ken Norkin

NARR: Have you ever waited days to get your own copy of a Congressional bill?

VOICE-1: "Yes, we'll be mailing your copies of S-37, but it'll be next week."

NARR: Have your issues ever turned up in legislation you didn't even know about?

VOICE-2: "They buried that in what bill?!"

NARR: We have an instant solution.

We're **Washington On-Line**...electronic publishers of government information.

Our **Bill Text Tracking System** is the first computerized file of pending federal legislation.

Now, using your own computer, you can obtain the current version of every bill moving through Congress.

SFX: [keyboard sounds -- perhaps a "beep" -- printer sound]

Enter a bill number. Instantly, you receive the full text. Print out as many copies as you need.

And ... for the first time ... you can find **every** bill that mentions **any** topic by simply typing in that word or phrase.

VOICE-3: "Let's try taxes this time..."

NARR: For more information...or for a demonstration...call **Washington On-Line** at 543-9101. Or see our ad in **TIME** magazine.

Which legislation can you afford to miss?

SFX: [music tag]

NARR: **Washington On-Line** brings you every word.

COPY

DATE: August 13, 1985
CLIENT: Legi-Tech Washington On-Line
PROJECT: Radio Spot for Contribution Tracking
NUMBER: LT-5-B001
DRAFT: as recorded BY: Ken Norkin/from client input

SFX: [gavel pounding "The yeas have it...the motion is approved as amended. The chair recognizes..."]

NARR: If it's your job to follow Congress, you need to know more than who voted how. You need to know why.

SFX: ["Will the gentleman yield?"]

NARR: Often the answer can be found in campaign contributions:

Who gave how much money to whom? And what did they do with it?

SFX: ["I'm sure you understand our position on this one."]

NARR: We can help you find out.

We're **Washington On-Line**...electronic publishers of government information.

Our **Campaign Contribution Tracking System** is the first publicly available computerized file of FEC reports.

Now, using your own computer, you can look into every report filed since 1983.

Learn who contributes to which candidates or PACs. See every reported committee expense.

And for the first time, learn the address, occupation, and employer of every person who's contributed $200 or more.

For more information...or for a demonstration...call **Washington On-Line** at 543-9101. Or see our ad in **TIME** magazine.

MUSIC: Money talks. **Washington On-Line** helps you find out who listens.

9 7 0 4 3 8 4 1 6 6 2

Exhibit 7

Every bill. Every amendment. Every word.

Which piece of legislation can you afford to miss?

Announcing the Bill Text Tracking System™ from Washington On-Line.

Now you can get a current copy of every Congressional bill and resolution—instantly—without ever leaving your office. Because Washington On-Line has created the first computerized file of federal legislation that you can search from your own desk.

And all you need to reach Washington On-Line is a PC, word processor, or any terminal that communicates over the telephone.

What's that bill really about? Keyword searching lets you find out.

Since bill titles often give no clue to bill content, you could miss a piece of legislation you need to know about. Washington On-Lines Bill Text Tracking System lets you search for and find every bill that contains any word or phrase of interest. Within seconds, you can display all relevant bill titles, read their official summaries, or print out as many copies of the full text as you need.

Amendments are highlighted, so you can quickly identify the latest revisions.

Complete and accurate because our computer actually reads every page.

Using the latest optical scanning technology, we feed each printed page directly into the Washington On-Line system. Nothing can be left out.

The perfect complement to your current legislative monitoring efforts.

Subscribe to the Bill Text Tracking System and when you need the exact language of a bill, you'll have it in seconds.

Already available is the current version of every House and Senate bill from the 99th Congress: 25,000 pages of legislation containing over 4 million words, any one of which could be important to you.

No hourly fees or connect charges.

The annual subscription fee allows unlimited use of the system so you can search as often or as long as you need.

Seeing is believing.

In the wrong word could cost you millions of dollars—or the right angle on a story—the Bill Text Tracking System was designed for you. For more information, or for a demonstration, call us today, before the second session of the 99th Congress.

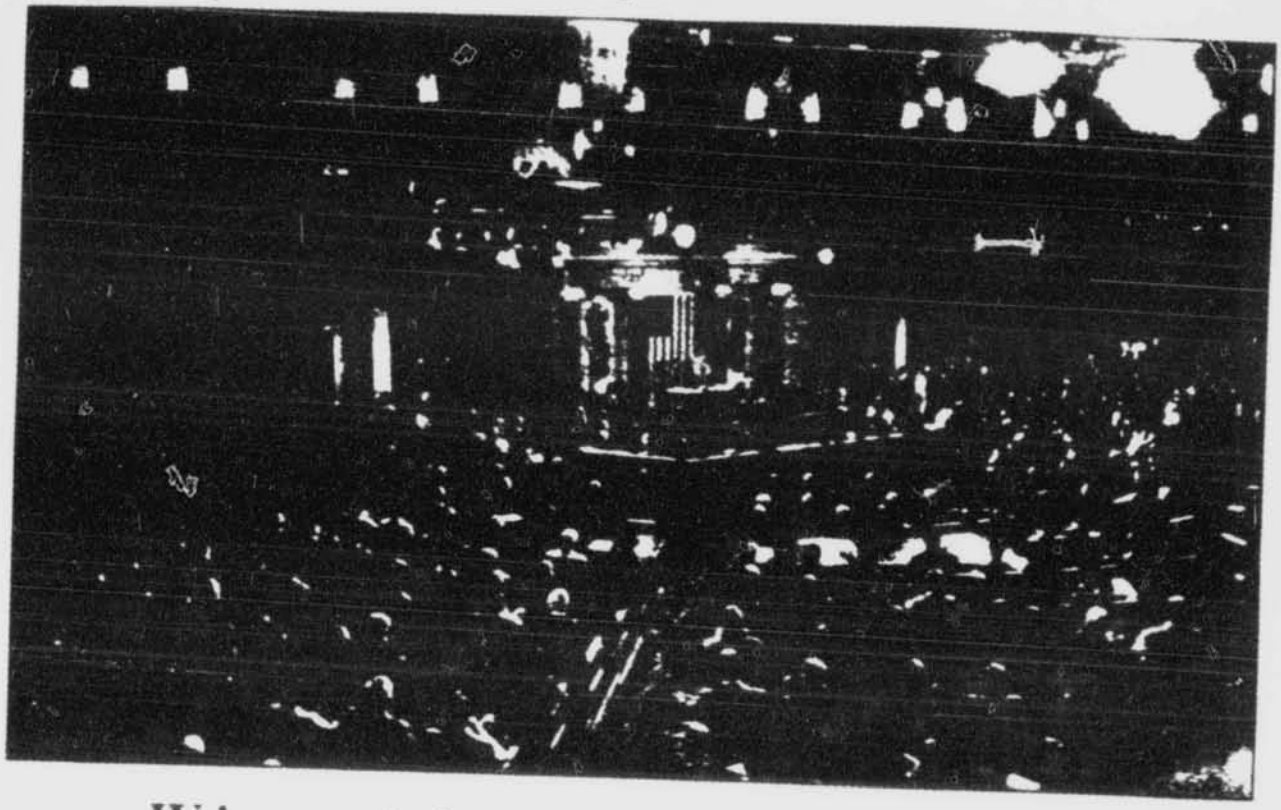
The legislation you need to know about is too important to miss.

WASHINGTON ON-LINE

507 Eighth Street, Southeast, Washington, D.C. [illegible]

[illegible] Washington On-Line

Money talks.



We've made it easy to find out who listens.

Announcing the Campaign Contribution Tracking System™ from Washington On-Line.

Now you can find and examine federal campaign contribution information without going to the Federal Election Commission. Because Washington On-Line has assembled a computerized file of FEC *Reports of Receipts and Disbursements* that you can search from your own desk.

And all you need to begin using this system is a PC, word processor or any terminal that communicates over the telephone.

Who gave how much money to whom? What did they do with it?

With the Campaign Contribution Tracking System, you can quickly obtain a list of every reportable contribution received by any candidate committee or PAC.

Print out summary tables from their FEC filings. Monitor campaign expenses. Track committee to committee payments. Learn the name, address, and employer of every contributor.

And for the first time, [illegible] the contributions made by [illegible] individual, simply by entering that donor's name.

The perfect complement to your current legislative monitoring efforts.

The Campaign Contribution Tracking System helps you understand the ties between contributors and who win or lose. On which legislation passed or failed.

Already in the system are more than 90 [illegible] reports covering the last [illegible] million pages of information [illegible] contributors totaling $1 billion. Filings are updated as new reports become public.

No hourly fees or connect charges.

The annual subscription fee allows unlimited use of the system, so you can search as often or as long as you need.

Proven reliable and accurate.

Washington On-Line is a service of Leg-Tech Corporation, a subsidiary of McClatchy Newspapers, which has provided highly successful contribution monitoring systems in New York and California since 1981.

Call today for more information, or to arrange a free demonstration of the Campaign Contribution Tracking System. Then see for yourself how quickly you can discover whose money talks. And who listens.

WASHINGTON ON-LINE

507 Eighth Street, Southeast, Washington, DC [illegible]

[illegible] Washington On-Line, Inc.

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Exhibit 8

Washington On-Line
Master Service Agreement

Washington On-Line, of Washington, D.C. is pleased to enter into this Master Agreement, Number _____, with _____ of _____ (Subscriber) having an Effective Date of _____.

To make this contract as straightforward as possible, the words *we, us, our,* and *ours,* mean Washington On-Line; the words *you* and *yours,* mean you, the Subscriber.

Basic Service

We agree to provide you access to our time sharing computer system.

We will provide this service to you at one location only:

_____

You agree to have available at this location a separate business telephone line to be used exclusively for connection with computer time sharing systems or for transmission and reception of computerized information.

You agree to pay all charges associated with the installation and use of this telephone line. You understand that you must have this telephone line for us to provide you access to our system.

Technical Assistance

You can call us at 202/543-9101 during normal working hours for answers to questions on the use of the Washington On-Line system. However, we are not responsible for—and will not provide consulting services on the use of—equipment you own, or any equipment you use.

Maintenance of Equipment

You understand that your equipment must be working properly for you to access our system. Maintaining your equipment—or any equipment you use—is your responsibility. You are free to obtain service contracts from others to maintain your equipment and its communications capabilities.

Ownership and Credit

Information we transmit to you is for your internal use only. You may not distribute this information to others except to the extent incidental to the conduct of your business. If your use of this information includes its publication in any form, you will credit Washington On-Line as the source.

All computer programs, database files, reports we transmit to you, copyrights, and other rights to and of the Washington On-Line system are our exclusive property.

Improvements

We may from time-to-time improve and modify the programs and procedures associated with the services we provide you. Our services would then be provided in accordance with any such changes.

Fees

You agree to pay us a one-time

Initial Fee of $750.00

which we will invoice to you on the Effective Date of this Master Agreement. You agree also to pay an

Annual Access Fee of $500.00

throughout the life of this Master Agreement. We will invoice this Fee on the Effective Date of this Master Agreement and on each subsequent anniversary (Renewal Date).

We may increase the Annual Fee by notifying you in writing 60 days in advance of the Effective Date of the increase.

Terms of Payment

Our invoices are due and payable within thirty (30) days of issue. If payment becomes fifteen (15) days past due we may suspend your access to our system until we receive payment. Please make your payments to:

Washington On-Line
507 Eighth Street, Southeast
Washington, D.C. 20003

Duration of Agreement

This Master Agreement covers a period of one year beginning with the Effective Date and will automatically renew on an annual basis on each successive Renewal Date.

You may cancel this Agreement by notifying us in writing at least 90 days prior to the Renewal Date. You also have the right to cancel this Master Agreement as of the Effective Date of any increase in our fees affecting you, by notifying us in writing thirty (30) days in advance of that date.

Limit of Liability

We will make every reasonable effort to ensure that the information we provide you through the Washington On-Line system is complete and accurate, but we cannot warrant the completeness or accuracy of any information we deliver.

You will not hold us liable in any way for damages arising out of your use of our information. Further, you will hold us harmless from any claim, liability, or damages asserted against us by others because of, or in any way related to, your use of information you receive from us.

Complete Agreement

The above terms and conditions and those contained in any signed attachments or appendices, constitute the full and complete Agreement between you and us regarding access to the Washington On-Line computer time sharing system.

Any change, modification, or waiver of these provisions must be in writing and signed by an officer of Washington On-Line.

SUBSCRIBER	WASHINGTON ON-LINE
By _____	By _____
Typed Name _____	Typed Name _____
Title _____	Title _____
Date _____	Date _____

Subscriber Business Name _____

Billing Address _____

City _____ State _____ ZIP _____

Attention _____

Regular Business Telephone (_____) _____-_____

Computer Communications Telephone (_____) _____-_____

Effective Date _____ Agreement Number _____

WASHINGTON ON-LINE

The Campaign Contribution Tracking System℠ Subscription Agreement

Washington On-Line, of Washington, D.C. is pleased to enter into this Subscription Agreement with _____ of _____ _____ (Subscriber) having an Effective Date of _____.

To make this contract as straightforward as possible, the words *we, us, our,* and *ours,* mean Washington On-Line; the words *you* and *yours,* mean you, the Subscriber.

Basic Service and License for Use

We agree to provide you access to our Campaign Contribution Tracking System℠ in accordance with the terms and conditions of Master Agreement Number _____ which must be in effect throughout this Subscription Agreement.

Training

We will conduct a training session on the use of the Campaign Contribution Tracking System. The cost for this training is included within your Annual Subscription Fee. However, you agree to reimburse us for our travel costs associated with your training session.

We will provide one (1) user's manual. You may purchase additional copies from us.

Ownership and Credit

Information we transmit to you is for your internal use only. You may not distribute this information to others except to the extent incidental to the conduct of your business. If your use of this information includes its publication in any form, you will credit Washington On-Line as the source.

All computer programs, database files, reports we transmit to you, copyrights, and other rights to and of the Washington On-Line system are our exclusive property.

Improvements

We may from time-to-time improve and modify the programs and procedures associated with the services we provide you. Our services would then be provided in accordance with any such changes.

Fees

You agree to pay us an

Annual Subscription Fee of $3,500.00

which we will invoice to you on the Effective Date of this Subscription Agreement and on each subsequent anniversary (Renewal Date).

We may increase the Annual Subscription Fee by notifying you in writing 60 days in advance of the Effective Date of the increase.

Terms of Payment

Our invoices are due and payable within thirty (30) days of issue. If payment becomes fifteen (15) days past due we may suspend your access to the Campaign Contribution Tracking System until we receive payment. Please make your payments to:

Washington On-Line
507 Eighth Street, Southeast
Washington, D.C. 20003

Duration of Agreement

This Subscription Agreement covers a period of one year beginning with the Effective Date and will automatically renew on an annual basis on each successive Renewal Date.

You may cancel this Agreement by notifying us in writing at least 90 days prior to the Renewal Date. You also have the right to cancel this Subscription Agreement as of the Effective Date of any increase in our fees affecting you, by notifying us in writing thirty (30) days in advance of that date.

Lawful Use

You understand that information included in the Campaign Contribution Tracking System has been copied by us from reports filed with the Federal Election Commission. It is a violation of federal law to sell or use information copied from such reports for the purpose of soliciting contributions from other than political committees.

Limit of Liability

We will make every reasonable effort to ensure that the information we provide you through the Campaign Contribution Tracking System is complete and accurate, but we cannot warrant the completeness or accuracy of any information we deliver.

You will not hold us liable in any way for damages arising out of your use of our information. Further, you will hold us harmless from any claim, liability, or damages asserted against us by others because of, or in any way related to, your use of information you receive from us.

Complete Agreement

The above terms and conditions and those contained in any signed attachments or appendices, constitute the full and complete Agreement between you and us regarding access to the Campaign Contribution Tracking System.

Any change, modification, or waiver of these provisions must be in writing and signed by an officer of Washington On-Line to become a part of this Agreement.

SUBSCRIBER	WASHINGTON ON-LINE
By _____	By _____
Typed Name _____	Typed Name _____
Title _____	Title _____
Date _____	Date _____

Subscriber Business Name _____

Billing Address _____

City _____ State _____ ZIP _____

Attention _____

Regular Business Telephone (_____) _____-_____

Computer Communications Telephone (_____) _____-_____

Effective Date _____ Agreement Number _____

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FEDERAL ELECTION
COMMISSION
Exhibit 9
1325 K Street, N.W. Washington, D.C. 20463
Phone (202) 523-4068 Toll Free 800-424-9530

FOR RELEASE:
TUESDAY,
JULY 23, 1985

CONTACT: FRED EILAND
SHARON SNYDER
DEBORAH STUTZ

FEC TO OFFER DIRECT ON-LINE COMPUTER SYSTEM ON SUBSCRIPTION BASIS

WASHINGTON--Direct on-line computer access to Federal Election Commission campaign finance data through a subscription service will be instituted by the Agency in September.

The program will operate in accordance with the Commission's Freedom of Information Act procedures.

This is a continuation of the Commission's efforts to expand public disclosure of campaign finance information filed with it by Federal candidates and political committees, those making independent expenditures and the communications costs of corporations and labor unions. The FEC is the only source of all those reports.

Query and retrieval of data representing Federal campaign finance information from both the 1983-84 and the 1985-86 election cycles will be available in either of two formats.

The first of these formats is geared for the subscriber who uses a micro computer, such as a P.C. Raw data will be "streamed" to the subscriber's computer in a form which will facilitate storing it on a floppy diskette or hard disk.

Initially, the types of information available in this form will include basic data on Federal candidates and Federally registered committees; political committee monies spent in support of or in opposition to candidates. As alternative variations are developed, they will be made available.

The second format which will be provided to the subscribers more closely parallels the indexes which currently are available at the FEC. These include: 1) an alphabetic listing of all political committees registered with the Commission; 2) an index providing a cross-reference to all records relating to an

- more -

individual candidate, such as total receipts and disbursements, PAC and party contributions, independent expenditures and other party spending; 3) an index of each political committee, including its total receipts and disbursements; 4) an index of political committees which includes, among other things, total contributions to or expenditures on behalf of or against individual candidates; and 5) an index providing an alphabetic listing of individuals making contributions of $500 or more to candidates, party committees and political action committees.

In mid-August the FEC will conduct a briefing for those who have expressed interest, to describe the scope of the on-line computer access program. Topics to be discussed will include detailed explanations of the data forms and the specific elements to be made available, cost, administrative arrangements and technical details related to the program.

Those interested should advise the FEC Freedom of Information Officer, 1325 K Streeet, NW, Washington, D.C. 20463, telephone 523-4065, providing the name of the person to be contacted, address and telephone number. This information will enable the Commission to advise each interested person of the date, time and place of the August briefing.

****

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2094
Legi-Tech, Inc.	)	

GENERAL COUNSEL'S REPORT

The Office of General Counsel is prepared to close the investigation in this matter as to Legi-Tech, Inc., based on the assessment of the information presently available.

26 April 1986
Date

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

May 22, 1986

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: MUR 2094

Attached for the Commission's review is a brief stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. A copy of this brief and a letter notifying the respondent of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe were mailed on May 22, 1986. Following receipt of the respondent's reply to this notice, this Office will make a further report to the Commission.

Attachments
1. Brief
2. Letter to Respondent

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 22, 1986

Bruce D. Sokler, Esquire
Mintz, Levin, Cohn, Ferris, Glovsky &
Popeo, P.C.
1825 Eye Street, N.W.
Suite 1201
Washington, D.C. 20006

RE: MUR 2094
Legi-Tech, Inc.

Dear Mr. Sokler:

Based on a complaint filed with the Commission on October 24, 1985, the Commission determined on January 2, 1986, that there was reason to believe that your client had violated 2 U.S.C. § 438(a)(4), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") and 11 C.F.R. § 104.15 of the Commission's Regulations, and instituted an investigation in 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.

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.

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Should you have any questions, please contact Eric Kleinfeld, the attorney assigned to handle this matter, at (202)523-4000.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Brief

9704384167 9

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2094
Legi-Tech, Inc.	)	

GENERAL COUNSEL'S BRIEF

I. Statement of the Case

On October 24, 1985, the Office of General Counsel of the Federal Election Commission (hereinafter "Commission") received a signed, sworn and notarized complaint from the National Republican Congressional Committee (hereinafter "NRCC" or "complainant") and Jan Baran, General Counsel, alleging violations of the Federal Election Campaign Act of 1971, as amended (hereinafter the "Act") by Legi-Tech, Inc. (hereinafter "Legi-Tech" or "respondent"). In general, complainants allege that Legi-Tech is using contribution information obtained from Commission reports for commercial purposes, in violation of the sale or use restriction of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15.

Respondent was notified of the complaint in this matter by letter dated October 29, 1985. Legi-Tech responded in writing to the allegations of the complaint on November 15, 1985, contending that its activities fall within the media exemption to the sale or use restriction contained in 11 C.F.R. § 104.15(c).

On January 2, 1986, the Commission determined that there was reason to believe that Legi-Tech violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15, by directly copying information contained in Commission reports into a data base and then using that information for commercial purposes by selling it to the public

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under the trade name "Washington On-Line." Respondents were notified of the Commission's determinations by letter dated January 13, 1986.

On January 23, 1986, Legi-Tech requested an extension of time to respond to the Commission's reason to believe determinations. A one-week extension was granted, and on February 6, 1986, Legi-Tech submitted a written response to the Commission's reason to believe determinations, with an extensive discussion of the factual background and legal arguments of this matter.

II. Legal Analysis

A. Factual Background

Legi-Tech, Inc. is a subsidiary of McClatchy Newspapers. Legi-Tech developed a campaign contribution tracking system (hereinafter "CCTS") which is marketed under the trade name "Washington On-Line." CCTS consists of a computerized data base containing all campaign contribution reports on file and available for public inspection at the Commission. A purchaser of CCTS will be able to access through a personal computer information on (1) political contributions, including the amount, date and cumulative total of the contributions; (2) contributors, including the name, address, occupation, employer and in some cases, telephone numbers; (3) contribution recipients, including whether the recipient is a candidate committee or other political committee; and (4) disbursements, such as amounts of transfers to other committees, salaries, administrative expenses and payments to suppliers. Legi-Tech obtains this information by purchasing

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microfilm reels from the Commission which, in turn, become the source of the data base. Access to CCTS is sold to the public for an initial fee of $750 plus an annual fee of $4000.

Complainant alleges that Legi-Tech's use of information obtained from Commission reports is a "patently commercial" use which violates the Act's sale or use restriction, as codified at 2 U.S.C. § 438(a)(4). NRCC claims that continued use of this information by Legi-Tech will irreparably injure both NRCC and its contributors. NRCC contends that purchasers of CCTS will use the service to solicit contributions from, invade the privacy of, and harass NRCC's contributors. This, in turn, will make those contributors less likely to contribute to NRCC, which, as a result, will suffer a marked decrease in contributions.

In responding to NRCC's allegations and the Commission's reason to believe determinations, Legi-Tech contends that it is operating in full compliance with the Act and Commission regulations. Legi-Tech's argument consists of three primary points. First, Legi-Tech argues that CCTS is a news service within the meaning of the media exemption to the sale or use restriction, as set out at 11 C.F.R. § 104.15(c) of the Commission's regulations. Legi-Tech states that its "activities are well within the traditional notion of press organizations whose activities are protected." Response of Legi-Tech at page 23.

Second, Legi-Tech argues that its sale and use of information obtained from the Commission is neither for the purpose of soliticing contributions nor for commercial purposes

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in general. It is Legi-Tech's contention that the sale for profit of campaign contribution information does not in and of itself constitute a commercial purpose forbidden by the statute. Finally, Legi-Tech argues that to prohibit its sale and use of campaign contribution information would violate the First Amendment of the United States Constitution.

B. Legal Analysis

The issues in this matter center upon the "sale or use restriction" contained in 2 U.S.C. § 438(a)(4). This provision requires the Commission to make all reports and statements available for public inspection, except that

> any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. (emphasis added).

Thus, this provision restricts the uses to which information obtained from the Commission may be put by any person. "Person" is defined under the Act to include any individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. § 431(11). Legi-Tech, as a corporation established and maintained under the laws of California, meets the Act's definition of person, and as such is subject to the restriction on the use of campaign contribution information of 2 U.S.C. § 438(a)(4).

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The Commission's regulations at 11 C.F.R. § 104.15 amplify the statutory restriction. 11 C.F.R. § 104.15 states

> Any information copied, or otherwise obtained, from any report...shall not be used by any person for the purpose of soliciting contributions or for any commercial purpose...

Again, any commercial use or sale of information obtained from reports on file with the Commission is prohibited. However, an exception to this general prohibition is provided for members of the news media, as set out in 11 C.F.R. § 104.15(c) of the regulations which states,

> The use of information, which is copied or otherwise obtained from reports filed under 11 C.F.R. § Part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.

Thus, news media are exempt from the statutory restriction on the use of campaign contribution information. However, the exemption is not absolute. The principal purpose of the use of campaign contribution information may not be commercial, notwithstanding the status of the information-user either as a news medium or otherwise.

Section 438(a)(4) was designed to prevent the disclosure reports filed with the Commission from becoming a vehicle whereby the contributor names contained on those reports would be used for solicitation or commercial purposes. In a number of Advisory

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Opinions, the Commission has focused on the congressional intent behind 2 U.S.C. § 438(a)(4). Citing to the language of the proponents of this provision, those Opinions recognize that the principal, if not sole, purpose of the restriction on the use of information is to protect contributor information and lists from being used for commercial purposes. See Advisory Opinions 1980-78, 101; 1977-66. Congress' purpose, as reflected in the Senate debate on 2 U.S.C. § 438(a)(4), was to prevent the invasion of contributors' privacy stemming from the commercial use of contributor lists:

> MR. BELLMON. "...the purpose of this amendment is to protect...citizens who are generous and public spirited enough to support our political activities [from] all kinds of harassment..." 117 Cong. Rec. S30058(1971).

The legislative history to the 1979 Amendments to the Act makes it apparent that, although a commercial vendor may compile the names and addresses of political committees for the purpose of selling those names, the prohibition on the copying and use of names and addresses of individual contributors is crucial and so was maintained. H.R. Rep. No. 422, 96th Cong., 1st Sess 23 (1979).

The Commission has consistently interpreted and applied the sale or use restriction in Advisory Opinions and past enforcement actions. In Advisory Opinion 1980-101, the Commission determined that the commercial republication of FEC data on political action committees in the form of a directory, and the subsequent sale of those directories, would be permissible under the Act, as long as

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the publication did not include any information identifying individual contributors. 1/ The publication and sale of information filed by political committees (i.e. expenditures by political committees) was similarly determined not to be a violation of 2 U.S.C. § 438(a)(4), as long as the information used did not relate to individual contributors. 2/ See Advisory Opinion 1981-38.

Two types of commercial activity fall within the "commercial purpose" aspect of the statute. First is the use of the disclosure lists for distinct, though secondary, commercial activity. Examples of this are the sale of the lists for use in obtaining magazine subscriptions or charitable contributions. Second is the sale of the disclosure lists themselves, which is inherently a commercial purpose, i.e. list brokering. Despite the lack of legislative history on the subject, Congress apparently intended both such purposes to come within the sale or use restriction in order to protect the individuals whose names appear on the lists. 3/

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1/ Respondents cite this Opinion as standing for the proposition that the names and addresses of individual contributors may not be used for the principal purpose of solicitation. The Commission in no way restricted the prohibition in this manner, but instead recognized that the sale or use restriction extended to the use of information identifying individual contributors in those situations where its principal purpose is commercial.

2/ Information from Schedule B generally does not contain information relating to individual contributors.

3/ Congress' intent is evidenced by the addition, in 1979, of the statutory provision allowing political committees to place ten pseudoyms (or "salts") in each list filed, aiding further in the detection of violations of the restriction on sale or use. See 2 U.S.C. § 438(a)(4).

The current matter under review presents a situation where a corporation is copying disclosure reports obtained from the Commission into a data base and then selling that information via computer to the public. This activity appears to facially violate the sale or use restriction of 2 U.S.C. § 438(a)(4). Legi-Tech is directly copying information from FEC reports and then using it for commercial purposes, i.e. selling disclosure lists to the public for profit. Unless Legi-Tech falls under the news media exemption to the sale or use restriction, its activities are impermissible under the Act.

Thus, the key issue in resolving this matter concerns the media exemption contained at 11 C.F.R. § 104.15(c). This provision has two aspects. First, the use of information copied from Commission reports must be for a newspaper, magazine, book or "other similar communication," i.e. a news medium. Second, the principal purpose of the use must not be the communication of contributor information for solicitation or commercial purposes, i.e. although a secondary purpose may be commercial, the principal purpose must be "news-related."

Legi-Tech claims that CCTS is a news service operating within the traditional notion of a press organization and as such within the meaning of the media exemption. However, Legi-Tech provides little support for this contention, and none of the factors it does cite either individually or collectively establish Legi-Tech's status as a member of the news media.

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Legi-Tech argues that as a subsidiary of a parent corporation, McClatchy Newspapers, which is extensively involved in an array of media activities, CCTS somehow qualified as a media function. Legi-Tech urges the Commission to consider all of McClatchy's enterprises when they are simply not relevant to the present issue: whether CCTS is a legitimate media function. The fact that a buyer may purchase CCTS without purchasing any other of Legi-Tech's services requires that the analysis of the media exemption be focused on CCTS alone. McClatchy's involvement in traditional media functions is not sufficient to sweep CCTS within its journalistic umbrella.

Legi-Tech is self-described as an electronic newspaper. Yet, when CCTS is examined it exhibits few of the characteristics common to newspapers. 4/ The reporting function is minimal if not non-existent. There is no description of the raw data, collected from Commission reports, in the form of news articles. There is a similar absence of any analysis of the contribution information presented.

As well as the lack of reporting in Legi-Tech's service, there is a similar absence of editorials or commentaries. No commentaries are presented assessing the relative importance (or lack of importance) of the raw data. No authorship is involved at all, just the mere presentation of FEC data. Legi-Tech's

4/ Examples of distinguishing characteristics of a news medium, such as a "news story, commentary or editorial" are contained in the media exemption to the definition of "expenditure." 2 U.S.C. § 431(9)(B)(i).

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format, albeit electronic, is simply not analogous to other news media. None of Legi-Tech's operations in conjunction with CCTS are akin to the operations of a newspaper. No journalists are involved in covering events, gathering information, checking the accuracy of the information or analyzing the information. CCTS simply cannot be characterized as a legitimate press organ.

Respondent would have the Commission bound by a ruling of the second circuit court of appeals in which Legi-Tech is described as an "organ of the press." See Legi-Tech, Inc. v. Keiper, 766 F.2d 778 (2d Cir. 1985). Because this case is clearly distinguishable on its facts, such an argument carries little weight in this matter. Legi-Tech v. Keiper involved Legi-Tech's publication of a package of information including summaries of pending state legislation combined with relevant political information such as legislators' voting records and campaign contributions. 5/ Legi-Tech's services in New York were (and are) substantially different than the CCTS service at issue in the present matter. Legi-Tech's New York service was legislative in focus, involving more than the transmission of raw data. CCTS is nothing more than the transmission of raw data and lacks any "summaries" or "relevant political information." Thus, the reference in Legi-Tech v. Keiper to Legi-Tech as a press organ is made neither in the context of CCTS, nor in the context

5/ The court found that the State of New York had denied Legi-Tech access to a competing state-run legislative news service.

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of 2 U.S.C. § 438(a)(4) (or any section of the Act), but merely concerns Legi-Tech's legislative activities in New York State.

Respondent cites In re Virginia Political Report, MUR 1540, as supporting the proposition that Legi-Tech falls within the media exemption. In that matter, the Commission determined there was no reason to believe that a political newsletter which published the names of individual contributors and the amounts contributed, violated 2 U.S.C. § 438(a)(4). In citing this MUR, Legi-Tech ignores the factual charcteristics of the newsletter clearly distinguishing it from CCTS. The newsletter contained more than just a contributor list, including election returns, book reviews, campaign analyses and items of political interest. 6/ None of these items are provided by CCTS. 7/

Therefore, under any reasonable analysis of the service provided by CCTS and its distinguishing characteristics, it simply does not stand up to the ordinary notion of what constitutes a newspaper. Rather than an electronic newspaper, CCTS is instead a marketing service established primarily and principally for commercial purposes. The second prong of the

6/ The specific newsletter issue which was the subject of MUR 1540 contained Virgnia state election results and biographical information about the candidates, as well as a general discussion of Virginia politics.

7/ More closely analogous to the present factual situation is In re Contributions, Inc., MUR 1523, in which the respondents compiled lists of individual contributors, inter alia, into a four volume register which they then sold to the public for $1150. The information was copied directly from FEC reports. The Commission determined there was reason to believe that those respondents committed a knowing and willful violation of 2 U.S.C. § 438(a)(4).

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media exemption to the sale or use restriction provides that the principal purpose of the communication of contributor information may not be for commercial purposes.

Clearly, there is a commercial purpose to Legi-Tech's operations. CCTS is a profit-seeking venture developed by Legi-Tech. When looking at Legi-Tech's targeted market and customers, it becomes increasingly evident that CCTS is a business service with a strictly commercial purpose, to sell contributor and other FEC information. Legi-Tech defined a target market consisting of four distinct groups: (1) the "political establishment" including elected officials, political action committees and government agencies; (2) the news media; (3) special interest groups, including lobbyists, law firms and trade associations; and (4) corporate groups including government contractors and other large and medium size corporations. 8/ Legi-Tech is clearly relying on providing its CCTS service to two of those groups, the special interest groups and the corporate groups. Legi-Tech performs demonstrations for potential purchasers, and through January 1986, three-quarters of all demonstrations had been presented to potential customers who could be classified as special interest or corporate customers. By the end of January 1986, with the exception of several newspapers, all of Legi-Tech's CCTS purchasers were either special interest or corporate customers.

8/ The general public is not among these targeted groups, because, obviously, little, if any, profit could be made by targeting the sale of CCTS to the public.

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Notwithstanding the fact that the special interest and corporate customers are those most likely to turn Legi-Tech's profit-seeking venture into a profit-making one, these are also the customers who are not likely to view CCTS as an electronic newspaper, but rather as a business service which they can put to use to successfully accomplish their goals, whether they may be to influence the legislative process or to seek contributions for PACs.

Legi-Tech argues that the mere fact that its service is sold for profit does not establish a commercial purpose, especially where, in its view, the statute was specifically intended to prevent list brokering and not the dissemination of information. Such an argument is flawed for two reasons. First, it is based on the premise, which was discounted above, that respondent is a legitimate member of the news media. The Act does not prohibit those entities which are legitimately engaged in reporting the news, from copying and using contribution information, notwithstanding the fact that such an entity is a profitable concern. Once again, a typical newspaper must be distinguished from CCTS. A newspaper which is sold for profit, even where it contains contribution information, certainly contains much more in terms of content than the sale of FEC reports. CCTS is just that, the sale of FEC repo ts. When correctly viewed as a non-media business service, the primary purpose of CCTS is clearly none other than commercial.

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Second, CCTS's activities should be viewed as list-brokering in an electronic format. Respondent argues that the electronic media are to be treated no differently than the print media. Certainly then, the converse is also true. Having been unable to establish itself as a legitimate news service, respondent's product in electronic form should be treated no differently under the Act than if it were in printed form. A printed publication of the information CCTS provides would be of doubtful legality under the Act by virtue of the fact that it is nothing more than list brokering, i.e. the sale of lists of individual contributors' names, addresses, occupations, employers and telephone numbers with financial gain as the principal objective. See MUR 1523. Merely changing the format does not change the conclusion. The sale for profit of individual contributors' names, addresses, occupations, employers and telephone numbers in an electronic format may still be viewed as list brokering, especially where CCTS enhances the ability of a "list purchaser" to access those lists by, for example, focusing on all contributors who live in a certain geographical area or on all individuals who contributed to a certain candidate or committee. Certainly, by the addition of telephone numbers to the FECA data, respondent is attempting to enhance the desirability of the lists and its own ability to broker the lists. Respondent chooses to ignore the profit aspect of its operations under the guise of its claim to be an electronic newspaper, when it is in actually marketing a business service with financial gain as its principal objective.

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Additionally, Legi-Tech asserts that any ban on its activities would implicate not only its own rights of freedom of speech and of the press but also the public's right to disclosure of campaign contribution information and the First Amendment rights of solicitors who seek to use the reports. Respondent cites a state court case, Ryan v. Kirkpatrick, 699 S.W. 2d 215 (Mo. 1984), as supporting their proposition. In that case, a Missouri statute similar to 2 U.S.C. § 438(a)(4) was declared unconstitutional by the Missouri Supreme Court. Ryan v. Kirkpatrick involved the direct solicitation of contributors whose names appeared on campaign disclosure reports and did not deal with the commercial purpose aspect of the law. The Missouri statute did not contain the media exemption applicable in this MUR, so the Missouri Supreme Court did not address the issue of who qualifies for this exemption, or, for that matter, any aspect of the Act.

C. Conclusion

In conclusion, under the sale or use provision of the Act and its accompanying regulations, the republication of contributor information is restricted to non-commercial purposes, i.e. to republication by legitimate news operations. The treatment of CCTS depends not so much on its electronic format but rather on what it actually does. CCTS is not entitled to the media exemption, because it simply is not a legitimate news operation. CCTS exhibits none of the characteristics of an ordinary notion of what a newspaper is; yet it calls itself a

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"newspaper" and seeks to rest on that self-description. In fact, CCTS is more accurately described as a computerized list brokering service, selling contributor information directly copied from Commission reports, principally for financial gain.

Consistent with past Commission Advisory Opinions and enforcement actions, it is the sale of the names, addresses, occupations and employers of individual contributors by respondent which particularly offends the Act. Accordingly, because the campaign contribution tracking system directly copies from Commission reports and offered by respondent for sale to the public, is clearly done so for commercial purposes without the objective indicia of a news service, the Office of General Counsel recommends that the Commission find probable cause to believe that Legi-Tech, Inc. is violating 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15.

III. General Counsel's Recommendations

The Office of General Counsel recommends that the Commission:

1. Find probable cause to believe that Legi-Tech, Inc. is in violation of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15.

2 May 1986
Date

Charles N. Steele
General Counsel

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May 30, 1986

Eric Kleinfeld, Esquire
Federal Election Commission
999 E Street, N.W., Room 657
Washington, D.C. 20463

86 JUN 2 A11:05

Re: Legi-Tech, Inc., MUR 2094

Dear Mr. Kleinfeld:

Legi-Tech, Inc. hereby requests a seven-day extension of time in which to respond to the recommendation of the General Counsel that the Commission find probable cause to believe a violation of the federal election laws has occurred. The basis for the request is that key personnel associated with Legi-Tech will be involved in management meetings during the next several weeks. We propose to submit our response no later than June 22, 1986.

Sincerely,

Terrence J. Leahy

Terrence J. Leahy

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 5, 1986

Terrence J. Leahy, Esquire
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
1825 Eye Street, N.W.
Washington, D.C. 20006

Re: MUR 2094
Legi-Tech, Inc.

Dear Mr. Leahy:

This is in reference to your letter dated May 30, 1986, requesting an extension of seven days 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 June 22, 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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BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

In the Matter of	)	
	)	MUR NO. 2094
LEGI-TECH, INC.	)	

SUBMISSION OF RESPONDENT
IN RESPONSE TO PROPOSED RECOMMENDATION
OF GENERAL COUNSEL

Bruce D. Sokler
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June 23, 1986

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BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

In the Matter of LEGI-TECH, INC.	MUR NO. 2094

SUBMISSION OF RESPONDENT
IN RESPONSE TO PROPOSED RECOMMENDATION
OF GENERAL COUNSEL

On May 22, 1986, the Office of the General Counsel informed respondent Legi-Tech, Inc. ("Legi-Tech") that it was prepared to recommend that the Federal Election Commission find probable cause to believe that Legi-Tech has committed a violation of the federal election laws. Legi-Tech hereby submits its response to this recommendation.[1]

A complete description of Legi-Tech's operations and activities is set forth in the Submission of Respondent, dated February 6, 1986, to the General Counsel in response to its finding that there was reason to believe that Legi-Tech had violated the federal election laws. We understand that the

[1] By letter dated June 5, 1986, the General Counsel granted respondent an extension until June 22, 1986 to file a response. Since that date fell on a Sunday, respondent was informed by telephone that it could submit this pleading on June 23, 1986.

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earlier submission is available for review by the Commissioners, and that description will only be summarized in Part I below.

The General Counsel's brief is a remarkable document in that it asks the Commission to embark on a collision course that, if followed, will inevitably end in a judicial declaration that the sale and use restriction in 2 U.S.C. § 438(a)(4) is unconstitutional. To reach its recommendation, the General Counsel's brief had to take a distorted view of the facts and a myopic view of the statutory and constitutional law, and had to ignore the basic purposes of the statute the Commission is charged to administer. The recommendation also overlooked the fundamental principles that statutes and regulations should be interpreted to avoid constitutional infirmities[1] and that constitutional issues be avoided whenever possible.[1]

We earnestly suggest that the Commission eschew the judicial beating to which the General Counsel's brief will

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[1] See, e.g., Lowe v. Securities and Exchange Comm'n, 105 S. Ct. 2557, 2572 (1985).

[1] See, e.g., United States v. Clark, 445 U.S. 23, 27 (1980) ("this Court will not pass on the constitutionality of an Act of Congress if a construction of the statute is fairly possible by which the question may be avoided."); Califano v. Yamasaki, 442 U.S. 682, 693 (1979); Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 341, 346-48 (Brandeis, J., concurring).

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lead. Legi-Tech does not covet a major constitutional confrontation with the FEC. It has operated entirely in the open, in the full view of the Commission and its staff. Legi-Tech's activities advance and augment the FEC's basic mission of disclosure. Our activities are fully lawful and constitutionally protected, and if necessary, we are prepared to defend them vigorously, and be vindicated.

The General Counsel's proposed recommendation is based on its erroneous claim that Legi-Tech's electronic publication of information from FEC reports does not constitute the use of information in "newspapers, magazines, books, or other similar communications" within the meaning of 11 C.F.R. § 104.15. As we show in detail in Part II, the brief proposes to take an unduly restrictive view of the media exception -- an interpretation that misconstrues Legi-Tech's information dissemination activities; that would defeat the underlying purpose of the election laws; that ignores and is inconsistent with every court pronouncement in this area; and that wholly ignores the overriding constitutional rights of Legi-Tech as a First Amendment speaker. We strongly urge the Commission to reject the General Counsel's recommendation and to conclude that Legi-Tech qualifies for the exemption. If the sale and use restriction is applied to prevent Legi-Tech from electronically publishing information from FEC reports, the statute will be challenged in court. As we demonstrate in Part

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III, there can be little doubt that the restriction will be held unconstitutional.

I. Nature of Legi-Tech's Operations

Legi-Tech offers to its subscribers an electronic news service that includes, among other items, information on campaign contributions obtained from public disclosure reports filed with the Federal Election Commission. The dissemination of campaign contribution information, however, constitutes only one part of Legi-Tech's operations in California, New York and Washington. A description of those operations shows that Legi-Tech's federal contribution tracking system complements its other electronic publishing activities at the state and federal level, as well as the journalistic enterprises of its parent company, McClatchy Newspapers.

A. McClatchy Newspapers

McClatchy is a diversified media company with holdings in the newspaper industry, radio, cable systems, and new communications technologies such as videotext and multipoint distribution service.[4] These activities reflect McClatchy's

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[4] McClatchy has a direct or indirect ownership interest in several municipal daily newspapers, including the Sacramento Bee, the Modesto Bee, the Fresno Bee, the Anchorage Daily News, and the Tri-City Herald. Collectively, these newspapers have a

(Continued)

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fundamental business strategy of broadening its operations beyond traditional daily newspapers to include new information delivery services that take advantage of advanced technologies. McClatchy considers this approach necessary for it to compete effectively with other information providers in the coming decades.

B. Legi-Tech's State Operations

Legi-Tech began operations in California in 1981 and was incorporated under the laws of the State of California in 1982. McClatchy acquired its interest in the company in 1982. In 1983, Legi-Tech began to provide services in New York State, and in 1985 expanded to Washington, D.C.

Services. Legi-Tech is in the business of collecting and transmitting legislative and political information to its subscribers over telecommunications facilities. In California and New York, it offers a service known as the Legi-Tech

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4/ (Continued from previous page)

circulation of hundreds of thousands of residents. McClatchy is the licensee of stations KFBK (AM) and KAER-FM in Sacramento, California, and KMJ (AM) and KNAX-FM in Fresno, California. It holds interests in a multipoint distribution service venture, as well as in several companies that currently have or have applied for cellular telephone licenses. McClatchy offers a videotext service, El Dorado Teleguide. Finally, it markets an electronic newspaper library called Advanced Search Concepts.

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System. The system includes summaries of state legislation in plain terms, transmits the recorded votes on each bill, provides the attendance record of state legislators, reports the text of bills, and publishes legislative calendars and agendas.

A significant feature of the Legi-Tech System in California and New York is the transmission of information about political contributions. Legi-Tech provides to its subscribers a variety of contribution information on file with the state government, including names and addresses of contributors, amounts of contributions, and the dates of the contributions. Legi-Tech originally began to offer this service in California at the request of its newspaper clients.

Customers. Hundreds of customers subscribe to Legi-Tech's state services. The company has always targeted the print media as major customers, and its current and former subscribers include Newsday, the Los Angeles Times, Gannett News Service, The New York Times, Capital Newspapers Group, and the New York Post. Legi-Tech's other subscribers include lobbyists, corporations, political parties, local governments (including the New York City Mayor's office), state agencies and trade associations. The New York State Commission on Investigations subscribers to the service, and monitors

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information on campaign contributions to assist its investigations of state officials.[5]

Operations. Legi-Tech operates much like a daily newspaper. Its staff in Sacramento includes eight to ten people who gather legislative and political information for publication in Legi-Tech's data base. Similarly, the Albany staff includes seven to nine reporters who cover the legislative "beat." The job of these reporters is to attend assembly meetings and legislative sessions and to record decisions and actions at those meetings. Legi-Tech reporters also seek out the text of bills, legislative calendars, contribution information, and other items from a variety of sources in the state legislatures. In short, Legi-Tech journalists cover events, gather information, check on sources, double-check the accuracy of their information, and prepare and present it in a usable form -- activities no different in substance from those of their colleagues who work for print publications.

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[5] The approximate breakdown of customers in New York is trade associations, slightly over thirty percent; government agencies, about thirty percent; corporations, over ten percent; lobbyists, about fifteen percent; media, about ten percent; and political organizations, about three percent. In California, the figures are trade associations, about forty percent; government agencies, about forty percent; corporations, about fifteen percent; lobbyists, about thirteen percent; media groups, about six percent; and political organizations, about nine percent.

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C. Legi-Tech's Federal Information Services

Legi-Tech has now expanded to the federal level. Under the trade name Washington On-Line, Legi-Tech currently offers the same electronic information services in Washington that it provides in the states. These include four related services: (1) the Congressional Vote Tracking System ("Vote Tracking"); (2) the Congressional Bill Tracking System ("Bill Tracking"); (3) the Bill Text Tracking System ("Bill Text"); and (4) the Campaign Contribution Tracking System ("CCTS"). Each service may be purchased separately, or as a package at a significantly reduced rate.

Vote Tracking. The Vote Tracking System permits subscribers to use their personal computers or word processors to review every recorded floor or committee vote of Congress and to analyze the performance of any legislator, or group of legislators, since the beginning of the current Congress. Among other features, Vote Tracking enables subscribers to calculate automatically the percentage of the time any member supported or opposed a particular position. Most important for the purposes of this investigation, users of Vote Tracking have access to information from Federal Election Commission reports. Subscribers can determine every PAC contribution a particular legislator has received since 1983. This information is obtained by Legi-Tech from the Reports of Receipts and Disbursements filed by candidates and PACs with

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the Commission. A subscriber has the capability to compare directly votes on legislation with PAC contributions.

Bill Tracking. Bill Tracking offers subscribers the capability to use their computers to obtain status reports on a piece of legislation, showing where the bill is sitting in the legislature; action reports, providing a complete legislative history of every bill; calendars, showing the current committee and floor schedules, as well as future calendars and committee schedules; official summaries of every bill, with Lexis-like key word searching that permits the user to find any word or phrase mentioned in any summary in the system; and sponsor/co-sponsor reports, which list senators and representatives alphabetically or chronologically, with the dates they signed on to a particular bill. Bill Tracking also permits users to create computerized bill files that organize information in a manner most useful to the customer.

Bill Text. The Bill Text service is the first computerized file of federal legislation that enables a subscriber to call up the desired information at his desk. Bill Text permits Legi-Tech subscribers to obtain instantly an up-to-date copy of every bill and resolution introduced before the current Congress. By using word or phrase searches, subscribers can locate every piece of legislation that refers to a particular topic.

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CCTS. CCTS contains a computerized data base with all campaign contribution reports on file and available for public inspection at the Federal Election Commission. Legi-Tech has developed this service in part because its contribution reports at the state level have generated significant customer demand, particularly among the news media, many of which cover the federal government in Washington.

Through CCTS, a subscriber is able to call up on his personal computer a variety of data from the FEC reports.[6] CCTS enables subscribers to request information in a wide variety of formats depending on the purpose of the search. Once the user is in the Contributor Tracking module, for example, he can run a search based on the contributor's name, his employer, geographical location, or the recipient of the contribution. Thus, a subscriber might want to analyze all contributions made to the committee to re-elect a particular member of Congress. The system would enable him to conduct such a search quickly and easily. Alternatively, he might want

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[6] The data base includes information on (1) political contributions, including the amount, date, and cumulative total of the contributions; (2) contributors, including their name, address, occupation, employer, and in some cases telephone numbers; (3) contribution recipients, including whether the recipient is a candidate committee or a political action committee; and (4) payments and expenses, such as amounts of transfers to other committees, salaries, administrative expenses, and payments to suppliers.

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to report on which employees of a particular company gave money to a specific political action committee. A reporter could focus on all of the contributors that live in the geographic area covered by his newspaper.

The primary benefit of CCTS is that it is the first service to make this massive amount of public information accessible in a convenient, computerized form. Until now, those who monitor the flow of dollars to or from a candidate's committee or a political action committee had to visit the FEC and pore over hundreds of thousands of pages of reports to ferret out the desired information.[1] With CCTS, a subscriber can use his personal computer or word processing equipment to receive precisely the data he needs, in a matter of seconds.

Sales and Marketing. Legi-Tech began to offer its federal services in late 1985. With the assistance of an advertising and market research firm, Legi-Tech defined a target subscriber market consisting of four major groups:

1. The Media. This group was defined to include reporters, researchers, correspondents, editors, and executives of local and national newspapers; general

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[1] For example, if a researcher wanted to learn about all contributions made by a particular individual mentioned in a report to the FEC, he would have to go through thousands of pages of reports, and then would still not be sure that he has an accurate total. Purchasing the micro film from the agency does not alleviate this chore of reviewing large amounts of information that the subscriber is not interested in.

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interest, news, business, and trade magazines and newsletters; Washington news bureaus, services, and agencies, both print and broadcast; news directors and assignment editors at local radio and television stations and the major networks; columnists, special correspondents, and other news "personalities" in both print and broadcast; directors and producers of broadcast news/feature programming, such as "60 Minutes" magazine formats and "Meet the Press" interviews.

2. Special Interest Groups. These include not only such special interest groups but also their lobbyists; lawyers working within such organizations; law firms, accounting/management consulting firms, public relations agencies and other consultants; senior executives and government relations staffers at associations, unions and the U.S. Chamber of Commerce.

3. The "Political Establishment." This group encompasses elected national officials (Congress, the President and Vice President) and their office and campaign staffs; national political parties; political action committees (PAC's); government agencies; political image and management consultants.

4. Corporate Groups. This includes government and defense contractors; large and medium size national corporations interested in the effects of government policy; issue study and research firms ("think-tanks"); and other profit or non-profit organizations with a special interest in the affairs of government.

To obtain subscriptions, Legi-Tech launched a major advertising campaign. First, utilizing lists from standard reference books, Legi-Tech has sent tens of thousands of brochures through the mail.

Second, Legi-Tech has advertised on local radio stations during news and public affairs broadcasts, which attract its target market. The radio advertisements characterized Washington On-Line as "electronic publishers of government information."

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Third, Legi-Tech has advertised Bill Text and CCTS in a series of print media that reach its target audience. These have included weekly newsmagazines and more specialized journals that reach trade associations, lawyers, the legislative community, and reporters. Print advertisements have stressed the usefulness of Legi-Tech's services to monitor legislative activity. The advertisements, for example, describe Legi-Tech's services as "the perfect complement to your current legislative monitoring efforts," and that CCTS "helps you understand the link between contributions and who won or lost. Or which legislation passed or failed."

Fourth, an important aspect of Legi-Tech's marketing activities in Washington has been personal demonstrations of the capabilities of the system to prospective clients, i.e., the equivalent of a free sample issue. The vast majority of those demonstrations were performed for potential subscribers who are affected by, who seek to influence, or who report about the legislative process.

As of June 15, 1986, Washington On-Line's customers include several major newspaper organizations; several trade associations; a union headquarters; law firms; several corporations; some lobbying groups; and the U.S. Department of Justice.

In addition, Legi-Tech has begun to offer customers in California and New York the opportunity to subscribe to the

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federal Bill Text and CCTS services. Several customers have already signed up for Washington services, including a major telephone company and a leading metropolitan newspaper.

Uses of the System. Legi-Tech does not keep track of the frequency with which its subscribers use the federal services, nor does it monitor the uses to which the system is put. Some subscribers use CCTS to keep track of who is receiving contributions and from what sources. Some use it in coordination with the Bill Text service to find links between contributions to legislators and their introduction or support of particular pieces of legislation. Some use the system to assist grass-roots political lobbying efforts. Some use the information to encourage individuals to participate in the political process for purposes of influencing public policy on a particular issue.

Members of the media have expressed particular interest in the great variety of ways in which users can format particular types of data and focus their searches quickly and easily. For example, some have mentioned to Legi-Tech that it is useful to have a "financial profile" of a public figure who is giving a speech being covered by a reporter -- a profile that can be obtained instantaneously on CCTS. Also, the ability of journalists to report the amounts of campaign contributions from particular sources and then to compare this data to the voting records of members of Congress is one of the

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outstanding features of the system. One prospective customer had the idea of using the system to trace a senator's receipts of contributions from defense-related PACs during the period when the defense bill was before his committee. In that case, the information obtained from CCTS would form the core of the story that the reporter was attempting to put together. As this election year gets underway, journalists can be expected to intensify their attempts to monitor the legislative and campaign processes, triggering an even greater demand for Legi-Tech's services.

Operations. As in California and New York, a significant portion of Legi-Tech's Washington staff -- about eight reporters -- spends their time covering the "beat" and gathering legislative data. Legi-Tech creates its data base for CCTS by purchasing the FEC microfilm reels, at $10 per reel, that contain all of the campaign contribution reports on file with the agency. The Commission makes these reels available to Legi-Tech (and other entities) usually on the same day that the reports are filed and the film is prepared.

Legi-Tech expends considerable effort and money to input this information into its data base. It first organizes the information according to the way that Legi-Tech wants to format the information. It then sends the papers to an outside data processing firm whose operators manually key punch each item of information from the reports. After the key-punched items are

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returned to Legi-Tech, the company's staff reviews the materials to ensure their accuracy. Legi-Tech has spent over half a million dollars putting together its data base in this manner, including staff salaries and fees for outside service firms.

II. Legi-Tech Qualifies for the Exemption in the Sale or Use Provision for Use of Information in "Newspapers, Magazines, Books, or Other Similar Communications."

The approach of the General Counsel's brief is fundamentally flawed. The proposed recommendation in effect places on Legi-Tech the burden of proving that its information dissemination activities resemble those of a traditional newspaper. It asks the Commission to endorse a Luddite approach to its regulation, which was designed to avoid precisely the First Amendment problems presented by this case.

Such an approach, however, turns the federal election law on its head. As we explain below, a finding that Legi-Tech falls within the media exemption is required by (1) the disclosure purpose of the FEC act and the intent of Congress to avoid abridging First Amendment activity; (2) a comparison of the media exemption to the sale or use restriction with the newspaper exemption from the Act's definition of expenditures; (3) a review of the Supreme Court's press rulings -- which instruct that the "press" for First Amendment purposes includes a wide array of information dissemination activities -- as well

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as other judicial holdings that have refused to subject all types of press organizations to regulatory constraints; and (4) the Second Circuit's explicit recognition of Legi-Tech as media and that court's protection of Legi-Tech's First Amendment press rights.

A. The "Similar Communications" Exemption Must Be Interpreted Broadly To Effectuate the Basic Disclosure Purpose of FECA.

It is a fundamental principle of statutory interpretation that all provisions of a statute are to be interpreted in accordance with the underlying purpose of the statute.[8] Unlike the General Counsel brief's "green eyeshade" approach, the sale or use restriction in 2 U.S.C. § 438(a)(4) cannot be examined in isolation from the remainder of FECA. The underlying purpose of the federal election laws is not to prevent disclosure, but to promote it. FECA requires that the Commission shall "within 48 hours after the time of the receipt by the Commission reports and statements filed with

[8] See, e.g., Richards v. United States, 369 U.S. 1, 11 (1962) ("We believe it fundamental that a section of a statute should not be read in isolation from the context of the whole Act, and that in fulfilling our responsibility in interpreting legislation, 'we must not be guided by a single sentence or member of a sentence, but [should] look to the provisions of the whole law, and to its object and policy.'") (citations omitted); 2A Sutherland, Statutory Construction § 46.05 (4th ed. 1984), and cases cited therein.

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it, make them available for public inspection, and copying." 2 U.S.C. § 438(a)(4) (emphasis supplied). As we noted in our earlier brief, the Supreme Court has confirmed that FECA's disclosure requirements serve compelling government interests, such as providing the public with information as to the sources and use of political campaign money; deterring corruption by exposing large contributions; and providing an essential means of gathering the data necessary to detect violations of the contribution limitations.[9]

Accordingly, as a general rule, the Commission should not be in the business of restricting the flow of information. Its mission is to promote, to the greatest degree possible, the disclosure of campaign-related information vital to the political process. In the ideal Jeffersonian democracy, every citizen would actually possess all FEC disclosure reports. As a practical matter, however, the press and other interested representatives serve as surrogates for the electorate in this regard.[10] Absent clear and convincing evidence of a

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[9] Buckley v. Valeo, 424 U.S. 1, 66-67 (1976).

[10] As the Supreme Court observed in Cox Broadcasting Corp. v. Cohn, 420 U.S.469, 491 (1975):

> In the first place, in a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in

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violation of the sale or use restriction, the presumption should be in favor of publication activities that promote the objectives of Congress by facilitating the disclosure of campaign contribution information.[11]

The sale or use restriction must also be construed narrowly in light of the explicit intent of Congress not to abridge constitutional free speech and press rights. In its February submission, Legi-Tech reviewed at length the legislative history of the sale or use restriction and the "similar communications" exemption.[12] In brief, during the discussion on the amendment, Senator Nelson made clear that "newspapers may, if they wish, run lists of contributors and amounts." Senator Bellmon responded that this interpretation

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[10] (Continued from previous page)

convenient form the facts of those operations. Great responsibility is accordingly placed upon the news media to report fully and accurately the proceedings of government, and official records and documents open to the public are the basic data of governmental operations. Without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally.

[11] See 2 U.S.C. § 437g(a)(7) (court must determine through "clear and convincing proof" that the defendant in a civil action has committed a knowing and willful violation of the FEC Act).

[12] See February Submission at pp. 27-32.

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was correct, and that only "list brokers, under this amendment, would be prohibited from selling the list or using it for commercial solicitation."[13] This legislative history squarely supports Legi-Tech's position that the sale or use restriction in FECA does not prevent news organizations from publishing the lists as part of their journalistic activities. Surely the General Counsel would not contend that the reference in the legislative history to "newspapers" means that literally only traditional daily newspapers enjoy the right to publish FEC information under the statute; all First Amendment speakers obviously hold such rights.

The fixation in the General Counsel's memorandum on whether Legi-Tech looks like a general circulation newspaper misconstrues the Commission's own regulation. Its recommendation focuses on the phrase "newspapers, magazines, books or other similar communications" and concludes that Legi-Tech's electronic publication activities do not qualify for the exemption simply because they exhibit "few of the characteristics common to newspapers."[14] But the exemption, by its own terms, is not restricted to newspapers; it includes any type of communication that is "similar" to a newspaper,

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[13] 117 Cong. Rec. S30058 (1971).

[14] Memorandum at 9.

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magazine or book. "Communications" refers to any "process by which information is exchanged between individuals through a common system of symbols, signs, or behavior," and "similar" means simply "having characteristics in common."[15] Thus, the regulation encompasses all First Amendment press speakers. The recommendation's failure even to analyze whether Legi-Tech offers a "similar communications" service undercuts its conclusions.

B. The Exemption for "Similar Communications" Is Broader than the Media Exemption to the Definition of Expenditures, Which Has Been Given an Expansive Construction by the Courts.

The General Counsel's brief suggests that examples of distinguishing characteristics of a news medium may be discerned from 2 U.S.C. § 431(9)(B)(i), which exempts from the definition of reportable "expenditures" those amounts spent for a "news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication . . ."[16] A comparison between the two provisions is indeed useful, but not for the purpose mentioned by the General Counsel. To the contrary, an examination of the expenditure exemption shows that Legi-Tech's publication activities must be permitted.

15/ See Webster's New Collegiate Dictionary, 1980 ed.

16/ Memorandum at 9 n.4.

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The expenditure exemption is quite narrow. It is limited to particular types of news stories, rather than all "similar communications" as in 11 C.F.R. § 104.15(c).[17] The media exemption from the expenditure definition also differs significantly from that in this case because application of the expenditure exemption limits the amount of campaign information available under the Act and therefore defeats the intent of the statute.[18] Here, of course, the opposite is true; Legi-Tech's publication of campaign contribution information fulfills the intent of Congress in enacting the disclosure provisions.

Even though the expenditure exemption is narrower than that at issue here, when it enacted the expenditure provision Congress made clear that it did not wish to tread on First Amendment rights of speech by requiring forced disclosure. The legislature declared unequivocally that "it is not the intent of the Congress in the present legislation to limit or burden in any way the first amendment freedoms of the press or of

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[17] Cf. 11 C.F.R. § 110.13(a)(2) ("Broadcasters, bona fide newspapers, magazines and other periodical publications may stage nonpartisan candidate debates . . .").

[18] See Brief for Appellant Federal Election Commission, Federal Election Commission v. Massachusetts Citizens for Life, Inc., No. 85-701 (U.S.) (filed February 27, 1986) (court of appeals' decision declaring section 441b of the FEC Act unconstitutional would defeat "compelling interest" in "public disclosure of the sources of federal campaign financing.").

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association."[19] Thus, the intent of Congress in enacting the media exemption to the expenditure definition was exactly the same as when it adopted the statute at issue here: under no circumstances should the statute be applied so as to stifle First Amendment speech.[20]

The current version of the media exemption to the expenditure definition has been scaled back from a provision that was held unconstitutional. The court of appeals in Buckley v. Valeo invalidated a version of the expenditure exemption which restricted its availability to "bona fide" periodical publications.[21] The court struck down this

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[19] H.R. Rep. No. 1239, 93rd Cong., 2d Sess. 4 (1974) (emphasis added).

[20] See pp. 19-20 supra.

[21] Buckley v. Valeo, 519 F.2d 821, 869-78 (D.C. Cir. 1975) (en banc), aff'd in part and rev'd in part, 424 U.S. 1 (1976). The full text of the exemption read:

> The provisions of this section do not apply . . . to any news story, commentary, or editorial distributed through the facilities of a broadcasting station or a bona fide newspaper, magazine, or other periodical publication. A news story, commentary, or editorial is not considered to be distributed through a bona fide newspaper, magazine, or other periodical publication if---
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> (1) such publication is primarily for distribution to individuals affiliated by membership or stock ownership with the person (other than an individual) distributing it or causing it to be distributed, and not primarily

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provision on the grounds that it was impermissibly vague and overbroad in an area where the government may regulate only with narrow specificity.[22]

In accordance with the intent of Congress to preserve breathing space for protected First Amendment activity, every court that has addressed the media exemption to the expenditure limitation has either construed it broadly to include various types of media, or has declared it unconstitutional. For example, in Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210 (S.D.N.Y. 1981), Reader's Digest commissioned a study of Senator Kennedy's accident at Chappaquidick for an article in its magazine that included a videotape reenactment of the accident. The magazine distributed copies of the tape and the article to broadcast media. After the FEC made a "reason to believe" finding that

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[21] (Continued from previous page)

> for purchase by the public at newsstands or by paid subscription; or
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> (2) the news story, commentary, or editorial is distributed by a person (other than an individual) who devotes a substantial part of his activities to attempting to influence the outcome of elections, or to influence public opinion with respect to matters of national or State policy or concern.

519 F.2d at 871 n.132.

[22] This point was not appealed to the Supreme Court.

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the magazine had violated the expenditure disclosure provisions, the magazine sued to prevent the Commission from proceeding with the investigation. The court held that, in order to minimize harm to First Amendment values, the Commission first had to decide whether Reader's Digest was acting as a press entity when it distributed the tape. If so, the court would have had no subject matter jurisdiction to continue the investigation.[23]

Similarly, in Federal Election Commission v. Phillips Publishing, Inc., 517 F. Supp. 1308 (D.D.C. 1981), the District Court rejected the Commission's position that a solicitation letter seeking subscriptions to a political newsletter was not distributed through the facilities of a periodical publication and therefore did not qualify for the exemption in § 431(9)(B)(i). The Court observed that "[b]ecause the purpose of the solicitation letter was to publicize The Pink Sheet and obtain new subscribers, both of which are normal, legitimate press functions, the press exemption applies."[24]

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[23] 509 F. Supp. at 1215.

[24] 517 F. Supp. at 1313. See also MUR 296(76) (dismissing an internally generated complaint against Penthouse Magazine for running an ad about the Carter interview that advised readers not to vote until they read the issue; General Counsel mentioned "the overriding protection of the First Amendment in this area.").

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Finally, in Federal Election Commission v. Massachusetts Citizens for Life, 769 F.2d 13 (1st Cir. 1985), prob. juris. noted, 106 S. Ct. 783 (1986), the Commission sought to hold a nonprofit corporation liable for violating FECA by making expenditures of corporate funds for special editions of its newsletter urging readers to vote for anti-abortion candidates. The court of appeals concluded that the special editions could not be considered news stories, commentaries or editorials distributed through the newsletter's facilities, emphasizing that the editions were circulated to twenty times the number of people who subscribed to the regular editions. However, the court found that the Act could not constitutionally be applied to prohibit such expenditures.

All of these decisions stand in stark contrast to the General Counsel brief's approach to this case. Instead of leaving First Amendment breathing room, the proposed recommendation would attempt to strangle a new medium in its crib.

C. The Supreme Court and Lower Courts Have Broadly Interpreted the "Press" To Prevent Publishers from Being Subjected to Constitutionally Suspect Regulation.

The General Counsel's brief's cramped interpretation of the range of entities that enjoy publication rights under the FEC Act flies in the face of numerous court pronouncements establishing that First Amendment press speakers are not

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limited to those that publish editorials or hire reporters. The Supreme Court has consistently intepreted the "press" in the most expansive manner possible, in order to prevent infringement of constitutionally protected rights of speech. The General Counsel's brief does not even discuss these cases, and its analysis of Legi-Tech is entirely inconsistent with them.

As far back as Lovell v. Griffin, 303 U.S. 44 (1938), the Court invalidated an ordinance requiring a permit for the distribution of "circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold." Its discussion of the broad range of entities entitled to First Amendment press rights applies with equal force in this case:

> The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. What we have had recent occasion to say with respect to the vital importance of protecting this essential liberty from every sort of infringement need not be repeated.

303 U.S. at 452 (emphasis added). Legi-Tech fits comfortably within these parameters.

The Supreme Court continues to apply the principles in Lovell by ensuring that government regulation efforts leave the

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necessary breathing room for First Amendment speakers. Just last year, in Lowe v. Securities and Exchange Commission, 105 S. Ct. 2557 (1985), the Court invoked Lovell in ruling that a publisher of investment material could not be enjoined from publishing nonpersonalized investment advice. It found that the publisher need not register as an investment adviser because it qualified under the exclusion in 15 U.S.C. § 80b-2(a)(11)(D) available to "the publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation." The Court concluded that Congress, "plainly sensitive to First Amendment concerns, wanted to make clear that it did not seek to regulate the press through the licensing of nonpersonalized publishing activities."[25] It found that "the reasoning of Lovell . . . supports a broad reading of the exclusion for publishers."[26] The Court assumed that Congress was aware of its earlier decisions on freedom of the press, and "'would err on the side of fundamental constitutional liberties when its legislation implicates those liberties.'"[27] Turning to the

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[25] 105 S. Ct. at 2570.

[26] Id. at 2571 (emphasis added).

[27] Id., quoting Time, Inc. v. Regan, 104 S. Ct. 3262, 3292 (1984) (Stevens, J., concurring in part and dissenting in part).

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statutory exception before it, the Court found that the provision used "extremely broad language" that encompassed any publication provided it is "bona fide" and "of regular and general circulation." The publications at issue satisfied these general criteria, and could not be restrained under the statute.[28]

In many other instances, courts have treaded carefully when asked to apply regulatory provisions to organizations that publish information, in order to avoid the constitutional pitfalls of the General Counsel's brief. United States v. Kelly, 328 F.2d 227 (6th Cir. 1964), involved a situation closely analogous to the present case. The defendants printed a one-page collection of racing information, such as racing entries, names of jockeys, weight to be carried by each horse, track conditions, late scratches, and probable odds -- in other words, nothing more than "raw data."[29] They were convicted under a statute that prohibited interstate transportation of wagering paraphernalia. The court of appeals reversed, holding that the defendants were exempted from the statute by language that excluded "any newspaper or similar publication":

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[28] Id. Three concurring justices concluded that the petitioner was an investment adviser subject to regulation and sanction under the Act, but that to prevent the petitioner from publishing nonpersonalized investment advice would violate his First Amendment rights. Id. at 2574-87.

[29] General Counsel's Memorandum at 9.

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> We think the legislative history of Section 1953 and its companion Section 1084 clearly indicates that Congress did not intend to inhibit publications containing racing results or predictions. If this information may lawfully be included in the sports sections of large daily metropolitan newspapers there is no valid reason why appellants cannot print and circulate the same news.

328 F.2d at 236. See also Friedman's Exp. Inc. v. Mirror Transportation Co., 169 F.2d 504 (3rd Cir. 1948) (comics section of Sunday newspaper was by itself "newspaper" exempt from certification requirements of Interstate Commerce Act); In re Sterling Cleaners & Dyers, Inc., 81 F.2d 596, 597 (7th Cir. 1936) (daily publication giving news and notices of proceedings in Chicago courts, held "newspaper" under the bankruptcy statute); Kings County v. Superior Court, 119 Wash. 591, 92 P.2d 694 (1939) (weekly publication principally espousing views of political organization was a "newspaper" qualified to publish official notices); In re Bibb Co., 117 Minn. 214, 135 N.W. 385 (1912) (daily finance and commerce publication was a newspaper).

D. Legi-Tech Qualifies for the Media Exemption.

The General Counsel states that "the key issue in resolving this matter concerns the media exemption contained at 11 C.F.R. § 104.15(c)."[10] Not only does the General

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[10] Memorandum at 8.

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Counsel's brief approach this issue from the wrong legal perspective, but its factual analysis -- issued without any discovery and without having accepted Legi-Tech's invitation to observe a demonstration of its service -- is also riddled with errors and misunderstandings. Properly understood, and placed in context, Legi-Tech's activities, including CCTS, qualify for the exemption.

The proposed recommendation asks the Commission to don blinders when it suggests that the entire analysis focus upon CCTS in isolation and that other relevant evidence be ignored.[11] For example, to indicate that the Commission should disregard the fact that McClatchy Newspapers is the parent company of Legi-Tech is simply wrong. While this factor is not dispositive, it certainly is relevant to the Commission's determination as to whether information is published here in "newspapers . . . or similar communications."[12] Having conceded that Legi-Tech's activities in New York are press functions (see below), the

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[11] Memorandum at 9.

[12] That the parent company's primary activity is the publication of newspapers certainly suggests that electronic publication ventures are "similar" to their traditional functions. We find it hard to believe, for example, that if the Legi-Slate system were to begin to offer campaign contribution information obtained from the FEC, the General Counsel would choose to be blind to the fact that the service is operated by the Washington Post.

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General Counsel nevertheless asks the Commission to make the counterintuitive finding that McClatchy is engaged in media activities everywhere but Washington, and that Legi-Tech is an "organ of the press" in New York, but that both are merely list brokers in Washington.

The General Counsel's brief also asserts, without explanation, that "[t]he fact that a buyer may purchase CCTS without purchasing any other of Legi-Tech's services requires that the analysis of the media exemption be focused on CCTS alone."[13] The brief does not say why the company's pricing structure is relevant to whether information from FEC reports is being used in "similar communications."[14] Indeed, the General Counsel at no point even mentions Legi-Tech's Congressional Bill Tracking Service and Bill Text Tracking Service, which permit computerized tracking of legislation pending in both houses of Congress. The recommendation's approach will not be able to account for the Congressional Vote Tracking Service, which provides access to the same information obtained from FEC reports that is available on the CCTS module,

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[13] Memorandum at 9.

[14] It is certainly not unique that part of a newspaper can be purchased separately; for example, The New York Times sells its Sunday Book Review section on a stand-alone basis. Cable television operators, recognized as First Amendment editors, sell their services on a part-by-part basis.

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and which is designed to facilitate a comparison of legislative records with PAC contributions -- perhaps the quintessential use of FEC data in the manner Congress intended. Nor does the General Counsel's memorandum refer to the fact that Legi-Tech does have "journalists [who] are involved in covering events, gathering information, checking the accuracy of the information [and] analyzing the information."[35] Legi-Tech employs a large number of people at Washington On-Line whose job is to gather data, check the accuracy of the data, and search for new sources of information.

The inescapable fact is that the Commission in this case will not be writing on a clean slate. The Second Circuit in Legi-Tech, Inc. v. Keiper, 766 F.2d at 738 (2d Cir. 1985), has already examined Legi-Tech; has ruled that Legi-Tech is an "organ of the press"; and has then carefully analyzed whether a New York state statute that prohibited Legi-Tech from subscribing to the state's legislative news service and retransmitting the "raw data," the text of bills, violated Legi-Tech's First Amendment press rights. The court found that such a statute could violate those rights, and upon remand, New York is now under court order to provide access to its news service.

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[35] Memorandum at 10.

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The proposed recommendation's attempt to distinguish the services offered by Legi-Tech in New York and Washington has no grounding in the facts. The recommendation states that "Legi-Tech's New York service was legislative in focus, involving more than the transmission of raw data," while "CCTS is nothing more than the transmission of raw data and lacks any 'summaries' or 'relevant political information.'"[16] Nothing could be further from the truth. As of this month, the services offered in New York and Washington -- vote tracking, bill text tracking, bill tracking, and campaign contributions -- will be identical. In both cities, Legi-Tech offers "a package with relevant political information such as voting records and campaign contributions." 766 F.2d at 732. Such information is "absolutely vital to the functioning of government and to the exercise of political speech, which is at the core of the First Amendment." Id. The General Counsel cannot simply ignore Legi-Tech's legislative publication activities in Washington, then attempt to distinguish the Second Circuit decision on the ground that its operations here are not sufficiently legislative.[17] Moreover, the campaign

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[16] Memorandum at 10.

[17] The General Counsel's brief claims that the absence of editorials and commentaries, as opposed to selection and transmission of new data, makes Legi-Tech ineligible to be media. Yet, the memorandum does not question the Second

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contribution information in New York, as with CCTS, is on a separate module, and its database is accessed alone, not in connection with any other legislative information, as the General Counsel's brief erroneously implies.

At bottom, the recommendation of the General Counsel is based on a fundamental misunderstanding of Legi-Tech's services. In arguing that it is ineligible for the "similar communications" exemption, the General Counsel's brief leaves the impression that all CCTS contains are the FEC disclosure reports as they appear in hard copy. But CCTS offers far more than that. Through specialized software, Legi-Tech permits its subscribers to analyze the information in a multitude of ways, in effect creating millions of "news articles." It is the user who specifies the selection, manipulation, and distillation of data those articles are to contain. Users create their own "articles," not only by performing specific searches, but by creating their own files on particular topics, individuals, committees, or other categories. Those files may then be consulted on a daily basis, as information is continually updated. The self-generated files contain the "description"

17/ (Continued from previous page)

Circuit's finding that the State of New York operates a legislative news service. Memorandum at 10 n.5. The State's service only transmits raw data -- texts of legislative bills, calendars, and the like.

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and "analysis" of "raw data" that the General Counsel's brief erroneously believes is lacking from Legi-Tech's data base.

The brief also errs when it examines Legi-Tech's target customers and opines that because they are special interest groups -- that is, lobbyists, law firms and trade associations -- or corporations, CCTS is a "business service" and not media.[38] Obviously, these are groups that participate extensively in the political process. Yet the memorandum states cryptically that "[n]otwithstanding the fact that the special interest and corporate customers are those most likely to turn Legi-Tech's profit-seeking venture into a profit-making one, these are also the customers who are not likely to view CCTS as an electronic newspaper, but rather as a business service which they can put to use to successfully accomplish their goals, whether they may be to influence the legislative process or to seek contributions for PACs."[39] To the extent the proposed recommendation is suggesting that corporate customers of Legi-Tech are more likely than others to be list brokers, that suggestion is ludicrous.

In any case, no one would deny that these customers view CCTS as "a business service which they can put to use to

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[38] Memorandum at 12.

[39] Id. at 13.

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successfully accomplish their goals." Undoubtedly, the National Journal, for example, has basically the same target audience as Legi-Tech, and its subscribers use the Journal "to successfully accomplish their goals" and "to influence the legislative process." Yet presumably the General Counsel would concede that the National Journal is a press entity.

The Commission should summarily reject the General Counsel's recommendation and find that Legi-Tech falls within the media exemption. The Commission might find the Supreme Court's opinion in Lowe v. Securities and Exchange Commission, supra, instructive. Like the General Counsel's brief here, the court of appeals in Lowe erred when it found that the investment newsletter in question was not entitled to the media exemption and placed the constitutionality of that part of the statute at issue.[40] In Lowe, the court of appeals failed to "capture[] the central thrust of the legislative history and [did not] even mention[] the apparent intent of Congress to keep the Act free of constitutional infirmities." 105 S. Ct. at 2572. The General Counsel's brief similarly fails to remember that the central purpose of the statute is disclosure and that FECA was not intended to abridge freedom of the

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[40] In Lowe, the question was whether the publication at issue was a "bona fide" newsletter, 105 S. Ct. at 2575. Here the General Counsel characterizes the issue as whether Legi-Tech is a "legitimate news operation." Memorandum at 15.

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press. With a complete understanding of the facts, the Commission should easily conclude that Legi-Tech's activities are permissible.

E. Legi-Tech's Service Is Not Sold "For the Purpose of Soliciting Contributions or for Commercial Purposes.

The General Counsel's memorandum also appears to assert that because Legi-Tech transmits FEC information for profit, it is ineligible for the media exemption because it violates the "commercial use" limitation in 11 C.F.R. § 104.15(c).[41] The same discussion also appears to analyze whether Legi-Tech is violating 2 U.S.C. § 438(a)(4) itself by using the FEC reports "for commercial purposes." The brief states:

> Two types of commercial activity fall within the 'commercial purpose' aspect of the statute. First is the use of the disclosure lists for distinct, though secondary, commercial activity. Examples of this are the sale of the lists for use in obtaining magazine subscriptions or charitable contributions. Second is the sale of the disclosure lists themselves, which is inherently a commercial purpose, i.e. list brokering. Despite the lack of legislative history on the subject, Congress apparently intended both such purposes to come within the sale or use restriction in order to protect the individuals whose names appear on the lists.[42]

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[41] Memorandum at 11-14.

[42] Id. at 7.

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There is no difference, however, between "sale of the lists for use in obtaining magazine subscriptions" and "sale of the disclosure lists themselves." The General Counsel's attempt to explain what the provision means only highlights its vagueness. If there is no legislative history on the subject, it is hard to see how the General Counsel can conclude that this result is what Congress intended. In fact, the only legislative history on the subject shows that Congress intended only to prevent list brokering.

The General Counsel's brief finds fault with Legi-Tech for attempting to earn a profit. It creates a distinction between a "legitimate" news organization and a "non-media business service" such as that offered by Legi-Tech. The General Counsel's argument on commercial use appears to be closely linked to its media point; because Legi-Tech does not offer a "legitimate" news service, it must be violating the commercial use provision.[43]

Legi-Tech has never denied that it is in business for a profit. But surely any other news organization that qualifies for the exemption also intends to make money. A profit-making motive is not equivalent to a "commercial use" under the statute. Accordingly, the memorandum makes no sense when it

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[43] See id. at 13-14.

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states that, for a news organization to qualify for the exemption, "the principal purpose must be news-related," although "a secondary purpose may be commercial."[44] Newspapers transmit news and they also make money; they do not have primary and secondary purposes. The Washington Post has a sports section because that sells newspapers. To characterize Legi-Tech as engaging in illegal activity because it offers information that subscribers want is nonsensical.

Whatever the General Counsel's interpretation of the statute, its recommendation requires facts to support its view that Legi-Tech is no more than a "computerized list broker." It has none. If the General Counsel's office considers customer use of the system important, it should have requested information on actual use of the system, which Legi-Tech would have gladly provided. That information would have shown that customers use CCTS for all sorts of purposes that have nothing whatever to do with list brokering -- such as preparation of news articles; assembly of contribution profiles of particular legislators; collection of information on legislators targeted by particular interest groups; and other uses related to the political process.

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[44] Id. at 8.

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The General Counsel's argument that Legi-Tech's selection of a target market and its performance of demonstrations proves that CCTS is a business service is not only ill-conceived, but contrary to precedent.[45] The court in Phillips Publications made clear that the solicitation of subscribers and publicizing the content of the service "are normal, legitimate press functions."[46] In addition, under the General Counsel's approach, the Sixth Circuit in Kelly v. United States, supra, should have concluded that the one-page racing sheet was a business venture, not a newspaper.

If the Commission adopts the General Counsel's recommendation, it will be freezing the media exemption to those technologies available when the regulation was passed. It will effectively bar the use of all new technologies that will permit the disclosure information on file at the FEC to become more freely available. Such an interpretation would totally frustrate the intent of Congress, not only to promote disclosure of campaign contribution information, but also to encourage electronic dissemination of government information. In an era when communications technologies are advancing by leaps and bounds, there is simply no justification for

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[45] Id. at 12.

[46] 517 F. Supp. at 1313 (emphasis added).

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insisting that members of the electorate remain in the Dark Ages, sifting through page after page of paper filings to ferret out the vital campaign contribution information they need.

III. If Interpreted To Prohibit Legi-Tech's Publication of FEC Campaign Contribution Information, the Sale or Use Restriction Is Unconstitutional.

The General Counsel's brief tersely responds to Legi-Tech's claim that the sale or use restriction in 2 U.S.C. § 438(a)(4) would be unconstitutional if it were construed to bar Legi-Tech from offering CCTS. It does not address Legi-Tech's arguments, but merely contends that Ryan v. Kirkpatrick, 699 S.W.2d 215 (en banc) (Mo. 1984), is distinguishable because it involved a state statute which had no media exemption and because the state court did not address the FEC Act.

We recognize that an agency is not empowered to declare the statute it administers unconstitutional. But as we said at the outset, where there is a serious doubt about the constitutionality of a statute, an agency is charged to find when possible a construction of the statute that avoids the constitutional question. E.g., Crowell v. Benson, 285 U.S. 22, 62 (1932). In this case, the constitutional cloud is particularly threatening.

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The constitutional analysis that would be applicable in this case is straightforward. The sale or use restriction bars the publication of a particular type of political speech. Such a prior restraint can be justified only on the basis of a compelling government interest. The only interest that can be advanced in favor of the statute is the need for contributors to campaigns to be protected from potential harassment by solicitors who might misuse the information from FEC reports. The release of names and addresses, however, is not the type of government interest that has been held to justify such a restraint. Moreover, the statute does not advance that interest, because the information on the FEC reports is already freely available to the public. In short, under the most elementary principles of constitutional law, this is not even a close case; the statute would fall.

A. The Sale or Use Restriction Is a Prior Restraint on the Expression of Political Speech.

The Supreme Court reaffirmed this month that "[w]here a law is subjected to a colorable First Amendment challenge, the rule of rationality which will sustain legislation against other constitutional challenges typically does not have the same controlling force."[47] Logi-Tech's First Amendment

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[47] City of Los Angeles v. Preferred Communications, Inc., No. 85-390 (U.S. June 2, 1986), slip op. at p. 7.

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challenge to Section 438(a)(4) is far more than "colorable." Under the interpretation urged by the General Counsel, the statute would bar Legi-Tech from publishing campaign contribution information contained in FEC reports. As such, it is a prior restraint on the expression of political speech. Such a restraint is presumptively invalid and may be sustained only under the most extraordinary circumstances. See Near v. Minnesota, 283 U.S. 697 (1931); New York Times Co. v. Sullivan, 376 U.S. 254 (1964).

The restriction on publication imposed by the sale or use restriction is especially suspect because it is based on the content of the speech. The Act restrains the publication of information from FEC reports, but no other types of information. As the Supreme Court noted in Police Department of the City of Chicago v. Mosley, 408 U.S. 92 (1972):

> [A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content . . . Any restriction on expressive activity because of its content would completely undercut the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open."[48]

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[48] 408 U.S. at 96, quoting New York Times Co. v. Sullivan, 376 U.S. at 270. Accord, Carey v. Brown, 447 U.S. 455 (1980). See also Metromedia, Inc. v. San Diego, 453 U.S. 490 (1981) (invalidating billboard restriction that applied to noncommercial but not commercial advertisements); Regan v. Time, Inc., 104 S. Ct. 3262 (1984) (invalidating statute permitting publication of pictures of U.S. securities only for

(Continued)

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The restriction on speech in this case is especially hard to justify because the speech being restrained is political. As the court of appeals in Legi-Tech pointedly declared, "information about legislative proceedings, and in particular, pending legislation, is absolutely vital to the functioning of government and to the exercise of political speech, which is at the core of the First Amendment." 766 F.2d at 732. The Second Circuit sought to protect Legi-Tech's right to publish a package of information that includes campaign contribution -- the same package that it makes available to its subscribers in Washington.

The prior restraint doctrine is applicable even if the statute at issue merely punishes speech after the event. See, e.g., Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1975); Worrell Newspapers of Indiana, Inc., v. Westhafer, 739 F.2d 1219 (7th Cir. 1984). Section 438(a) will therefore receive "the most exacting scrutiny." Smith v. Daily Mail Pub. Co., 447 U.S. 97, 102 (1979). "[T]o punish the publication of truthful information seldom can satisfy constitutional standards." Id. The FEC cannot meet its heavy burden.

44/ (Continued from previous page)

certain purposes); FCC v. League of Women Voters of California, 104 S. Ct. 3106 (1984) (overturning statute barring public broadcasting stations from engaging in editorializing).

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B. The Sale or Use Restriction Is Justified by No Compelling Government Interest.

The only purpose ostensibly served by the sale or use restriction is the protection of the privacy of contributors whose names and addresses are contained in the FEC reports. By prohibiting the commercial use of information from FEC files, the statute attempts to prevent list brokers from soliciting individual contributors. Under no stretch of the imagination, however, is this interest sufficient to uphold the prior restraint on Legi-Tech's publication of this information.[49]

First, the protection of names and addresses is simply not an important governmental interest. For example, in National Association of Retired Federal Employees v. Horner, No. 85-1739 (D.D.C. April 28, 1986), Judge Joyce Green recently ruled that the Office of Personnel Management could not refuse to provide names and addresses of retired federal workers to the National Association of Retired Federal Employees who sought the names to solicit membership. The agency had relied on the privacy exemption in FOIA to deny the request. See 5 U.S.C. § 552(b)(6). The court observed that "[d]isclosure of

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[49] See, e.g., Smith v. Daily Mail, supra (state's interest in preserving anonymity of its juvenile offenders insufficient); Oklahoma Pub. Co. v. District Court, 430 U.S. 308 (1977) (same); Cox Broadcasting Co. v. Cohn, 420 U.S. 469 (1975) (state interest in preserving anonymity of victims of sexual assault and the right of privacy insufficient).

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names and addresses . . . reveals nothing that would embarrass the addressee." The court also rejected that contention that retirees would find the solicitations annoying or harassing, finding that this possibility was not sufficiently important to warrant a finding that the privacy interests were substantial. If the interest in protecting names and addresses is not even substantial enough to prevent disclosure under the privacy exemption to FOIA, it is hard to fathom how it can constitute the "compelling" government interest necessary to uphold the prior restraint imposed by Section 438(a)(4).[30]

In other contexts, the interest of individuals in avoiding annoyance or harassment has consistently given way to those who seek to exercise of First Amendment rights. For example, in Bolger v. Young Drug Products Corp., 463 U.S. 60 (1983), the Supreme Court invalidated on First Amendment grounds a statute barring the Postal Service from delivering unsolicited material relating to conception prevention. Even in the context of commercial speech, the Court rejected entirely the notion that the statute was justified because it shielded recipients from offensive material:

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[30] See also Ditlow v. Shultz, 517 F.2d 166, 170 (D.C. Cir. 1975) (disclosure of names and addresses would result in less than substantial invasion of privacy); Getman v. NLRB, 450 F.2d 670 (D.C. Cir. 1971) (disclosure of names and addresses would result in relatively minor loss of privacy); Disabled Officer's Association v. Rumsfeld, 428 F. Supp. 454 (D.D.C. 1977), aff'd without opinion sub nom., Disabled Officers Ass'n v. Brown, 574 F.2d 636 (D.C. Cir. 1978).

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> [W]e have never held that the Government itself can shut off the flow of mailings to protect those recipients who might potentially be offended. The First Amendment "does not permit the government to prohibit speech as intrusive unless the 'captive' audience cannot avoid objectionable speech." Consolidated Edison Co. v. Public Service Comm'n of New York, 447 U.S., at 542, 100 S.Ct., at 2335. Recipients of objectionable mailings, however, may "'effectively avoid further bombardment of their sensibilities simply by averting their eyes.'" Ibid., quoting Cohen v. California, 403 U.S. 15, 21, 91 S.Ct. 1780, 1786, 29 L.Ed.2d 284 (1971). Consequently, the "short, though regular, journey from mail box to trash can . . . is an acceptable burden, at least so far as the Constitution is concerned." Lamont v. Commissioner of Motor Vehicles, 269 F.Supp. 880, 883 (SDNY), summarily aff'd, 386 F.2d 449 (CA2 1967), cert. denied, 391 U.S. 915, 88 S.Ct. 1811, 20 L.Ed.2d 654 (1968).

463 U.S. at 72. See also Schaumberg v. Citizens for a Better Environment, 444 U.S. 620 (1980) (overturning ordinance that prohibited door-to-door or on-street solicitation of contributions not using seventy-five percent of their receipts for charitable purposes); Consolidated Edison Co. v. Public Service Commission, 447 U.S. 530 (1980) (overturning a ban by a utility on inserts the discussed controversial issues of public policy; offended recipients could simply dispose of the mailings).

In considering whether the sale or use restriction is justified by a compelling state interest, moreover, the District Court will also consider whether the restriction interferes with other state interests. Here, the sale or use restriction not only directly abridges the First Amendment

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rights of those who are prevented from publishing the information, but it undermines the interests of those who wish to use the information from FEC reports for solicitation purposes. In the Ryan case, for example, the Missouri Supreme Court found that the state statute modeled on the federal statute at issue here violated the First Amendment rights of a political candidate who sought access to the names on the reports so that he could solicit contributions from those who shared his political ideology.[31] In addition, the sale or use restriction directly interferes with the disclosure intent of the federal election laws, an interest that is itself "compelling."

Even if the privacy interest in this case were entitled to respect, Section 438(a)(4) simply does not promote the privacy interests of contributors to federal campaigns. Other provisions of the FECA Act ensure the public availability of campaign contribution reports. That is the very purpose of the campaign contribution disclosure laws. Anyone who is interested in the information may purchase microfilm rolls containing the complete reports. The Commission itself has a data base that permits computerized access to the campaign

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[31] See also National Ass'n of Retired Federal Employees v. Horner, supra (public interest was served by association's attempts to contact potential members and lobby on their behalf).

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contribution information. It is ironic that the Commission is both attempting to expand computerized access to its data base, while penalizing private companies that provide essentially identical services. Legi-Tech's publication activities no more threaten the privacy interests of individual contributors than the FEC's own direct data access program. As the court declared in Ryan:

> By placing the information in the public domain, the state must have presumed that the right of privacy gives way to public interest in this information. Certainly the right of privacy vanishes with the required public disclosure of the requisite information.

669 S.W.2d at 218-19. The Ryan court added that any "compelling interest in protecting the privacy of contributors fades fast in the light of the publicity which the act generates through operation of its provisions." Id. at 217. As the Supreme Court declared in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 495-96 (1975):

> [T]he interests in privacy fade when the information involved already appears on the public record. The conclusion is compelling when viewed in terms of the First and Fourteenth Amendments and in light of the public interest in a vigorous press.

Those are exactly the circumstances present here.[52]

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[52] In any case, there is an obvious way in which contributors whose names appear on solicitation lists can avoid solicitation efforts without affecting the First Amendment rights of others. They can transfer the offensive material "from envelope to wasebasket," Consolidated Edison Co., 447 U.S. at 542, or they can hang up the telephone.

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C. Section 438(a)(4) Is Constitutionally Infirm Because It Is Vague and Overbroad.

The sale or use restriction, if challenged, would also fall because it is subject to yet another constitutional infirmity: it is hopelessly vague and overbroad. In the First Amendment area, more than elsewhere, stautory vagueness and statutory overbreadth are constitutional vices often related and sometimes functionally inseparable.[53] Where "a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms' it 'operates to inhibit the exercise of [those] freedoms.'"[54]

The General Counsel's futile efforts to explain why the statute bars Legi-Tech's activities demonstrate the vagueness and overbreadth inherent in the restriction against publication "for the purpose of solicitation or for other commercial purposes." The memorandum draws a distinction between a "business service" and "legitimate" news service, under which only the latter type of publication may issue information from FEC reports. The General Counsel provides no explanation,

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[53] See, e.g., NAACP V. Button, 371 U.S. 415, 423-33 (1963).

[54] Grayned v. City of Rockford, 408 U.S. 104, 109 (1972), quoting Baggett v. Bullitt, 377 U.S. 360, 377 (1964), and Cramp v. Board of Public Instruction, 368 U.S. 278, 287 (1961). Accordingly, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." NAACP V. Button, 371 U.S. at 433.

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however, how its determines when the "primary" motive for publication is "news-related" rather than commercial, and the regulation itself provides no guidance. It would be impossible to determine, for example, whether The New York Times publishes a story because the organization seeks to publish news or because it seeks to make a profit. Where the regulation abridges fundamental First Amendment rights of speech, such vagueness is fatal.

The provision is also overbroad in that it affects publication that does not threaten the privacy interests of individual contributors. It prohibits Legi-Tech from providing computerized access to users who have no interest in soliciting individuals, but who require convenient access to the information for use in news articles, lobbying efforts, or other purposes that have nothing to do with solicitation. The sale or use provision therefore "does not aim specifically at evils within the allowable area of [government] control, but . . . sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press."[55]

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[55] Thornhill v. Alabama, 310 U.S. 88, 97 (1940) (voiding statute prohibiting all picketing.)

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IV. Legi-Tech's Electronic Publication Activities Supplement the Commission's Own Efforts To Provide Computerized Access to its Data Base.

The implication of the General Counsel's proposed recommendation is that no news service that offers an electronic data base with all information from FEC reports and that is sold to the public for a profit could be lawfully published under the statute. This remarkable position, however, would defeat the Commission's own efforts to enhance the utility of its disclosure data base to the public through telecommunications technology. Recognizing the inherent limitations of paper filings, the Commission has undertaken to provide electronic access to campaign contribution information in its public files. In 1980, the Commission began to provide computer tapes containing campaign finance data under the Freedom of Information Act. The Commission has initiated a program of remote access to portions of its disclosure data base through a telecommunications network that is available to state election officials. The Commission has also developed a program by which the public may access directly information on the data base through requests under the Freedom of Information Act, a service the Commission has said "will be especially

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helpful to those individuals, groups and organizations regularly utilizing computerized technology."[56]

Budget cutbacks spurred by Gramm-Rudman, however, have hindered the Commission's computerization effort.[57] The Commission has had to end its service of providing computerized access to information on invididual donors, "a process that allowed identification of major bankrollers of campaigns and political parties."[58] Legi-Tech's private enterprise activities fill this gap, enabling the Commission to continue to perform its disclosure activities.

Congress has actively encouraged participation by private industry in the electronic dissemination of information from government agencies. In a recent report, the House Committee on Government Operations concluded:

> Electronic information systems offer the opportunity to make more government information readily available to more public users. The technology also permits government information to be used in ways that are not possible when the information is stored on paper records.

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[56] Letter from John Warren McGarry to the Honorable Glenn English, September 30, 1985, reprinted in Electronic Collection and Dissemination of Information by Federal Agencies, Hearings before a Subcommittee of the House Committee on Government Operations, 99th Cong., 1st Sess. (1985), pp. 534-36.

[57] See "Faster, Cheaper, Sparser Information from the FEC," Washington Post, June 6, 1986, p. A17, col. 1.

[58] Id.

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At the same time, the Committee noted that "an agency should limit the services that it offers to the public and should leave the private sector to provide additional value-added services," and "a Federal agency should structure an electronic information program in order to allow a role for the private sector."[59] Legi-Tech is fulfilling this objective by providing electronic information services that might otherwise have to be undertaken by the government.[60]

In its prosecutorial zeal, the General Counsel's brief ignores these very important factors. Legi-Tech and the Commission should be working cooperatively in advancing the Commission's mission, not locking heads in an adversial controversy which the Commission will ultimately lose.

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[59] Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview, H.R. Rep. No. 99-560, 99th Cong., 2d Sess. (1986), p. 12.

[60] This effort is also consistent with the most recent policy statement by the Office of Management of the Budget on the management of federal information resources. Circular A-130, 50 Fed. Reg. 52,730 (1985). OMB indicated that "the government should look first to private sources, where available, to provide the commercial goods and services needed by the government to act on the public's behalf, particularly when cost comparisons indicate that private performance will be the most economical." Id. at 52,736. The agency also observed that "[t]he use of up-to-date information technology offers opportunities to improve the management of government programs, and access to, and dissemination of, government information." Id.

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Conclusion

The General Counsel's brief opines that, because Legi-Tech's Campaign Contribution Tracking Service does not contain editorials, it should be barred from publishing information from FEC reports. We respectfully suggest that the analysis requires more than that. A comparison of the statutory intent and the exemption for "similar communications" with Legi-Tech's operations shows beyond doubt that Legi-Tech's activities qualify for the exemption. The General Counsel simply cannot ignore a ruling by the court of appeals, directly on point, that Legi-Tech is an organ of the press for purposes of the First Amendment. Nor can it ignore the legions of cases that insist that the press be regulated only in limited circumstances not present here.

In the event that the Commission adopts the General Counsel's flawed recommendation, the statute will be challenged in court as a content-based prior restraint that serves no compelling government interest. Surely the preferable outcome is to recommend that Legi-Tech's activities qualify for the

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media exemption. We respectfully request that the General Counsel modify its proposed recommendation and that the Commission -- either on the basis of that modified recommendation or on its own initiative -- dismiss this matter.

Respectfully submitted,

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Dated: June 23, 1986

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BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

In the Matter of	)	
	)	MUR NO. 2094
LEGI-TECH, INC.	)	

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SUPPLEMENTAL SUBMISSION OF RESPONDENT

Respondent Legi-Tech, Inc. submits this supplemental pleading to bring to the Commission's attention the ruling of the United States Court of Appeals for the District of Columbia Circuit in National Republican Congressional Committee v. Legi-Tech Corporation, No. 85-6037 (D.C. Cir. July 15, 1986). As Legi-Tech previously informed the Commission, this case involved an attempt by the National Republican Congressional Committee to enjoin Legi-Tech's publication of information from FEC reports on the ground that such publication violated the copyright laws. In yesterday's decision, the court of appeals, invoking the doctrine of primary jurisdiction, announced that it would defer its consideration of that case pending a ruling by the Commission in this proceeding.

The court's opinion, a copy of which is attached, is entirely consistent with Legi-Tech's submission of June 23, 1986. The court's analysis dictates that the Commission adopt

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a narrow reading of the sale or use restriction in 2 U.S.C. § 438(a)(4) and dismiss this matter. The court made plain that the media exception should be broadly construed to permit publication of information from campaign contribution reports on file with the Commission:

> Thus, NRCC's copyright action must fail if Legi-Tech's use of FEC reports is authorized by FECA. Notwithstanding NRCC's arguments to the contrary, we conclude that FECA is ambiguous with respect to whether commercial activity like Legi-Tech's Tracking Service is protected. The statutory proscription of use of public campaign contribution reports for 'soliciting contributions or for commercial purposes' arguably applies to any individual or organization that sells information obtained from FEC reports for a profit, including Legi-Tech. Such an expansive interpretation, however, would bar newspapers and other commercial purveyors of news from publishing the information contained in those reports under any circumstances. Such a result would obviously impede, if not entirely frustrate, the underlying purpose of the disclosure provisions of FECA. See Buckley v. Valeo, 424 U.S.1, 66-68, 78, 82 (1976); see also S. Rep. No. 689, 93rd Cong., 2d Sess. 1-2 (1974). In enacting FECA, Congress sought "to promote full disclosure of campaign-oriented spending to insure both the reality and the appearance of the purity and openness of the federal election process." Buckley, 424 U.S. at 78 (footnote omitted). We are most reluctant to construe an exception to the FECA disclosure requirements so broadly as to vitiate the more general statutory mandate of public disclosure.
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> Moreover, the legislative history of the "commercial purposes" proviso unequivocally indicates that Congress intended a narrower proscription. In particular, the brief history of the "commercial purposes" floor amendment reveals that it was intended to protect campaign contributors from the barrage of solicitations

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> they would receive if "list brokers" were allowed to sell donor lists on file at the FEC. 117 Cong. Rec. 30,057-58 (1971). The sponsor of the amendment, Senator Bellmon, expressly indicated that it would not prohibit newspapers from publishing lists of contributors. Id. at 30,058; see also FEC Advisory Opinion 78; Campaign Use of Expenditure Information, Fed. Election Camp. Fin. Guide (CCH) § 5530 (1980) ("The prevention of list brokering, not the suppression of financial information, is the purpose of 2 U.S.C. § 438(a)(4) and [the implementing regulation of the Commission].") Senator Cannon, a co-sponsor of FECA, accepted the amendment, noting that it had "a laudable objective" but questioning how effectively it could be enforced. 117 Cong. Rec. at 30,057.

Slip op. at pp. 6-7.

The court was concerned not only that a broad reading of the sale or use restriction would defeat the disclosure purpose of the statute,[1] but also that such an interpretation would raise serious constitutional problems because of its restriction on rights of speech and press.[2] Concurring with the decision to hold the case in abeyance, Judge Wright explicitly cautioned the Commission to avoid treading on Legi-Tech's First Amendment rights:

> [I]n deciding the scope of the FECA ban on commercial exploitation, the FEC should remain cognizant of the important and troubling First Amendment implications raised by any construction of the statute that bars the use of the information at issue in this case by organizations such as Legi-Tech.

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[1] See Legi-Tech's June 23, 1986 Submission at pp. 17-23.

[2] See id. at 42-53.

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Concurring Opinion, at p. 1.

To be sure, the court indicated that the Commission should have the first opportunity to interpret its own statute and that the court would await a decision by the Commission as to whether Legi-Tech's activities are proscribed by FECA.[1] However, where the agency's interpretation of a statute places its constitutionality in question, a court will often make its own judgment to avoid an unconstitutional (and necessarily irrational) interpretation. This was exactly the approach of the Supreme Court in Lowe v. Securities and Exchange Commission, 105 S. Ct. 2557 (1985), discussed in Legi-Tech's earlier submission and decided after Chevron. "In cases where the policy of constitutional avoidance must be considered . . . the administrative construction cannot be decisive." Id. at 2576 (White, J., concurring), citing United States v. Clark, 445 U.S. 23, 33 n.10 (1980). Accordingly, the Commission should be aware that any decision adverse to Legi-Tech will be subject to rigorous judicial scrutiny.

In sum, the court's decision makes it more apparent than ever that the General Counsel's proposed recommendation should be rejected. At a minimum, the court's opinion will require the Commission to address the "important and troubling" First

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[1] See Chevron, U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984).

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Amendment issues raised as a result of this investigation -- issues that were ignored in the General Counsel's proposed recommendation. As Legi-Tech explained at length in its earlier submissions, its activities are wholly consistent with FECA. An interpretation of the sale or use provision that bars Legi-Tech from publishing campaign contribution information will place that portion of the statute in serious constitutional jeopardy. Accordingly, Legi-Tech respectfully reiterates its request that this matter be dismissed.

Respectfully submitted,

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Dated: July 16, 1986

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Attachment

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-6037

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, an unincorporated association, et al., APPELLANTS

v.

LEGI-TECH CORPORATION

No. 85-6041

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, an unincorporated association, et al., APPELLANTS

v.

LEGI-TECH CORPORATION

Appeals from the United States District Court for the District of Columbia

(Civil Action No. 85-03106)

Argued March 10, 1986

Decided July 15, 1986

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

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Jan W. Baran, with whom *Bruce G. Joseph* and *Carl R. Frank* were on the brief, for appellants.

Bruce D. Sokler, with whom *Thomas J. Casey* and *Terrence J. Leahy*, were on the brief, for appellee.

Before: STARR and SILBERMAN, *Circuit Judges* and WRIGHT, *Senior Circuit Judge*.

Opinion for the Court filed by *Circuit Judge* STARR.

Concurring opinion filed by *Senior Circuit Judge* WRIGHT.

STARR, *Circuit Judge*: This is an appeal from the District Court's judgment dismissing the copyright infringement and common-law misappropriation action filed by the National Republican Congressional Committee (NRCC or Committee) against Legi-Tech Corporation for the copying, adaption and distribution of campaign contribution information on public file at the Federal Election Commission (FEC or Commission). Because this case presents a question that falls within the primary jurisdiction of the FEC to interpret the Federal Election Campaign Act (FECA),[1] we postpone consideration of this matter until the Commission has had an opportunity to express its views on the FECA issue.

I

The National Republican Congressional Committee is a non-profit, political association that supports Republican Party candidates for election to the United States House of Representatives. NRCC's primary activity is fundraising. Its principal business asset is its list of donors, created through an expensive and laborious process of targeting and soliciting likely contributors.

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[1] Pub. L. No. 92-225, 86 Stat. 3 (1971) (current amended version principally codified at 2 U.S.C. §§ 431-455 (1982)).

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FECA requires the Committee to file with the Commission a list of the names and addresses of all contributors who donated more than $200 in any year. 2 U.S.C. § 434(b)(3)(A) (1982). The Commission, in turn, has a statutory obligation to make these lists promptly available for public inspection and copying, subject only to the limitation "that any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes." 2 U.S.C. § 438(a)(4) (1982).[2]

Legi-Tech Corp. collects and transmits legislative and political information to subscribers over telecommunication facilities, so as to make large amounts of information accessible in a convenient, computerized form. When Legi-Tech began operations in 1981, it offered its services in California and New York, providing summaries of state legislation, recorded votes on bills and attendance records of state legislators. Legi-Tech's clients included newspapers, political parties, lobbyists, corporations, local governments, state agencies and trade associations. At the request of newspaper clients, Legi-Tech added to its data base publicly available information concerning political contributions to state legislators.

In 1985, Legi-Tech decided to expand its electronic information services to include public data concerning the federal government. The Campaign Contribution Tracking Service (CCTS or Tracking Service), which is the subject of this litigation, provides subscribers with computer access to all campaign contribution reports on file at the FEC.[3] The software on the CCTS system permits

[2] The "commercial purposes" prohibition does not apply to the use of "the name and address of any political committee to solicit contributions from such committee." 2 U.S.C. § 438(a)(4) (1982).

[3] In addition, Legi-Tech supplements the data available from the FEC by including the phone numbers for about half the donors listed in FEC reports.

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information to be requested in a wide variety of formats and thus enables customers to target their searches according to their specific needs.[4]

In September 1985, NRCC learned of Legi-Tech's plans to offer the Tracking Service and include as part of its data base the Committee's donor lists on file at the Commission. NRCC promptly sought a copyright registration for its FEC donor lists. After some hesitation, the Copyright Office issued certificates of registration while noting "the Office's uncertainty and desire for judicial guidance on the copyrightability of compilations of data." Joint Record Excerpts (JRE) at 67. On September 27, 1985, NRCC filed suit in federal district court against Legi-Tech, seeking relief under both the federal Copyright Act and the common law of misappropriation.

On October 15, 1985, the District Court issued an oral ruling denying NRCC's motion for preliminary injunctive relief. The District Court concluded that "[i]t would totally frustrate the Federal Election Campaign Act . . . to avoid disclosure by copyrighting the very facts that are required to be filed in the public interest." JRE at 9-10. A week later, upon the parties' stipulation, the District Court issued a final judgment rejecting all the Committee's claims. On October 24, 1985, the Committee filed a complaint with the Federal Election Commission concerning Legi-Tech's Tracking Service. The next day, NRCC appealed the District Court's order to this court.

II

Before us, the Committee argues at length that the District Court erred in concluding that FECA authorizes Legi-Tech's challenged activity. *See* Brief for Appellant at iii, 2, 13-19, 24-25, 28-30; Reply Brief for Appellant

[4] Legi-Tech includes a warning on its sales materials and data base informing customers of the solicitation- and commercial-purposes prohibition contained in FECA.

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at 1-2, 4-5, 18-22. Appellant seeks to persuade us that Legi-Tech's commercial use of donor lists filed with the Commission not only is unauthorized but is in fact expressly prohibited by FECA. In making this argument, the Committee relies, among other things, upon the language, legislative history and underlying purpose of FECA and the regulations and decisions of the Commission interpreting that statute. NRCC would have us decide that whatever license to copy is provided by FECA, the statute clearly proscribes Legi-Tech's "wholesale commercial copying." Brief for Appellant at 19.

We are unconvinced, however, that "there is no risk . . . that [copyright] protection of NRCC's compilations is inconsistent with the FECA." Reply Brief for Appellant at 4-5. The language of FECA plainly evinces Congress' intent that campaign contribution reports on file with the FEC be "available for public inspection . . . and copying." 2 U.S.C. § 438(a)(4). Inasmuch as Congress expressly provided in FECA for public dissemination of the precise type of compilation at issue here, the provisions of the Copyright Act relied upon by NRCC, dealing with compilations generally, must be construed in a manner that will accommodate the Federal Election Campaign Act. *See generally MacEvoy Co. v. United States*, 322 U.S. 102, 107 (1944) ("Specific terms prevail over the general in the same or another statute which otherwise might be controlling." (citation omitted)). Such an interpretation of the Copyright Act seems particularly justified in light of the equitable doctrine of fair use, which permits limitation on copyright "for purposes such as criticism, comment, [and] news reporting." 17 U.S.C. § 107 (1982); *see Financial Information, Inc. v. Moody's Investors Service, Inc.*, 751 F.2d 501, 507-08 (2d Cir. 1984) ("[T]he fair use doctrine 'offers a means of balancing the exclusive right of a copyright holder with the public's interest in dissemination of information affecting areas of universal concern . . . .'" (citations omitted)).

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Thus, NRCC's copyright action must fail if Legi-Tech's use of FEC reports is authorized by FECA.[5] Notwithstanding NRCC's arguments to the contrary, we conclude that FECA is ambiguous with respect to whether commercial activity like Legi-Tech's Tracking Service is protected. The statutory proscription of use of public campaign contribution reports for "soliciting contributions or for commercial purposes" arguably applies to any individual or organization that sells information obtained from FEC reports for a profit, including Legi-Tech. Such an expansive interpretation, however, would bar newspapers and other commercial purveyors of news from publishing the information contained in those reports under any circumstances. Such a result would obviously impede, if not entirely frustrate, the underlying purpose of the *disclosure* provisions of FECA. *See Buckley v. Valeo*, 424 U.S. 1, 66-68, 78, 82 (1976); *see also* S. Rep. No. 689, 93d Cong., 2d Sess. 1-2 (1974). In enacting FECA, Congress sought "to promote full disclosure of campaign-oriented spending to insure both the reality and the appearance of the purity and openness of the federal election process." *Buckley*, 424 U.S. at 78 (footnote omitted). We are most reluctant to construe an exception to the FECA disclosure requirements so broadly as to vitiate the more general statutory mandate of public disclosure.

Moreover, the legislative history of the "commercial purposes" proviso unequivocally indicates that Congress intended a narrower proscription. In particular, the brief history of the "commercial purposes" floor amendment reveals that it was intended to protect campaign contributors from the barrage of solicitations they would receive if "list brokers" were allowed to sell donor lists on file at the FEC. 117 Cong. Rec. 30,057-58 (1971). The sponsor of the amendment, Senator Bellmon, expressly indicated that it would not prohibit newspapers

[5] NRCC's common-law misappropriation action would, *a fortiori*, also fail.

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from publishing lists of contributors. *Id.* at 30,058; *see also FEC Advisory Opinion 78: Campaign Use of Expenditure Information*, FED. ELECTION CAMP. FIN. GUIDE (CCH) § 5530 (1980) ("The prevention of list brokering, not the suppression of financial information, is the purpose of 2 U.S.C. § 438(a)(4) and [the implementing regulation of the Commission]."). Senator Cannon, a co-sponsor of FECA, accepted the amendment, noting that it had "a laudable objective" but questioning how effectively it could be enforced. 117 Cong. Rec. at 30,057.

Based on our examination of the legislative history of the proviso and the general purpose of FECA as a whole, we understand Congress to have "left a gap for the [FEC] to fill" in determining what commercial activities fall within the proviso's prohibition (actively akin to that of a list broker) and what commercial activity is not proscribed (activity akin to that of a newspaper). *Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984); *see also FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27, 37 (1981). Under these circumstances, a court may not substitute its construction of a statutory provision for a reasonable interpretation by the agency charged with administering the statute. *Chevron*, 467 U.S. at 844; *Democratic Senatorial Campaign Committee*, 454 U.S. at 39.

The Commission has not yet squarely addressed the status under FECA of services like CCTS. More generally, the Commission has promulgated a regulation stating that

> The use of information, which is copied or otherwise obtained from reports filed [with the FEC], in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such re-

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ports for the purpose of soliciting contributions or for other commercial purposes.

11 C.F.R. § 104.15(c) (1985).

At this juncture, it is unclear to us whether Legi-Tech's activities are protected by this regulation. The record before us fails to identify the subscribers to Legi-Tech's new Tracking Service. Furthermore, we do not know whether the FEC would deem Legi-Tech's communications to be "similar" to those of a newspaper or how the FEC would apply its "principal purpose" test to these facts. In light of the deference that must be accorded the FEC's interpretation of its own statute (and indeed its own regulation), any attempt on our part to resolve the present controversy would require judicial speculation as to the Commission's views.

To be sure, the Copyright Act provides us with a basis for resolving this controversy. But it is also well settled that "courts may route the threshold decision as to certain issues to the agency charged with primary responsibility for governmental supervision or control of the particular industry or activity involved." *Port of Boston Marine Terminal Association v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 68 (1970) (citations omitted). Considerations of uniformity in the application of law, efficient use of judicial resources, and appropriate deference to Congress' mandate to the FEC combine to lead us here to invoke the equitable doctrine of primary jurisdiction and stay our hand until the FEC has had an opportunity to speak to this question. *See generally Nader v. Allegheny Airlines, Inc.*, 426 U.S. 290, 303-304 (1976); *United States v. Western Pacific Railroad Co.*, 352 U.S. 59, 63-65 (1956); 4 K. Davis, *Administrative Law Treatise*, Ch. 22 (2d ed. 1983). Our limited review function is not rationally exercised by attempting to predict how the FEC would resolve this matter, *see Far East Conference v. United States*, 342 U.S. 570, 574-75 (1952), especially when the identical controversy is al-

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ready pending (at NRCC's behest) before the Commission, *see FPC v. Louisiana Power & Light Co.*, 406 U.S. 621, 647 (1972). More important, our decision to postpone consideration is warranted in light of Congress' explicit decision to vest the Commission with "primary jurisdiction" over civil enforcement of FECA.[6] *Buckley*, 424 U.S. at 112 n.153 (citing 2 U.S.C. § 437c(b)); *see Democratic Senatorial Campaign Committee*, 454 U.S. at 37; *cf. United States v. Philadelphia National Bank*, 374 U.S. 321, 353 (1963) (primary jurisdiction "requires judicial abstention in cases where protection of the integrity of a regulatory scheme dictates preliminary resort to the agency which administers the scheme" (citations omitted)). Under these circumstances, we see no reason not to heed the salutary principle that "statutes agencies administer should be interpreted by the agencies before the courts interpret them." 4 K. Davis, *supra*, § 22:5, at 95 (emphasis deleted).[7]

Finally, Legi-Tech contends that we may pretermit the FECA issue entirely because the NRCC's donor lists are, in Legi-Tech's view, entirely outside the protections afforded by the Copyright Act. As the Copyright Office itself observed, however, the copyrightability of compila-

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[6] All civil actions to enforce FECA are subject to initial determination by the Commission. 2 U.S.C. §§ 437c(b)(1), 437d(e) (1982).

[7] If we were to decide the FECA issue now, it might be argued that the judiciary would thereby preclude the Commission from adopting a contrary but reasonable interpretation of the statute that it is charged with administering. We obviously need not address or decide this issue, but merely note that such a preclusion would arguably violate the spirit, if not the letter, of *Chevron*. Alternatively, if the Commission were free to reject our interpretation and proceeded to do so, the untoward result would be the inconsistent application of FECA. *Cf. Far Eastern Conference*, 342 U.S. at 574 (judicial deference to agency's primary jurisdiction secures "[u]niformity and consistency in the regulation of business entrusted to a particular agency").

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tions of data is a highly uncertain area of the law which has divided courts and commentators alike. *See, e.g., Hutchinson Telephone Co. v. Frontier Directory Co.*, 770 F.2d 128 (8th Cir. 1985) (following line of cases holding telephone directories to be copyrightable); *Moody's Investors Service*, 751 F.2d at 504-07 (discussing "opposing lines of cases and competing theories advanced by commentators" regarding copyrightability of compilations of data). We believe it unwise to add yet another voice to the current copyright cacophony when resolution of this issue may prove entirely unnecessary.

We therefore hold this case in abeyance pending an opportunity for the FEC to interpret the "commercial purposes" proviso as applied to Legi-Tech's Tracking Service.[8]

So Ordered.

[8] Even if the FEC's resolution of NRCC's administrative complaint fails to provide such an interpretation, it is possible that the FEC's views on the matter might be obtained through an advisory opinion. *See* 2 U.S.C. § 437f(a) (1982).

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WRIGHT, *Senior Circuit Judge, concurring*: I agree that this case should be held in abeyance pending the Federal Election Commission's (FEC) interpretation of the Federal Election Campaign Act (FECA). I write separately, however, to note two issues of special concern.

First, in deciding the scope of the FECA ban on commercial exploitation, the FEC should remain cognizant of the important and troubling First Amendment implications raised by any construction of the statute that bars the use of the information at issue in this case by organizations such as Legi-Tech.

Second, I am troubled by the implication that the National Republican Campaign Committee (NRCC) may pursue its copyright remedies at the same time it pursues its administrative remedies under FECA. In crafting the requirements for administrative review of alleged violations of FECA, Congress might well have thought that the newly-created scheme would be the exclusive remedial scheme with which to enforce the strictures of FECA. *See* 2 U.S.C. § 437d(e). If we find that the NRCC may nonetheless pursue its copyright claims in federal court regardless of its administrative remedies, we would have effectively created a private enforcement scheme. Whether Congress intended to permit such private enforcement seems doubtful in light of the explicit limitations on liability imposed by the Act. *See id.* § 437g(a)(6)(A) (civil penalty limited to $5,000 or the amount of the contribution or expenditure involved in the violation); *id* § 437g(a)(6)(C) (civil penalty for willful violations limited to $10,000 or 200% of the amount of the contribution or expenditure involved in the violation).

This issue, however, need not be confronted by the court at this point. Should the Commission conclude that appellee's use of the lists is not barred by the FECA commercial exploitation prohibition, the court need not

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reach the issue whether the FEC enforcement scheme is exclusive. At that point, "NRCC's copyright action must fail [because] Legi-Tech's use of FEC reports is authorized by FECA." Opinion for the court at 6 (footnote omitted). The issue on the merits would then be clear, allowing this court to pretermit the more difficult jurisdictional question. *See Secretary of the Navy v. Avrech*, 418 U.S. 676, 678 (1974) (*per curiam*); *Doe v. U.S. Dep't of Justice*, 753 F.2d 1092, 1101 (D.C. Cir. 1985).

Thus, because I agree that the case should be held in abeyance pending the Commission's adjudication of appellant's administrative complaint, I concur in Judge Starr's opinion for the court.

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GCC# 1812

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October 22, 1986

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GENERAL COUNSEL

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: Legi-Tech, Inc., MUR No. 2094

Dear Mr. Steele:

I appreciate your permitting us the opportunity to discuss in person the issues raised by the Federal Election Commission's investigation of the Washington On-Line Service operated by my client Legi-Tech, Inc. I understand that you are concerned that Washington On-Line does not possess the traditional attributes of a "newspaper," and therefore may not qualify for the media exemption to the commercial sale or use restriction in the FEC Act. You are also concerned that declining to enforce the statute against Legi-Tech would hinder your enforcement efforts against list brokers, because parties could assert in subsequent proceedings that it is difficult to differentiate Legi-Tech's services from those of traditional list brokers.

In this letter, we attempt to respond to those concerns. First, we discuss the most recent statement by Congress of what the "news media" include, in the closely related context of the Freedom of Information Act. Second, we focus in greater detail on why the services and operations of Washington On-Line in fact resemble those of a traditional news medium, not a list broker.

I. Congress Has Recently Stated that the News Media Include Organizations Such as Legi-Tech.

The anti-drug omnibus bill just passed by Congress (H.R. 5484) would permit members of the "news media" to pay reduced fees for materials requested under the Freedom of Information Act, but would deny this privilege to those who

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seek the information for a "commercial use."[1/] The bill is particularly relevant to the FEC Act, not only because it uses virtually the same language at issue here, but also because it confronts the problem of access by private entities to government information, and broadly endorses such access for the news media. Moreover, like the FEC Act, FOIA embodies potentially conflicting policies of disclosure and confidentiality.

The legislative history of the bill, particularly the explanatory statements by its sponsors, make clear that Legi-Tech and other electronic publishers are "news media" for the purpose of qualifying for reduced FOIA fees. The statement of Representative English, Chairman of the House Subcommittee on Government Information, Justice and Agriculture of the House Committee on Government Information, merits quotation at length:

> No definition of "news media" has been included in the bill. It is difficult to write a comprehensive definition. "News media" obviously includes traditional newspapers such as the Washington Post, New York Times, Daily Oklahoman, and Journal of Commerce. Similarly, magazines, newsletters; television, radio, and other broadcasters; and book publishers also automatically qualify as traditional news media. Reporters, columnists, and writers whose work is published in any of these outlets also qualify.
>
> The purpose of low fees for the news media is to further the availability of non-exempt information in government files to the public. Therefore, other vendors of information from

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1/ See the Freedom of Information Reform Act of 1986, reprinted in 132 Cong. Rec. H 11233-34 (agency FOIA regulations shall provide that "fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media . . .").

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agency files to public users also qualify as news media, even though the means of dissemination may not include standard newspaper or magazine formats. For example, a computerized information service that provides subscribers with access to information obtained from the government qualifies as news media because the services furthers [sic] the availability of government information to the public in the same way that a traditional newspaper does. Requests from these other information vendors whose dissemination functions are similar to that of newspapers and broadcasters must be treated in the same fashion.

The bill provides that most favorable fee provision for those in the information dissemination business because the use of FOIA for public dissemination of information in government files is in the public interest. Wide dissemination of government information supports public knowledge and oversight of government activities. The fact that a newspaper, publisher, information vendor, or author seeks to make a profit through publication does not affect the public interest nature of the disclosure.

The republication or dissemination of government information by a private concern is in the public interest just as much as the original distribution by the agency that prepared the information. The public benefits directly from broader availability of the information. In addition, the private dissemination actually saves the government effort and money that would otherwise be expended in providing the information to the public. In short, therefore, disseminating information is not intended to be a commercial use under the bill.

This broad understanding of "news media" will allow information to be readily disclosed by an agency whenever a newspaper or other news media has determined that there is an interest in the information. The FOIA is intended to foster the free market in ideas and information. Nonexempt

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> government information compiled at taxpayers expense should be widely available so that the benefits of the information can be shared. Easy and inexpensive access to government information by news media will prevent agencies from monopolizing information distribution and from controlling public debate in any way. This is also the policy behind the provision of the Copyright Act that prevents the government from copyrighting information.

132 Cong. Rec. H 9464 (daily ed. Oct. 8, 1986) (remarks of Rep. English) (emphasis added). Another sponsor of the bill, Senator Leahy, made similar remarks, and added:

> It is critical that the phrase "representative of the news media" be broadly interpreted if the act is to work as expected. As new technologies expand, there are new methods of communications which disseminate information to people through media other than traditional print or broadcast media, and these entities should be considered as "representatives of the news media." . . . In fact, <u>any person or organization which regularly publishes or disseminates information to the public, whether in print or electronically, should qualify for waivers as a "representative of the media."</u>

132 Cong. Rec. S 14298 (daily ed. Sept. 30, 1986) (remarks of Sen. Leahy). (Excerpts from the legislative history are attached as Exhibit A.)

These statements remove any doubt that (1) Legi-Tech will qualify as "news media" for the purposes of the FOIA amendments; (2) the fact that Legi-Tech earns a profit from sale of its service does not affect its right either to obtain the information or to disseminate it further, and does not constitute a "commercial use"; and (3) Congress believes that the wide dissemination of government information substantially promotes the public interest and in fact saves government resources that would otherwise have to be devoted to the same efforts. This recent congressional action constitutes relevant authority on which to base a recommendation of no probable cause, and we suggest that the General Counsel should revisit the Legi-Tech issue in light of it.

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II. Washington On-Line Is More Like a Newspaper than a List Broker

A. Legi-Tech's Services

Traditional newspapers contain a variety of features and information, whereas one could expect that list brokers would sell only lists of names, addresses, and related information. In this regard, Legi-Tech's service Washington On-Line is far more like a newspaper than a list broker. In fact, federal campaign contribution information constitutes only a small segment of the total package of services offered by the company.

As we have described in earlier submissions, Legi-Tech is in the business of collecting legislative and political information and disseminating it to subscribers over telecommunications facilities. Its services are essentially the same in Sacramento, Albany and Washington. Legi-Tech employees gather legislative information, including the text of legislation, votes, and legislative calendars. They also collect campaign contribution information available for public inspection pursuant to state and federal campaign disclosure laws. This information is input into a data base for subscriber use. Like readers of newspapers or other periodicals, a Legi-Tech subscriber selects, from among many pieces of information, only that data in which the subscriber is particularly interested.

Washington On-Line offers an array of federal information services to subscribers, including not only campaign contribution data but other legislative information services designed to keep up-to-date those following the legislative process. Washington On-Line's four services include: (1) Congressional Bill Text Tracking; (2) Congressional Bill Tracking; (3) Congressional Vote Tracking; and (4) Congressional Contribution Tracking. These services may be purchased individually, or as a package at a discount. The Bill Tracking and Bill Text Tracking Services cost $3500 each for a year's unlimited access. The Congressional Vote Tracking System is $3000, and the Campaign Contribution Tracking System is $4000. One year's access to all of the services may be purchased for $9000. Each of these services is described below.

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Vote Tracking. The Vote Tracking System permits subscribers to use their personal computers or word processors to review every recorded floor or committee vote of Congress and to analyze the performance of any legislator, or group of legislators, since the beginning of the current Congress. Among other features, Vote Tracking enables subscribers to create voting profiles, to calculate automatically the percentage of the time any member supported or opposed a particular position, or to create a comprehensive vote review. Users can also quickly discover legislators' absentee records. In this respect, Washington On-Line's service combines the features of the Congressional Record and the periodical Congressional Quarterly, yet is able to deliver the same information, and more, far more efficiently than the printed publications.

Users of Vote Tracking have access to information from Federal Election Commission reports. Subscribers can determine every PAC contribution a particular legislator has received since 1983. A subscriber has the ability to compare directly votes on legislation with PAC contributions. Some journalist subscribers have used Washington On-Line precisely for this purpose. See "Sen. D'Amato Wins Wall Street's Favor--and Contributions," The Wall Street Journal, Sept. 25, 1986, pp. 1, 10 (analyzing senator's contributions from securities firms; Legi-Tech's Washington On-Line Service identified as source of campaign contribution information) (attached as Exhibit B).

Bill Tracking. Bill Tracking offers subscribers the ability to obtain electronically status reports on a piece of leigslation, showing where the bill is sitting in the legislature; action reports, providing a complete legislative history of every bill; calendars, showing the current committee and floor schedules, as well as future calendars and committee schedules; official summaries of every bill, with Lexis-like key word searching that permits the user to find any word or phrase mentioned in any summary in the system; and sponsor/co-sponsor reports, which list senators and representatives alphabetically or chronologically, with the dates they signed on to a particular bill. Bill Tracking also permits users to create computerized bill files that organize information in a manner most useful to the customer.

Bill Text. Bill Text permits subscribers to obtain instantly an up-to-date copy of every bill and resolution

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introduced before the current Congress. By using word or phrase searches, subsribers can locate every piece of legislation that refers to a particular topic. Thus, this service is equivalent to a legislative "newspaper," updated daily, that contains the latest versions of pending legislation.

Campaign Contribution Tracking Service. CCTS, which sparked this investigation, contains all campaign contribution reports on file and available for public inspection at the Commission. The service permits computerized searches, based on criteria of the subscriber's choosing, of these reports. Washington On-Line does not present this information, however, in a format that suggests list brokering. It delivers all information contained on FEC reports. It does not break down the information into categories that would make it more useful to list brokers. One would expect, for example, that a list broker would ferret out information on individual contributors who give in excess of a particular amount, since those would be the most promising targets for solicitation. A list broker might also break down the information geographically by congressional district or according to other categories. Washington On-Line makes no such choices; whatever is available from the public FEC files is available on its data base. Although telephone numbers are added to some data entries to assist contacts by reporters, less than half of the individual contributor entries have telephone numbers.

In short, Washington On-Line's journalistic mission is simply to disseminate and update as rapidly as possible the information that is available at the FEC; it compiles and reports the facts concerning campaign contributions. In this sense, the Campaign Contribution Tracking Service is no different from the Wall Street Journal's stock market quotations, or USA Today's sports statistics.

Users of the state systems in New York and California may also subscribe to Washington On-Line's federal services. This means, for example, that a user in California may call up the Legi-Tech system for information on any or all of the following topics: (1) the text of pending legislation in the California legislature; (2) votes of legislators in California; (3) status of bills in California; (4) campaign contributions to legislators in California; (5) legislative calendars in California; (6) the text of federal legislation; (7) votes on federal legislation; (8) status of federal legislation; and (9)

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campaign contribution information obtained from Federal Election Commission files. This is a far cry from the mere distribution of lists for profit.

Thus, in terms of the depth and breadth of the information that it makes available to its subscribers, it is difficult to see how Washington On-Line could be characterized as simply a list broker.

B. Marketing

Newspapers rely heavily on extended subscriptions as a primary source of revenue. List brokers, presumably, would be more dependent on solitary sales of collections of names and addresses. In this category again, Washington On-Line is far closer to a traditional news medium than a list broker. It offers its subscribers unlimited access to the information on its data base for one year, at a rather substantial price. It would be cheaper, in fact, for a list broker to purchase the data he needs directly from the FEC, such as through microfilm purchases or through copying of FEC records, than it would for him to pay thousands of dollars for a Washington On-Line subscription. Because the names of substantial contributors are not likely to change very much over time, there would be little point in a broker having a continuous subscription to the company's service.

This difference also suggests the real value of Washington On-Line to subscribers: it is not the simple acquisition of names and addresses, but the ability to compare that information to the legislative information that is also on the system, and to identify trends and consequences in the legislative process. The attractiveness of the system also lies in its ability to create personalized files that may be updated continuously as legislative events occur. That is why such traditional news organizations as the Wall Street Journal, Cox Communications, the Los Angeles Times, and the Chicago Tribune, all subscribe to the service. The continuous updating of information is a newpaper-like feature that is not likely to be present in a list brokering situation.

C. Staff and Operations

The make-up of Washington On-Line's staff is very similar to that of a news organization. The staff is broken

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down into sales and news sides. The news segment consists of over twenty legislative specialists whose job it is to gather legislative and political information, check it for accuracy, and input it as quickly as possible into the company's data base. Their role does not consist simply of the collection and sale of FEC lists.

In order to gather information for the Campaign Contribution Tracking Service, Washington On-Line receives the publicly available microfilm reports prepared for the FEC. During a normal week, Washington On-Line receives an average of 7500 pages; in peak periods, the number of pages can run up to 40,000.

The news staff then separates the reports and enters information from the summary page of each report into the Legi-Tech computer. A keypunching firm is hired to process the schedules of receipts and disbursements. Receipts and disbursements information is available within one to two days of the entry of the summary pages. The reports are returned from keypunching in the form of computer tapes, which are loaded into the system's computer. The news staff undertakes internal verification programs to ensure accuracy. The staff also keeps hard copies of reports.

Washington On-Line also provides a variety of other services for its clients that are often associated with traditional news media. For example, it distributes a subscriber newsletter that describes new features on the system and suggests new ways of making use of the Legi-Tech data base. These newsletters contain related political information of interest to its target audience -- for example, dates of upcoming election primaries. Copies of the most recent subscriber newsletters are enclosed as Exhibit C.

We also wish to reiterate and emphasize the fact that Legi-Tech has already been classified as a press organization. The Second Circuit specifically found that Legi-Tech is an "organ of the press" that exercises First Amendment rights. Legi-Tech, Inc. v. Keiper, 766 F.2d 728 (2d Cir. 1985). This statement was not dictum, since the Second Circuit's entire opinion is an analysis of whether the state law challenged in that case violated Legi-Tech's First Amendment right of freedom of the press. The Court's holding was based on Legi-Tech's news services in New York, which -- contrary to the statement

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in the General Counsel's brief -- are no different from those it provides in Washington. The D.C. Circuit opinion in the NRCC case in no way undercuts that holding; indeed, a fair reading of that opinion is that the Court was suggesting to the Commission that it conclude that Legi-Tech qualifies for the media exemption, because that result would promote the disclosure purpose underlying the FEC Act. (Copies of the two decisions are enclosed as Exhibits D and E.) We note also that the settlement in the Second Circuit case described Legi-Tech as a "member of the press" entitled to press passes. To the extent that the General Counsel is concerned that a decision favorable to Legi-Tech here would be cited by list brokers in the future to justify conduct forbidden by the statute, we doubt that any list broker would be able to cite federal court of appeals precedent squarely in its favor.

III. Conclusion

Washington On-Line is the archetype of the new electronic publisher. Its campaign contribution data base cannot be viewed in isolation, but only in the context of the wide variety of other legislative and political news features that are also available to system subscribers. Surely if the Washington Post chose to reprint in a special supplement all FEC campaign contribution information, it would qualify for the media exemption. That result should also hold here, where Legi-Tech's news services, marketing features, and operations all resemble those of a traditional news organization, not a list broker.[2/]

The issue facing the Commission is how to apply an exemption from the commercial use provision that the agency itself created for the specific purpose of providing breathing room for media organizations exercising their First Amendment rights. The courts have already spoken and have found that

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2/ We have requested guidance from the staff as to which features of Washington On-Line's services suggest that it is no more than a list brokering service. The staff, however, has given us no such advice. We remain willing to discuss ways of modifying the service to resolve whatever reservations the Commission may have.

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Legi-Tech is indeed such a news medium. Congress has now joined them, directing that for-profit private electronic publishers that transmit information obtained from the government be considered news media. We respectfully urge the General Counsel to respect these findings and to recommend to the Commission that it make no finding of probable cause and dismiss the complaint.

If you have any questions about any of these points or would like further information, please do not hesitate to call.

Sincerely,

Thomas J. Casey

Thomas J. Casey

Enclosures

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EXHIBIT A

mation that is subject to withholding. However, the expansion is slight, precisely defined, and fully justified. For records regarding ongoing investigations, informants, foreign intelligence, counterintelligence, and international terrorism, the FBI will be able to withhold information on the existence of such records in cases where disclosure of the existence of the records will reveal information that should be protected. No substantive records that are disclosable today will be subject to withholding under these exclusions.

I am pleased to learn that these very modest provisions will solve the problems confronting law enforcement agencies. The small scope of the reforms confirms my previously stated view that the broad complaints from the law enforcement community about the negative effects of the FOIA were greatly exaggerated. Had the Justice Department limited its legislative proposals to these minor changes, we could have reached agreement on FOIA reform years ago.

The second set of changes involves the fee and fee waiver structure of the FOIA. The language is taken from a bill—H.R. 6414—that I introduced during the 98th Congress along with TOM KINDNESS, ranking minority member on the Government Information, Justice, and Agriculture Subcommittee.

While I am not in complete agreement with the Senate changes to this proposal, I am pleased with several important features. First, fees for requests by the news media are minimal. Second, the concept of news media is very expansive and includes a broad range of those in the business of publishing or disseminating Government information. Third, the standard for fee waivers is broader than current law and will require the granting of more fee waivers. Finally, although public interest groups do not fall within the most favorable fee category, all public interest groups—regardless of their status or identity or function—will be able to qualify for fee waivers and thereby obtain documents without charge if their requests meet the standard for waivers.

We have made several technical and minor changes to the FOIA provisions as passed by the Senate. We have also included a transition provision to clarify the bill's effect on pending requests. Other changes were considered, but any substantive questions that may have surrounded the Senate language have been resolved by the statement made by Senator LEAHY in the CONGRESSIONAL RECORD of September 30, 1986. I fully concur in that statement. I consider that Senator LEAHY's statement—and the statement made here today by Mr. KINDNESS and myself—reflect the intent of the Congress in making these changes to the FOIA. It is unnecessary, therefore, to amend the text of the bill since the intent has been so clearly stated.

In order to clarify the intent and purpose of the amendments for the benefit of our colleagues in the House, TOM KINDNESS—ranking minority member of the Government Information, Justice, and Agriculture Subcommittee—and I have jointly put together written explanatory materials that would have been included in a committee report. My statement includes an explanation of the fee waiver provisions.

SUMMARY OF HOUSE CHANGES TO THE FREEDOM OF INFORMATION ACT AMENDMENTS IN THE ANTI DRUG ABUSE ACT OF 1986

(1) The two Freedom of Information Act sections have been reorganized into four sections (§§ 1801-1804), including a short title. Wording, cross references, and typographical errors have been corrected.

(2) An effective date provision has been added as section 1804. The law enforcement provisions become effective upon enactment and are fully applicable to all requests in process or in litigation. The fee and fee waiver provisions become effective 90 days after enactment. Once effective, these fee provisions are fully applicable to all requests in process or in litigation, except that no review costs can be charged to any requests made before an agency adopts regulations on or after the effective date.

(3) The exclusion for foreign intelligence, counterintelligence and international terrorism contains two bracketed references defining these terms. These references are unnecessary or inappropriate and have been deleted. This is a technical change, and the definitions referenced in the Senate version are intended to remain applicable.

(4) In the revision to exemption (7)(C) relating to withholding or records on privacy grounds, the words "could reasonably be expected to" are deleted and the word "would" is included. This change makes the privacy standard in the law enforcement exemption consistent with the existing standard in exemption 8.

(5) A limitation on "review costs" has been added to clarify that only direct costs incurred during initial examination can be charged but that review costs may not include any costs in resolving issues of law or policy.

ANALYSIS OF THE FEES AND FEE WAIVERS AMENDMENTS TO THE FREEDOM OF INFORMATION ACT INCLUDED IN THE ANTI DRUG ABUSE ACT OF 1986 (H.R. 5484)

H.R. 5484 includes several provisions amending the Freedom of Information Act. The new language changes the rules governing fees and fee waivers for requests made under the FOIA.

Each agency is required to promulgate regulations specifying the schedule of fees and establishing procedures and guidelines for determining when such fees should be waived or reduced. Agency fee schedules must conform to guidelines promulgated by OMB.

There are three categories of requests for purposes of assessing fees. First, when records are requested for commercial use, fees shall be limited to reasonable standard charges for document search, duplication, and review. This provision allows the charging of review costs for the first time under the FOIA, but review costs may only be charged to commercial users. A commercial user is one who seeks information solely for a private, profit making purpose. Higher fees for commercial users will recover more of the costs of processing requests when one business uses the FOIA to seek information about another under circumstances in which there are no public interest aspects to the disclosure.

Except for requests that fall within the second category, requests from a for profit corporation or its representative may be presumed to be for commercial use unless the requester can demonstrate that the request qualifies for a more favorable fee schedule. A request from a public interest group, nonprofit organization, labor union, library, or similar organization, or a request from an individual may be presumed to be for commercial use unless the nature of the request suggest that the information is being sought solely for a private, profit making purpose. The public redissemination of documents or information obtained from the government is specifically intended not to be treated as a commercial use regardless of the identity or status of the requester.

Agency regulations must include procedures whereby a requester can determine its status for purposes of fee categories and can supply adequate justification at the time the request is made. Agency procedures and requirements must be simple, reasonable, and limited. Sworn or notarized statements may not be routinely required. An agency may not conduct an extensive proceeding to determine the status of a requester. Doubts should be resolved in favor of the requester. If there are multiple requesters, the status of the most favorable requester is controlling. Whenever possible, processing of a request should continue while the proper fee category is being determined.

The House amendment adds a provision limiting review costs to the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed. Also, the House version provides that review costs may not include any costs incurred in resolving issues of law and policy that may be raised in the course of processing a request. Once a document has been reviewed in response to a request—whether from a commercial requester or otherwise—no charge may be imposed on any subsequent requester for reviewing that document.

A similar limitation on review costs was included in H.R. 6414 (98th Congress), in the bill (S. 774) that passed the Senate in the 98th Congress, and in a draft bill that was the subject of negotiations with the Justice Department earlier this year. See the discussion of review costs in Senate Report 98-221. The omission of the review cost limitation in the Senate bill was probably inadvertent.

Second, when records are not sought for commercial use and are requested by (a) an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, or (b) a representative of the news media, fees shall be limited to reasonable standard charges for document duplication. A request made by a professor or other member of the professional staff of an educational or scientific institution should be presumed to have been made by the institution. A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision.

When a requester who is a representative of the news media has provided basic identification of his or her status (such as a request filed on news media letterhead, display of press credentials, or reasonable assurance that the information is being sought for public dissemination), the request must be treated under the second fee

category. Free lance writers and book authors who can demonstrate that their work is likely to be published also qualify under the second fee category.

No definition of "news media" has been included in the bill. It is difficult to write a comprehensive definition. "News media" obviously includes traditional newspapers such as the Washington Post, New York Times, Daily Oklahoman, and Journal of Commerce. Similarly, magazines, newsletters; television, radio, and other broadcasters; and book publishers also automatically qualify as traditional news media. Reporters, columnists, and writers whose work is published in any of these outlets also qualify.

The purpose of low fees for the news media is to further the availability of nonexempt information in government files to the public. Therefore, other vendors of information from agency files to public users also qualify as news media, even though the means of dissemination may not include standard newspaper or magazine formats. For example, a computerized information service that provides subscribers with access to information obtained from the government qualifies as news media under the FOIA because the services furthers the availability of government information to the public in the same way that a traditional newspaper does. Requests from these other information vendors whose dissemination functions are similar to that of newspapers and broadcasters must be treated in the same fashion.

The bill provides that most favorable fee provision for those in the information dissemination business because the use of the FOIA for public dissemination of information in government files is in the public interest. Wide dissemination of government information supports public knowledge and oversight of government activities. The fact that a newspaper, publisher, information vendor, or author seeks to make a profit through publication does not affect the public interest nature of the disclosure.

The republication or dissemination of government information by a private concern is in the public interest just as much as the original distribution by the agency that prepared the information. The public benefits directly from broader availability of the information. In addition, the private dissemination actually saves the government effort and money that would otherwise be expended in providing the information to the public. In short, therefore, disseminating information to the public is not intended to be a commercial use under the bill.

This broad understanding of "news media" will allow information to be readily disclosed by an agency whenever a newspaper or other news media has determined that there is an interest in the information. The FOIA is intended to foster the free market in ideas and information. Nonexempt government information compiled at taxpayers expense should be widely available so that the benefits of the information can be shared. Easy and inexpensive access to government information by news media will prevent agencies from monopolizing information distribution and from controlling public debate in any way. This is also the policy behind the provision of the Copyright Act that prevents the federal government from copyrighting information. See also the discussion of copyright issues in House Report 99-560.

It is not the role of government agencies to determine whether information is newsworthy. That is the responsibility of the news media. In the long run, it will be better and more efficient if agencies provide disclosable information to the news media without the costly, unnecessary battles over fees that have been a familiar feature in FOIA history. See the discussion of the first twenty years of the FOIA in House Report 99-832.

If a qualifying requester seeks information both for public dissemination and for a commercial or other use, the requester retains full entitlement to the favorable rates for dissemination. For example, a request from a public interest group falls under the third fee category. However, a request from reporter or writer for a general circulation magazine published by the public interest group would qualify under the second fee category for news media. A request for information that is sought for possible publication is still a request from the news media even though the public interest group might also want the information for other purposes. This will keep fees from becoming an unnecessary barrier to disclosure and will keep agencies from inquiring unnecessarily into all intended uses of the information that is being sought.

Third, for all other requesters, fees are limited to reasonable standard charges for document search and duplication. This is current law. Most requests from individuals will fall under this category. However, a request from an individual for Privacy Act files pertaining to himself or herself will continue to be governed by the limited fees permitted under that Act.

All of the fees chargeable to any requester may be waived or reduced if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. This change is specifically intended to remove from further debate or consideration the erroneous standards included in the January 1983 Justice Department fee waiver guidelines. Those guidelines have been heavily criticized by both House and Senate Committees as being inconsistent with the letter and the spirit of the FOIA. See the discussion of fee waivers in Senate Report 98-221 and in House Report 99-832. While legislative action to overturn the fee waiver guidelines is probably unnecessary, the opportunity to clarify the law is welcome.

House action today on fee waivers is consistent with the view expressed in House Report 99-832 that current practices with respect to fee waivers are too restrictive and that legitimate requests for fee waivers are being improperly denied because of the 1983 Justice Department guidelines.

The new fee waiver standard provides that waivers must be granted when a requester is seeking information on a subject relating to the manner in which a government agency is carrying out its operations or the manner in which an agency program affects the public. A requester is likely to contribute significantly to public understanding if the information disclosed is new; supports public oversight of agency operations, including the quality of agency activities and the effect of agency policy or regulations on public health or safety; or otherwise confirms or clarifies data on past or present operations of the government.

Any requester, regardless of its identity or status under other provisions of the FOIA can qualify for a fee waiver. Even a commercial requester can qualify for a fee waiver if the standard is met, but a commerical requester seeking information about a competitor will not normally be able to meet the standard.

As with the fee waiver standard that is superseded, the new fee waiver standard should be liberally construed in order to encourage full and complete disclosure of information in the possession of the government that does not require withholding for a public or private interest. The new standard is specifically intended to make it easier for more requesters, especially noncommercial requesters, to qualify for fee waivers. Anyone who qualifies under the existing standard will also qualify under the new language.

The requirement that the information will "contribute significantly" to public understanding should be objectively evaluated. For example, in *Better Government Association v. Department of State*, 780 F.2d 86 (D.C. Cir. 1986), a public interest organization sought access to information about the money spent by U.S. embassies entertaining visiting dignitaries. The State Department refused to grant a fee waiver, but this is precisely the sort of information that would qualify for a fee waiver under both the existing and the new standard.

The phrase "operations and activities of the government" should be broadly construed. It can encompass requests for historical documents and for information relating to foreign policy and national defense. Also, agencies deal with private entities on a wide range of regulatory, enforcement, procurement, and other activities. Records which illuminate that relationship indicate how the agency is carrying out its mission. It may be impossible to understand an agency's activities or operations unless records submitted by those being regulated or otherwise affected by agency policies are available. Thus, records submitted to an agency can qualify for a fee waiver when disclosure of the information reflects on agency operations and activities.

The deletion of the current language requiring fee waivers only when "furnishing the information can be considered as primarily benefiting the general public" is intended to emphasize that a request can qualify for a fee wavier even if the issue is not of interest to the public-at-large. Public understanding is enhanced when information is disclosed to the subset of the public most interested, concerned, or affected by a particular action or matter.

The bill includes several general limitations on the imposition of fees by agencies. The purpose of these limitations is to prevent agencies from using procedural ploys over fees to discourage requesters or delay the disclosure of information.

First, fee schedules can only provide for the recovery of direct costs of search, duplication, or review. This is the current limitation extended to include the newly permitted charges for review costs.

Second, no fee may be charged if the routine costs of collecting and processing of the fee allowable under the FOIA are likely to equal or exceed the amount of the fee. For example, a request for a 110 page document would not be charged a fee because no charges are applicable to the first 100 pages and the charges for the remaining ten pages would normally be waived under this provision.

Third, except for requests for commercial use that are subject to review charges, an agency may not charge any requester for the first two hours of search time or for the first one hundred pages of duplication. A requester may not file multiple requests at the same time each seeking portions of a large document solely in order to avoid payment of all fees. However, if requests are made more than thirty calendar days apart, each request must be treated separately. Multiple requests filed at the same time on unrelated matters cannot be treated as a single request for purposes of this provision.

Fourth, an agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion or unless the agency has determined that the fee will exceed $250. This is to prevent agencies from imposing an advance payment requirement in order to harass or discourage requesters.

The fee schedules in the FOIA do not supersede fees chargeable under a statute that specifically provides for setting of a level of fees for particular types of records. This provision does not change current law. The new language simply clarifies that statutes setting specific alternative bases for recovering dissemination costs can supersede FOIA fees. An example of a qualifying statute is 44 U.S.C. § 1708 (1982) which allows the Public Printer to set charges at cost plus a fifty percent surcharge to recover indirect costs. However, the User Fee Statute, 31 U.S.C. § 9701 does not qualify under new subparagraph (4)(A)(vi) of the FOIA because it is does not establish a specific level of fees. Similarly, the statute governing the National Library of Medicine, 42 U.S.C. § 275 et seq. (1982), is too general to qualify under the new FOIA subparagraph. A more extensive discussion of fees for government information, can be found in House Report 99-560 which, is incorporated here in its entirety by reference.

In any action brought by a requester regarding the waiver of fees, the court shall determine the matter de novo, except that the court's review of the matter shall be limited to the record before the agency. The purpose of this provision is to allow the courts to exercise independent judgment on the issue of whether a requester is entitled to a fee waiver.

Finally, it is apparent that the effect of the changes in fee and fee waiver policies will be to increase use of the FOIA by the press and by public interest and other nonprofit organizations as well. An increase in government oversight by these groups with less interference in the disclosure process by the political or bureaucratic processes of government is fully intended. It also seems likely that the use of the FOIA by businesses for purely commercial purposes may decrease as a result of higher fees. If this happens, it will be an unintended side effect of higher charges.

Mr. KINDNESS. Mr. Speaker, I was naturally suspicious—but not surprised—when I learned that the other body had included amendments to the Freedom of Information Act in its version of the antidrug legislation. Nevertheless, I believe that those amendments—as perfected in the version of the bill before us today—maintain an appropriate balance between disclosure and confidentiality necessary for the proper fulfillment of Government functions.

I have served since 1979 as ranking minority member of the Government Operations Subcommittee on Government Information which has legislative jurisdiction over the Freedom of Information Act. During that time the subcommittee has reviewed several particular concerns about the operation of the act, including the handling of requests for information held by Federal law enforcement agencies and for information submitted by private businesses to federal agencies, as well as the assessment and waiver of fees upon disclosure of Government information.

Because those concerns reflected the tension between disclosure and confidentiality inherent in the act, I have believed that successful legislative revision of the act would require a comprehensive measure that addressed each of these several concerns. I had hoped that the Government Operations Committee would be able to present such legislation to the House this year. The chairman and I authorized negotiations involving our staff with representatives of the Department of Justice, the press, and public interest groups. A draft bill was developed from those negotiations which contained provisions similar to those before us today in the Anti-Drug Abuse Act. But, the Justice Department encountered opposition from other executive branch agencies to the bill and the subcommittee decided not to proceed with a comprehensive reform bill. Instead, it recommended and the Government Operations Committee reported to the House a bill revising the process by which agencies handle requests for confidential business information. That bill, H.R. 4862, was passed by the House under suspension of the rules on September 22, 1986, and, I remain hopeful that the other body will pass it before the end of this session.

The Freedom of Information Act amendments contained in the Anti-Drug Abuse Act before the House today are addressed to the handling of requests for law enforcement information and to the assessment and waiver of fees on any FOIA request. These amendments have been derived from House and Senate proposals developed over the past 5 years. In brief summary, the provisions contained in the bill before us, and their legislative sources, are as follows:

Section 1801 states that these amendments may be cited as the "Freedom of Information Reform Act of 1986."

Section 1802 contains two subsections. Subsection (a) revises the law enforcement records exemption of the act—the seventh exemption—to bring its terms more into conformity with original congressional intent and accurate judicial interpretations of its terms. Subsection (a) was passed by the other body in the 98th Congress as section 10 of S. 774 and, a slightly modified version was included in the draft bill developed earlier this year by the Government Information Subcommittee.

Subsection (b) adds a new provision to the act, authorizing law enforcement agencies to treat certain law enforcement records as not subject to the act under certain limited circumstances in order to prevent the mere response to a FOIA request from serving as a tipoff to the subject of an investigation or from identifying an informant. This provision was included in the draft bill developed earlier this year by the Government Information Subcommittee, and a version of subsection (b)(2) was included in section 10 of S. 774.

Section 1803 rewrites existing law on the assessment and waiver of fees. Current law permits agencies to charge fees for the search for and duplication of records responsive to a FOIA request and, it requires a waiver of those fees when disclosure of the information can be considered as primarily benefiting the general public. Section 1803 specifies in greater detail than curent law the types of fees that can be charged to particular requesters and, it contains a more specific test for waiver of fees. Through these provisions, it is hoped that longstanding controversies over the assessment of fees and the grant of fee waivers may be resolved. The source of section 1803 is the fee and waiver provision of H.R. 6414, a bill I cosponsored with subcommittee Chairman ENGLISH which was introduced at the end of the 98th Congress.

Section 1804 provides two effective dates. Section 1802 will take effect upon enactment and will apply to all pending requests and litigation. Section 1803 will take effect 90 days after enactment except that the authority to issue regulations will be effective upon enactment and all such regulations must be promulgated within 90 days of enactment; in addition, section 1803 will apply to all requests and litigation pending 90 days after enactment, except that review charges may not be applied before the effective date or before the agency has finally issued its regulations.

The chairman of the Subcommittee on Government Information, the gentleman from Oklahoma [Mr. ENGLISH], has already provided to the House a detailed explanation of section 1803, the new fee and fee waiver provisions. Before continuing with a detailed explanation of the law enforcement record provisions contained in section 1802, I would like to commend and congratulate him for his good work on the Anti-Drug Abuse Act generally. For the past 4 years, he has, in addition to overseeing the operation of the Freedom of Information Act, conducted regular oversight of the executive branch's efforts to interdict drug smugglers. Like the Freedom of Information Act, the effort to interdict drug smugglers raises a number of controversial issues. At times we have disagreed on how best to address and resolve those controversies; but his ultimate goals have been worthy of support. So, I congratulate him and I hope that the Congress will enact this legislation.

ANALYSIS OF THE LAW ENFORCEMENT RECORDS AMENDMENTS TO THE FREEDOM OF INFORMATION ACT INCLUDED IN THE ANTI-DRUG ABUSE ACT OF 1986 (H.R. 5484)

Much of the impetus for adjustment of the provisions of the Freedom of Information Act which affect the handling of requests for information maintained by law enforcement agencies comes from the concerns expressed by Federal Bureau of Investigation Director William Webster in congressional testimony that the act is exploited by organized crime figures attempting to learn whether they are targets of investigative law enforcement activities, as well as the identities of informants.

While some have disputed the extent of such activity, it is clear that strict compliance with the terms of the act can, in certain limited circumstances, create problems for law enforcement agencies in terms of their ability to conduct investigations and protect the identity of informants. The amendments to the Freedom of Information Act contained in the Anti-Drug Abuse Act are designed to deal with these particularized law enforcement problems.

Section 1802(a) of H.R. 5484 amends subsection (b)(7) of the FOIA to modify the scope of the exemption for law enforcement records, codify certain judicial interpretations, and clarify congressional intent with respect to the agency's burden in demonstrating the probability of harm from disclosure.

The language of those amendments is identical with one exception explained below to that proposed in section 10 of S. 774, proposed FOIA reform legislation which passed the Senate, but was not acted upon in the House, during the 98th Congress. The meaning and intended effect of the amendments

regarding the substitution of "could reasonably be expected to" for "would" in several of the subparagraphs in (b)(7), as well as the change in language to include State, local, and foreign agencies and private institutions within the meaning of "confidential source" under subparagraphs (b)(7)(D). Its conclusions were that in both instances the proposed changes in statutory language substantially reflect current judicial interpretations and would not appreciably alter the meaning of the affected provisions in their practical application. What the amendment does is to give the agencies and courts some commonsense direction in applying the provisions of the exemptions. I ask unanimous consent that the CRS memorandums be included in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Section 1802 of H.R. 5484 amends the FOIA so that criminal law enforcement agencies, in certain circumstances, are not required to acknowledge the existence of records concerning an ongoing and undisclosed criminal investigation; informant records maintained under an informant's name or personal identifier; or, classified records of the FBI pertaining to foreign intelligence, counterintelligence, or international terrorism investigations, in response to a FOIA request.

This provision permits criminal law enforcement authorities in limited circumstances to avoid confirming the investigatory status of specific individuals or incidents in responding to FOIA requests. It is a narrow and specific statutory authority for criminal law enforcement agencies to act on the principle that "an agency may refuse to confirm or deny the existence of records where to answer the FOIA inquiry would cause harm cognizable under an FOIA exemption." *Gardels v. CIA*, 689 F.2d 1100, a1103 (D.C. Cir. 1982), citing *Phillippi v. CIA*, 546 F.2d 1009, 1012 (D.C. Cir. 1976).

Although Federal courts have generally recognized that the FOIA exemption scheme permits an agency to withhold the fact of the existence or nonexistence of specific records when disclosure of that fact would itself cause the harm that a specific exemption is intended to avoid, the Director of the FBI, William Webster, requested specific statutory authority to exercise this right so that there would be no ambiguity regarding its propriety.

Subsection (a) of section 1802 sets forth the criteria for three specific circumstances in which criminal law enforcement agencies would not be required to acknowledge the existence of agency records in response to an FOIA request.

The first circumstance, provided under paragraph (1) of subsection (a), permits agencies to refuse to acknowledge the existence of records when their disclosure would interfere with a criminal law enforcement proceeding under exemption (b)(7)(A), and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency. While the agency is thus able to prevent a tipoff of investigatory activity to someone using the FOIA to find out if such activity is underway, its authority to do so is narrowly drawn and closely circumscribed. It cannot, for example refuse to acknowledge requested records under this authority unless the records concern a criminal, rather than civil, law enforcement proceeding and would already be exempt from disclosure by virtue of exemption (b)(7)(A). Moreover, its authority to refuse to acknowledge such records under this provision exists only so long as there is reason to believe that the subject of the proceeding is not aware of its existence. Thus the provision gives agencies no new substantive withholding authority, since it does not apply to records that are not already exempt from disclosure, and it would not be available to an agency when there is reason to believe that the subject of an investigation or proceeding is aware of its pendency.

The second circumstance where an agency is not required to acknowledge the existence of specific requested documents concerns FOIA requests for informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier. The authority provided under subsection 1802(a)(2), however, is limited to those instances in which the request for such informant records is form a third party who specifically requests them by the informant's name or personal identifier. Moreover an agency must acknowledge the existence or non existence of such records when the informant's status as an informant has been officially confirmed.

In referring to a similar provision in S. 774, the Senate Judiciary Committee noted the obvious limitations of the exclusion authority thus permitted:

> Where the requester is the informant himself or a third party who describes the responsive records without reference to the informant's name or personal identifier, the records are subject to ordinary consideration under the provisions of the FOIA. (S. Rpt. 98-221 at 25)

The third provision under section 1802 applies to classified FBI records pertaining to foreign intelligence or counterintelligence—as defined in Executive order 12333—or international terrorism—as defined in the Foreign Intelligence Surveillance Act—but only to the extent that the fact of the existence of such records itself remains properly classified information. Like the first part of this section, subparagraph (a)(3) permits nonconfirmation of the investigatory status of specific individuals or incidents in the context of activities regarding foreign intelligence, counterintelligence, or international terrorism. But it gives the FBI no new substantive withholding authority since it applies only to FBI records that are properly classified as national security information and, therefore, already exempt from disclosure pursuant to exemption (b)(1) of the FOIA.

Agency actions pursuant to these provisions, like agency determinations to withhold acknowledged records pursuant to subsection (b) of the FOIA, are subject to de novo judicial review. The manner in which the Federal courts will review agency refusals to acknowledge or deny the existence of records has already been well established in *Gardels v. CIA*, 689 F.2d 1100 (D.C. Cir. 1982) and *Phillipi v. CIA*, 546 F.2d 1009 (D.C. Cir. 1976). In applying these new provisions, the Federal courts should follow the proceedings outlines in Gardels and Phillipi.

It is important to note that the provisions in section 1802 regarding law enforcement records were derived from a draft bill which was the subject of negotiations between the Department of Justice and the House Government Operations Subcommittee on Government Information, Justice and Agriculture earlier this year. During the course of these negotiations, the Department agreed that their implementation, as now provided by section 1802, would require that a notice of the authority to refuse to confirm the existence of requested records be included in every FOIA response by agencies permitted to exercise such authority. The Senate adopted the provision with the explicit understanding of the amendment's sponsors that such notice would be required.

The bill revises the rules governing fees and fee waivers under the FOIA. Each agency is requested to promulgate regulations specifying the schedule of fees and establishing procedures and guidelines for determining when such fees should be waived or reduced. Agency fee schedules must conform to guidelines promulgated by the Office of Management and Budget.

There are three categories of requesters for purposes of assessing fees. First, when records are requested for commercial use, fees shall be limited to reasonable standard charges for document search, duplication, and review. This provision allows the charging of review costs for the first time, but review costs many only be charged to commercial users. A commercial user is one who seeks information solely for a private, profit making purpose. Except for requests that are described in the second category, requests from a corporation may be presumed to be for commercial use unless the requester can demonstrate that it qualifies for a different fee schedule. A request from an individual or a public interest group may not be presumed to be for commercial use unless the nature of the request suggests otherwise. The resale of documents ob-

tained from the Government is not a commercial use.

Review costs include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed. Review costs are not intended to include any costs incurred in resolving issues of law and policy that may be raised in the course of processing a request.

Second, when records are not sought for commercial use and are requested by (a) an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, or (b) a representative of the news media, fees shall be limited to reasonable standard charges for document duplication. A request made by a professor or other member of the professional staff of an educational or noncommercial scientific institution should be presumed to have been made by the institution. A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision.

The bill provides the most favorable fee provision for those in the information dissemination business because the use of the FOIA for public dissemination of information in Government files is in the public interest. The fact that a newspaper or a publisher seeks to make a profit through publication does not affect the public interest nature of the information dissemination. It is critical that the phrase "representative of the news media" be broadly interpreted if the act is to work as expected. As new technologies expand, there are new methods of communications which disseminate information to people through media other than traditional print or broadcast media, and these entities should be considered as "representatives of the news media." In addition, some organizations publish magazines or periodicals in addition to carrying out other functions. Certainly, American Legion magazine, Common Cause magazine or Consumer Reports are "representatives of the news media," even though their parent organizations engage in activities other than publishing magazines. In fact, any person or organization which regularly publishes or disseminates information to the public, whether in print or electronically, should qualify for waivers as a "representative of the news media."

Third, for all other requesters, fees are limited to reasonable standard charges for document search and duplication. This is current law.

All of the fees chargeable to any requester may be waived or reduced if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. This is a change in the current fee waiver language and is specifically intended to overturn the January 1983 Justice Department fee waiver guidelines.

It is important to reaffirm that fee waivers play a substantial role in the effective use of the FOIA, and they should be liberally granted to all requesters other than those who are commercial users.

A major problem identified during our earlier Judicary Committee hearings on FOIA legislation was the fact that the 1983 Department of Justice guidelines construing the "primarily benefiting the general public" language took an unduly restrictive approach to the legislation. This approach was criticized by the Senate Judiciary Committee when it reported out S. 774 in the last Congress, and it has also been criticized by the House Government Operations Committee in its report on H.R. 4862, which recently passed the House. By making a change in the statutory standard for fee waivers, our intention is to repudiate the 1983 Department of Justice guidelines on fee waivers and to enact a broader and more precise standard which will make it easier for noncommerical requests to get waivers.

The requirement that the disclosure be "likely to contribute significantly to public understanding of the operations or activities of the Government" is to be liberally construed in favor of waivers for noncommercial requesters. We do not mean that waviers are appropriate only for items of compelling public interest at a given time, such as articles that are being prominently covered in the news media. Nor are we saying that the information sought must, standing alone, provide a complete and thorough understanding of the issue. Rather, we intend that agencies will grant fee waivers when they receive requests for many categories of information that contribute to public understanding in any meaningful way, even if the requester is seeking only a limited amount of information and even if the request covers only one facet of an issue. As one court put it, "a single document can substantially enrich the public domain." *Eudey v. CIA*, 478 F. Supp. 1175, 1178 (D.D.C. 1978).

Nor do we mean that a waiver is appropriate only if the requester intends to disseminate the requested information widely to the public. Our democracy depends on a knowledgeable citizenry, and public understanding of the operations or activities of Government is greatly enhanced every time that a single citizen uses the FOIA to obtain records which help that person understand what Government is doing on an issue of concern to that person.

It is important for agencies to administer this new statutory standard in an objective manner and should not rely on their own subjective view as to the value of the information requested to the public. A good example is the case of *Better Government Association v. Department of State*, 780 F.2d 86 (D.C. Cir. 1986), where the requester sought information about how U.S. Embassies are spending money and using personnel to entertain visiting dignitaries. That is the sort of information which should qualify for a fee waiver under the current standard and should continue to qualify under this bill.

Along the same line, the phrase "operations and activities of the government" should be broadly construed. Agencies deal with private entities on a range of regulatory, enforcement, procurement and other activities, and records which cast light on those relationships should be routinely made available with a waiver. It is impossible to understand the "operations and activities" of the Food and Drug Administration, for example, without ready access to records filed by the companies which the FDA regulates.

In addition, there is a legitimate public interest in being able to obtain a fee waiver in order to learn about Government inaction, as well as Government action. If, for example, a requestor is seeking records because it wishes to learn if an agency has been less than vigorous in working to protect public health and safety or to see how effectively procurement dollars are being spent, a waiver should be granted. Indeed, experience suggests that agencies are most resistant to granting fee waivers when they suspect that the information sought may cast them in a less than flattering light or to may lead to proposals to reform their practices. Yet that is precisely the type of information which the FOIA is supposed to disclose, and agencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information to learn about what Government is not doing, as well as what it is doing.

A request can qualify for a fee waiver even if the issue is not of interest to the public-at-large. Public understanding is enhanced when information is disclosed to the subset of the public most interested, concerned, or affected by a particular action or matter.

The bill includes several general limitations on the imposition of fees by agencies. First, fee schedules can only provide for the recovery of direct costs of search, duplication, or review. Second, no fee may be charged if the costs of routine collecting and processing the fee allowable under the FOIA are likely to equal or exceed the amount of the fee.

Third, except for requests for commercial use that are subject to review charges, an agency may not charge any requester for the first 2 hours of search time or for the first 100 pages of duplication. A requestor may not file multiple requests at the same time

each seeking portions of a large document solely in order to avoid payment of all fees. However, if requests are made more than 30 days apart, each request must be treated separately.

Fourth, no agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion or unless the agency has determined that the fee will exceed $250. This to prevent agencies from attempting to use fees to harass or discourage requesters.

The fee schedules in the FOIA do not supersede fees chargeable under a statute that specifically provides for setting of a level of fees for particular types of records. This provision does not change current law.

Finally, in any action brought by a requester regarding the waiver of fees, the court shall determine the matter de novo, except that the court's review of the matter shall be limited to the record before the agency. The purpose of this provision is to allow the courts to exercise independent judgment on the issue of whether a requester is entitled to a fee waiver.

In closing, I should like to thank Senator HATCH, the distinguished chairman of the Subcommittee on the Constitution, for working with me to fashion a balanced amendment which meets the needs of law enforcement and improves the fee and fee waiver provisions of the act for the news media and public interest users of FOIA. We have done that while preserving all of the essential features of the act. I compliment him and his staff for their tireless work on this issue.

EXHIBIT 1

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, March 10, 1986

To: House Government Operations Subcommittee on Government Information, Justice, and Agriculture, attention: Robert Gellman.

From: American Law Division.

Subject: Protection of Institutional Confidential Sources Under Proposed Amendments to the Freedom of Information Act.

The Freedom of Information Act (FOIA) exempts from mandatory disclosure "investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would . . . (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source." 5 U.S.C. 552(b)(7)(D)(1982). A proposed amendment to this provision would add a parenthetical phrase after "confidential source" providing that the term is to include "a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis."

The proposed amendment to Exemption 7(D) of the FOIA reflects the current weight of judicial authority on this question. Some early District Court cases confined the scope of the term "confidential source" to persons, pointing to references in the legislative history of the provision to individuals as sources. See, *Ferguson* v. *Kelley*, 448 F.Supp. 919 (N.D.Ill. 1977) on rehearing, 455 F.Supp. 324 (N.D.Ill. 1978); *Katz* v. *Department of Justice*, 498 S.Supp. 177 (S.D.N.Y. 1979) (state and local law enforcement agencies may be confidential sources but not private institutions). However, these cases have been rejected by the majority of courts, including Courts of Appeals and District Courts in the district in which the cases arose. The Seventh Circuit, which embraces the Northern District of Illinois, noted the courts have applied Exemption 7(D) to commercial institutions and non-federal law enforcement agencies without citing *Ferguson*. *Terkel* v. *Kelly*, 599 F.2d 214, 216 (7th Cir. 1979). District Courts in New York have also held that the exempting protects institutional confidential sources, including commercial entities such as banks and credit bureaus. *Biberman* v. *Federal Bureau of Investigation*, 528 F.Supp. 1140, (S.D.N.Y. 1982); *Maltzia* v. *Department of Justice*, 519 F.Supp. 338, 350 (S.D.N.Y. 1981).

Courts have pointed to the rationale for the protection of confidential sources and the non-restrictive plain meaning of the term "source" in holding that the exemption encompasses both individual and institutional sources, public and private. See, *Johnson* v. *Department of Justice*, 739 F.2d 1514 (10th Cir. 1984) (local law enforcement agencies); *Lesar* v. *Department of Justice*, 636 F.2d 472 (D.C.Cir. 1980) (state and local law enforcement agencies); *Baez* v. *Department of Justice*, 647 F.2d 1328 (D.C.Cir. 1980) (foreign agency source); *Founding Church of Scientology* v. *Regan*, 670 F.2d 1158 (D.C.Cir. 1981)(same); *Keeney* v. *Federal Bureau of Investigation*, 630 F.2d 114 (2d Cir. 1980)(local law enforcement agency); *Linerman* v. *Department of Justice*, 597 F.Supp. 84, 88 (E.D.Pa. 1984)(financial institution); *Founding Church of Scientology* v. *Lert*, 679 F.Supp. 1060, 1063 (local law enforcement agency and commercial institution); *Fiumara* v. *Higgins*, 572 F.Supp. 1093, 1110 (D.N.H. 1983)(local law enforcement agency). See also, Anno., 59 A.L.R.Fed. 550, 555-557 (1982).

Thus, the inclusion of language indicating that "confidential source" is to include state, local and foreign agencies as well as private institutions that supply confidential information to a federal law enforcement agency would reflect the interpretation given the exemption by most courts.

RICHARD EHLKE,
Specialist in American Public Law.

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, February 28, 1986

To: House Government Operations Committee, Subcommittee on Government Information, Justice, and Agriculture, attention: Bob Gellman.

From: American Law Division.

Subject: Proposed Amendment to Exemption 7 of the Freedom of Information Act.

Exemption 7 of the Freedom of Information Act provides that the disclosure mandate of the Act does not apply to investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel. 5 U.S.C. 552(b)(7)(1982).

A proposed amendment to the exemption would change the phraseology of subsections (A), (D) and (F), by substituting "could reasonably be expected to" for "would." The provision would then permit exemption if, inter alia, production of a record "could reasonably be expected to" interfere with enforcement proceedings, disclose the identity of a confidential source or endanger the life or safety of any individual. This memorandum briefly analyzes the relationship of this proposed amendment to current judicial interpretation of the exemption.

The proposed amendment is similar to that contained in the Freedom of Information Reform Act, S. 774, reported by the Senate Judiciary Committee in the 98th Congress. The Senate bill, however, would have also amended subsection (C) (personal privacy) by substituting the "could reasonably be expected to" language for "would" in that subsection. S. Rept. No. 98-221, 98th Cong., 1st Sess. 23 (1983). The amendment, according to the Senate Report, was intended to clarify the degree of risk of harm from disclosure which must be shown to justify withholding records under any of these subparagraphs [of Exemption 7]. The FBI and other law enforcement agencies have testified that the current "would" language in the exemption places undue strictures on agency attempts to protect against the harms specified in Exemption 7's subparts.

This burden of proof is troubling to some agencies in the context of showing that a particular disclosure "would" interfere with an enforcement proceeding. Moreover, as the FBI has testified, it is particularly vexing with respect to whether production of requested records "would" disclose the identity of a confidential source, substantially contributing to the asserted "perception" problem of sources doubting the FBI's ability to protect their identities from disclosure through FOIA. S. Rept. No. 98-221 at 23-4.

The effort to "clarify the degree of risk of harm from disclosure which must be shown to justify withholding records" pursuant to Exemption 7 has been a consistent part of reform proposals over the years. These proposals have focused on the confidential source subsection and would have substituted the phrase "would . . . disclose the identity of a confidential source" with "would tend to disclose . . ." See, Hearings on Freedom of Information Act Before the Subcomm. on the Constitution of the Senate Judiciary Comm., 97th Cong., 1st Sess. 690 (1981); FBI Proposals to Amend the Freedom of Information Act 31 (June 19, 1979).

The proposed amendment does not appear to be prompted by any particular case or line of cases that have enunciated a contrary standard of the degree of risk of harm that must be shown to justify assertion of Exemption 7(A), (D) or (F). In fact, the earlier proposals (those that employed the "tend to" phraseology) were portrayed as being reflective of judicial interpretation. See, Hearings, supra at 690. The current proposed formulation ("could reasonably be expected to") would also seem to be consistent with both the case law and the legislative history of the provision.

Exemption 7 was overhauled as part of the 1974 amendments to the Act. With respect to the protection of confidential sources, the sponsor of the provision, Senator Hart, stated at the time of its introdu-

progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements.

"(b) An office or agency performing other functions within the executive branch of a State may be designated to carry out the functions specified in subsection (a).

"DISCRETIONARY GRANTS

"SEC. 1309. The Director is authorized to make grants to public agencies and private nonprofit organizations for any purpose specified in section 1302 of this title. The Director shall have final authority over all grants awarded under this section.

"APPLICATION REQUIREMENTS

"SEC. 1310. (a) No grant may be made under section 1309 of this title unless an application has been submitted to the Director in which the applicant—

"(1) sets forth a program or project which is eligible for funding pursuant to section 1309 of this title; and

"(2) describes the services to be provided, performance goals, and the manner in which the program is to be carried out.

"(b) Each applicant for funds under section 1309 of this title shall certify that its program or project meets all the requirements of this section, that all the information contained in the application is correct, and that the applicant will comply with all the provisions of this title and all other applicable Federal laws. Such certification shall be made in a form acceptable to the Director.

"ALLOCATION OF FUNDS FOR DISCRETIONARY GRANTS

"SEC. 1311. Of the total amount appropriated for this part in any fiscal year, 20 per centum shall be reserved and set aside for section 1309 of this title in a special discretionary fund for use by the Director in carrying out the purposes specified in section 1302 of this title. Grants under section 1309 may be made for amounts up to 100 per centum of the costs of the programs or projects contained in the approved application.

"LIMITATION ON USE OF DISCRETIONARY GRANT FUNDS

"SEC. 1312. Grant funds awarded under section 1309 of this title shall not be used for land acquisition or construction projects.".

(b)(1) Subsections (a) and (b) of section 401 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3741) are each amended by striking out "part E" and inserting in lieu thereof "parts E and M".

(2) Section 801(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3782(b)) is amended by striking out "parts D and E" and inserting in lieu thereof "parts D, E, and M".

(3) Section 802(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3783(b)) is amended by inserting "or M" after "part D".

(4) Section 808 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789) is amended by inserting "or 1308, as the case may be," after "section 408".

(5) The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking out the items relating to part M and section 1301, and inserting in lieu thereof the following new items:

"PART M—GRANTS FOR DRUG LAW ENFORCEMENT PROGRAMS

"Sec. 1301. Function of the Director.
"Sec. 1302. Description of drug law enforcement grant program.
"Sec. 1303. Applications to receive grants.
"Sec. 1304. Review of applications.
"Sec. 1305. Allocation and distribution of funds under formula grants.
"Sec. 1306. Reports.
"Sec. 1307. Expenditure of grants; records.
"Sec. 1308. State office.
"Sec. 1309. Discretionary grants.
"Sec. 1310. Application requirements.
"Sec. 1311. Allocation of funds for discretionary grants.
"Sec. 1312. Limitation on use of discretionary grant funds.

"PART N—TRANSITION—EFFECTIVE DATE—REPEALER

"Sec. 1401. Continuation of rules, authorities, and proceedings.".

(c) Section 1001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended—

(1) in subsection (a)—

(A) in paragraph (3) by striking out "and L" and inserting in lieu thereof "L, and M";

(B) by redesignating paragraph (6) as paragraph (7), and

(C) by inserting after paragraph (5) the following new paragraph:

"(6) There are authorized to be appropriated $230,000,000 for fiscal year 1987, $230,000,000 for fiscal year 1988, and $230,000,000 for fiscal year 1989, to carry out the programs under part M of this title." . . .; and

(2) in subsection (b) by striking out "and E" and inserting in lieu thereof ", E, and M".

Subtitle L—Study on the Use of Existing Federal Buildings as Prisons

SEC. 1601. STUDY REQUIRED.

(a) Within 90 days of the date of enactment of this Act, the Secretary of Defense shall provide to the Attorney General—

(1) a list of all sites under the jurisdiction of the Department of Defense including facilities beyond the excess and surplus property inventories whose facilities or a portion thereof could be used, or are being used, as detention facilities for felons, especially those who are a Federal responsibility such as illegal alien felons and major narcotics traffickers;

(2) a statement of fact on how such facilities could be used as detention facilities with detailed descriptions on their actual daily percentage of use; their capacities or rated capacities; the time periods they could be utilized as detention facilities; the cost of converting such facilities to detention facilities; and, the cost of maintaining them as such; and

(3) in consultation with the Attorney General, a statement showing how the Department of Defense and the Department of Justice would administer and provide staffing responsibilities to convert and maintain such detention facilities.

(b) Copies of the report and analysis required by subsection (a) shall be provided to the Congress.

Subtitle M—Narcotics Traffickers Deportation Act

SEC. 1751. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) Section 212(a)(23) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(23)) is amended—

(1) by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))"; and

(2) by striking out "any of the aforementioned drugs" and inserting in lieu thereof "any such controlled substance".

(b) Section 241(a)(11) of such Act (8 U.S.C. 1251(a)(11)) is amended by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))".

(c) The amendments made by this subsections (a) and (b) of this section shall apply to convictions occurring before, on, or after the date of the enactment of this section, and the amendments made by subsection (a) shall apply to aliens entering the United States after the date of the enactment of this section.

(d) Section 287 of the Immigration and Nationality Act (8 U.S.C. 1357) is amended by adding at the end the following new subsection:

"(d) In the case of an alien who is arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances, if the official (or another official)—

"(1) has reason to believe that the alien may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States,

"(2) expeditiously informs an appropriate officer or employee of the Service authorized and designated by the Attorney General of the arrest and of facts concerning the status of the alien, and

"(3) requests the Service to determine promptly whether or not to issue a detainer to detain the alien, the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.".

(e)(1) From the sums appropriated to carry out this Act, the Attorney General, through the Investigative Division of the Immigration and Naturalization Service, shall provide a pilot program in 4 cities to establish or improve the computer capabilities of the local offices of the Service and of local law enforcement agencies to respond to inquiries concerning aliens who have been arrested or convicted for, or are the subject to criminal investigation relating to, a violation of any law relating to controlled substances. The Attorney General shall select cities in a manner that provides special consideration for cities located near the land borders of the United States and for large cities which have major concentrations of aliens. Some of the sums made available under the pilot program shall be used to increase the personnel level of the Investigative Division.

(2) At the end of the first year of the pilot program, the Attorney General shall provide for an evaluation of the effectiveness of the program and shall report to Congress on such evaluation and on whether the pilot program should be extended or expanded.

Subtitle N—Freedom of Information Act

SEC. 1841. SHORT TITLE.

This subtitle may be cited as the "Freedom of Information Reform Act of 1986".

SEC. 1842. LAW ENFORCEMENT.

(a) EXEMPTION.—Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

"(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impar-

tial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;".

(b) EXCLUSIONS.—Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f) respectively, and by inserting after subsection (b) the following new subsection:

"(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

"(A) the investigation or proceeding involves a possible violation of criminal law; and

"(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

"(2) Whenever informant record maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

"(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.".

SEC. 1801. FEES AND FEE WAIVERS.

Paragraph (4)(A) of section 552(a) of title 5, United States Code, is amended to read as follows:

"(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

"(ii) Such agency regulations shall provide that—

"(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

"(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media; and

"(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

"(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

"(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

"(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee, or

"(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

"(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

"(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

"(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency."

SEC. 1804. EFFECTIVE DATES.

(a) The amendments made by section 1802 shall be effective on the date of enactment of this Act, and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date.

(b)(1) The amendments made by section 1803 shall be effective 180 days after the date of enactment of this Act, except that regulations to implement such amendments shall be promulgated by such 180th day.

(2) The amendments made by section 1803 shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in paragraph (1) of this subsection or before the agency has finally issued its regulations.

Subtitle O—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

SEC. 1821. SHORT TITLE.

This subtitle may be cited as the "Mail Order Drug Paraphernalia Control Act".

SEC. 1822. OFFENSE.

(a) It is unlawful for any person—

(1) to make use of the services of the Postal Service or other interstate conveyance as part of a scheme to sell drug paraphernalia;

(2) to offer for sale and transportation in interstate or foreign commerce drug paraphernalia; or

(3) to import or export drug paraphernalia.

(b) Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined not more than $100,000.

(c) Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture upon the conviction of a person for such violation. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(d) The term "drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act (title II of Public Law 91-513). It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body, such as—

(1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(2) water pipes;

(3) carburetion tubes and devices;

(4) smoking and carburetion masks;

(5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) chamber pipes;

(8) carburetor pipes;

(9) electric pipes;

(10) air-driven pipes;

(11) chillums;

(12) bongs;

(13) ice pipes or chillers;

(14) wired cigarette papers, or

(15) cocaine freebase kits.

(e) In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

(1) instructions, oral or written, provided with the item concerning its use;

(2) descriptive materials accompanying the item which explain or depict its use;

(3) national and local advertising concerning its use;

(4) the manner in which the item is displayed for sale;

(5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

Exhibit B

Wall Street Journal
September 25, 1986

Financial Friends

Sen. D'Amato Wins Wall Street's Favor —And Contributions

New Yorker Often Looks Out For Securities Industry; Inaction Can Help, Too

Ties to Drexel and Junk Bonds

By BRUCE INGERSOLL
And BROOKS JACKSON
Staff Reporters of THE WALL STREET JOURNAL

WASHINGTON – When it comes to shaking the money tree for campaign donations, few lawmakers can match Alfonse D'Amato, who has clearly become Wall Street's favorite senator.

As chairman of the Senate Banking subcommittee on securities since 1981, the New York Republican has blocked or blunted legislation opposed by Wall Street while reaping a rich flow of campaign money from the nation's leading brokerage houses and investment-banking firms. The big donations often coincide closely with his legislative actions – or inaction.

Last year, for example, just one week before holding a hearing on a proposal to limit purchases of "junk" bonds by federally regulated thrift institutions, Sen. D'Amato was guest of honor at a $1,000-a-plate dinner arranged by Drexel Burnham Lambert Inc., the No. 1 underwriter of the high-yield, high-risk securities. The proposal, opposed by Drexel, later was dropped from legislation that the senator introduced.

Alfonse D'Amato

Sen. D'Amato is a case study of how even a freshman lawmaker, if strategically placed, can loosen the purse strings of wealthy contributors. The $5 million that he raised in the 18 months ended June 30 put him just behind two senior senators, GOP Senate Finance Chairman Bob Packwood of Oregon ($6.2 million) and Democratic Whip Alan Cranston of California ($6.1 million) for the period.

Though Sen. D'Amato heads only a subcommittee, it is the one that deals with Wall Street's vital interests. Since 1981, more than $500,000 has poured into his reelection campaign from the partners, executives and political-action committees of Wall Street firms, according to a tabulation by this newspaper. In some cases, such contributions appear to have been coordinated by management (see page 10).

Many Requests

Sen. D'Amato and Michael Kinsella, his administrative assistant and formerly a lobbyist for the Securities Industry Association, aren't bashful about asking for donations. "Nothing is enough," complains one top Wall Street lobbyist. "It's continuous pressure. If you don't contribute, they don't return your calls."

By contrast, Peter Iovino, a Washington lawyer, recalls Sen. D'Amato's first Capitol Hill fund-raiser in 1980, shortly after the senator defeated the aging Jacob Javits in the GOP primary. The reception was a forlorn, empty-room affair, attended by only a handful of New York Republican politicians and Sen. D'Amato. "One guy wandered in by mistake, but I was the only paying guest," Mr. Iovino says. "Oh, how things have changed."

Sen. D'Amato isn't sheepish about his role as the securities industry's guardian. The 49-year-old senator, wreathed in cigar smoke, leaps up from his office chair to show off a memento of a filibuster he led in September 1984 to stop a deregulation bill that would have allowed big banks to cut into the securities business. Hanging on a wall is a white T-shirt with a single word emblazoned in red: "BILLBUSTER."

"Look, you say what you want about the Wall Street brokerage houses, et cetera, and all their dealings," he declares. "But I am a New York senator, and I have an interest to protect."

He denies that campaign money colors his legislative judgment or that he uses his office to extract contributions. "My legislative shop is in no way connected with planning of fund-raising events," he says. "I don't operate that way."

Slighting the Banks

Whenever Wall Street's interests conflict with the desires of another powerful constituency in Mr. D'Amato's bailiwick – the big money-center banks – the senator invariably sides with the Street. In addition to the 1984 filibuster, Sen. D'Amato successfully led the infighting this year to expunge from the Senate banking bill any grant of securities powers to banks.

Sen. D'Amato doesn't hold banks in high esteem. "Those guys!" he exclaims, rolling his eyes. "The only thing they can do is finance the foreign debt that the government will eventually bail them out on. They're the worst. They want everything – securities, insurance."

Campaign aides say Sen. D'Amato's total spending for reelection this year may hit $10 million. Major donors range from real-estate developers and corporate PACs to labor unions and Italian-American voters. And his support for Israel has attracted substantial Jewish backing.

But it is Wall Street's money that stands out.

An example of how the D'Amato money machine works is the May 31, 1985, dinner given by one of Drexel's Los Angeles offices at Chasen's, a Beverly Hills restau-

Please Turn to Page 10, Column 1

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Financial Friends: Sen. D'Amato Wins Favor, Funds on Wall Street

(Continued From First Page)

rant long favored by the show business set.

Harry Hornwitz, a senior vice president, says Drexel set up the dinner after Sen. D'Amato's aide, Mr. Kinsella, asked if we could put together a fund raiser." At the time, the senator was preparing to hold hearings on legislation crucial to Drexel. One proposal would have curbed the Drexel pioneered reliance on junk bonds to finance corporate takeovers and buyouts. The other would have limited junk bond purchases by thrifts on the premise that unlimited investment in below investment grade securities is too risky for government-insured institutions.

"There was a lot of one-on-one," recalls Mr. Hornwitz, as the table hopping Sen. D'Amato worked the banquet room at Chasen's. The guest list included 23 Drexel executives and half a dozen officials of Columbia Savings & Loan Association, one of Drexel's prime customers. At the time, the Beverly Hills thrift institution owned more than $1 billion in junk bonds, representing about 16% of its assets, and was in the process of increasing such holdings to $2.3 billion, or 28% of assets, nearly triple the proposed limit, as of last June 30.

Campaign records show that the Drexel executives gave $1,000 each. Columbia's chief executive, Thomas Spiegel, gave $2,000 and his father, Abraham, the chairman, gave another $2,000. The total pot for the evening, more than $33,000.

A week later, Sen. D'Amato was back in Washington, hearing testimony on the junk bond issue. One main witness against restricting junk bonds was Frederick Joseph, Drexel's chief executive.

The following week, Republican Sen. Peter Domenici of New Mexico appeared before Sen. D'Amato's panel to plead for a bill he introduced to limit investments by thrifts in junk bonds. "Banks and thrifts are in trouble," he said, adding that the number of shaky, federally insured institutions had reached a historic high. "If we do not restrain institutional investments in junk bonds," he warned, "it is my honest belief that the taxpayers will be the ones who pick up the tab in the event the investments fail."

In September 1985, Sen. D'Amato began sounding out Drexel and other companies on a draft bill to tighten regulation of corporate takeovers. One provision would have limited thrift institutions' purchases of junk bonds. But when the senator introduced his takeover bill on Dec. 6, 1985, the provision so dreaded by Drexel was missing.

Instead, he merely proposed a federal study of junk bonds. Five days later, on Dec. 11, Mr. Joseph and 35 other Drexel executives from New York donated $500 each to Sen. D'Amato's campaign.

Sen. D'Amato calls the timing "absolutely coincidental." The Drexel contributions came at a major fund-raiser. "We had a thousand people there and raised more than $1 million," he says. Asked about the timing of the donations to Sen. D'Amato, a Drexel spokeswoman says, "We support legislators we think understand the concerns of our industry and specifically those of our firm."

The Drexel total has reached $70,750, including gifts made in connection with President Reagan's appearance last spring at New York's Waldorf-Astoria Hotel. Drexel's PAC gave $5,000, and executives of its Los Angeles branch gave $5,000 more.

Other companies giving to Sen. D'Amato also have a big stake in junk bonds. Executives of Integrated Resources Inc., which raises considerable capital with junk bond issues through Drexel, contributed $58,750. The New York firm's chief lobbyist, Richard Rosenbaum, is the Republican national committeeman from New York state. "It's natural for me to raise money for Al here among my friends," Mr. Rosenbaum says.

Lobbying Group Formed

Integrated Resources and Columbia Savings are among more than 50 companies in the Alliance for Capital Access, a lobby formed to oppose federal limits on junk-bond financings. Sen. D'Amato says he saw "dozens and dozens" of lobbyists while he and his legislative staff were considering corporate takeover legislation.

The takeover bill that Sen. D'Amato came up with displays his legislative shrewdness—and a knack for straddling volatile issues while picking up campaign contributions. Among other things, it proposed to curb certain offensive and defensive tactics used in takeover battles and to give investors more timely information on pre-takeover moves and more time to weigh tender offers. But the measure wouldn't tip the touchy balance between corporate management and the raiders and their investment bankers.

"D'Amato pretty much avoids choosing sides because it's a procedural bill," says David Aylward, who was a top aide to the senator's House counterpart, Colorado Democrat Tim Wirth, before organizing the Capital Access lobby. As long as the takeover process can go on, Mr. Aylward says, "most [investment] firms can live with the bill."

Early Support for Bill

The Business Roundtable, a group of 200 chief executives from giant corporations, wanted Congress to rein in corporate raiders, and during the frenzy of hostile takeovers early last year a growing number of lawmakers were eager to do it. Sen. D'Amato promised Senate colleagues that he would have legislation ready for their consideration before the July Fourth recess.

That didn't happen. While Sen. D'Amato's staff was writing and rewriting his bill, bipartisan outrage over hostile takeovers was ebbing away. By the time he introduced the bill in December, the politically opportune moment for trying to curb corporate raiders had passed.

"I'm not suggesting bad faith, but he did freeze people by promising a bill," a Democratic Senate staffer says. "He was really using his ability to control the legislative process to neutralize those who were anxious to move."

Sen. D'Amato never did push his bill. He now denies dragging out the process, with chiding his colleagues for "a total lack of courage" on takeover regulation. "They were all clamoring for tender-offer reform last year, and they're silent on the issue today," he says.

Wall Street lobbyists, however, appreciate the importance of political inaction. "It's not what Sen. D'Amato does that counts," one says, "it's what he doesn't do."

Robert Fomon, the chairman of E.F. Hutton & Co., comments, "He isn't a captive of the commercial banks, as some senators are." Adds Daniel Murphy, a Hutton lobbyist, "We supported D'Amato early and often and with great enthusiasm." Much of the support came in a one-day freshet of mostly $500 contributions from 20 Hutton executives in January 1985.

One year ago, Sen. D'Amato was planning to look into the much-publicized revelations about check-overdrafting at Hutton. But at a going-away party here for a securities-industry lobbyist, a Democratic Senate staffer says he overheard the senator tell Mr. Murphy, "I've got to hold hearings, but I'll go easy on you."

Sen. D'Amato says it never happened. Mr. Murphy doesn't recall such a remark by the senator. "He's got a puckish sense of humor, but it doesn't ring a bell."

Whatever the case, Sen. D'Amato never did hold any hearings.

Donations to Sen. Alfonse D'Amato From Financial Firms and Individuals

(Jan. 1, 1981, to Aug. 20, 1986)

	INDIVIDUAL	PAC	TOTAL
Drexel Burnham Lambert Inc	$63,750	$ 7,000	$ 70,750
Integrated Resources Inc	58,750	0	58,750
Morgan Stanley & Co.	29,800	10,800	40,600
Goldman, Sachs & Co.	36,700	0	36,700
Salomon Brothers Inc	25,750	6,000	31,750
Bear, Stearns & Co.	21,700	9,000	30,700
Shearson Lehman Brothers, Inc.*	18,050	6,500	24,550
E. F. Hutton & Co.	16,750	7,000	23,750
L. F. Rothschild, Unterberg, Towbin Inc	18,800	3,000	21,800
Prudential-Bache Securities Inc	11,100	8,200	19,300
Donaldson, Lufkin & Jenrette Inc	7,000	10,000	17,000
Kidder, Peabody & Co.	16,200	0	16,200
Dillon, Read & Co.	13,880	0	13,880
PaineWebber Inc	8,875	4,700	13,575
Merrill Lynch & Co.	4,975	2,500	7,475
Smith Barney, Harris Upham & Co.	6,200	0	6,200
First Boston Corp.	2,500	3,500	6,000
Others	48,400	14,250	62,650
TOTAL			$501,630
All banks	$34,650	$43,490	$78,140
All thrifts	39,100	40,850	79,950

Note: Includes donations to "Salute to President Reagan," a joint fund-raising committee of Friends of D'Amato and "Victory '85," a New York State GOP committee aiding Sen. D'Amato and other GOP candidates.

*Includes predecessors.

Source: Washington On-Line, Federal Election Commission

EXHIBIT C

WASHINGTON ON•LINE

Subscriber Newsletter

September 1986

Boolean Logic: *The Basis of Keyword Searching*

More than a hundred years ago, an Englishman named George Boole devised a mathematical system in which all variables have a value of either zero or one. Originally designed for the analysis of symbolic logic, Boolean logic is now widely used in computer programming and forms the basis of the keyword search capabilities in our Bill Text Tracking System.

Boolean logic saves you time when conducting searches. You can, for example, produce a broad overview of legislation in which two or more subject areas overlap by simply typing the words and separating them with spaces. For instance, if you wish to study the interrelationship of agriculture and taxes, type "agriculture taxes." You can use up to 80 characters to search all bills introduced in the 99th Congress.

Boolean logic also allows you to conduct numerous searches simultaneously. There's no need to conduct separate searches for all bills mentioning agriculture and all bills mentioning taxes, for example. By typing in both subject areas joined by a plus sign, such as "agriculture + taxes," you have quick access to all bills mentioning either topic.

If you are interested in a heavily legislated subject, you can narrow the amount of information displayed to a more manageable level by directing the system to exclude entire subcategories. Type in the area of interest and the information you wish to exclude, dividing them with a dash. If, for example, you type in "agriculture-taxes," the system will display all bills containing information on agriculture but will automatically winnow out bills which also mention taxes.

A related feature called truncation lets you conduct even more sophisticated searches. When researching a subject area that might be represented by multiple variations of a word, such as the plural, type the root word followed by "@." Typing "tax@" will produce all bills mentioning taxes, taxation, and related words. For very specific search capabilities, combine options. For example, type "agriculture taxes-subsidies" to review all bills mentioning agriculture and taxes but excluding bills which also mention subsidies.

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Campaign Contributions: *Where does all this information come from?*

The Federal Election Commission (FEC) is required by law to publicly disclose the campaign finance reports filed by candidate committees and political action committees. Working directly with the FEC, however, exposes the individual to a confusing mass of paperwork. The complexity of campaign finance laws, the multitude of different filing deadlines, and the inexperience of many filers create an erratic flow of inconsistently filed reports. Our Campaign Contribution Tracking System takes the hassle out of gathering contribution information, letting you concentrate on analysis.

Our extensive experience has helped us develop a system for providing reliable and prompt access to contribution information, even during peak periods. Many subscribers have asked how we gather and organize this information. The complex process begins with the campaign finance reports filed with the FEC. The FEC sends these reports to a lab to be converted into microfilm. Washington On-Line receives duplicates of this film on Monday, Tuesday, and Thursday mornings, the same time the microfilm is delivered to the FEC. During a normal week, we receive an average of 7,500 pages; during peak periods, the weekly average surges up to 40,000 pages.

The next step is sorting the reports. Our contributions specialists separate the reports and enter information from the summary page of each into our computer. Entering summary pages first assures that subscribers have the fastest possible access to the essential information contained in each report.

Processing the remaining pages is the next step. Because of the immense volume of information, we hire a professional keypunching firm to process the schedules detailing receipts and disbursements. We use a simple flagging system to communicate effectively with the keypunching staff and help speed their work along. We further streamline the process by combining contributions made by the same individual on the same day and combining payroll deductions from the same individual. To ensure accuracy and completeness, we include all contributors whose aggregate year-to-date total is $200 or more. Receipts and disbursements information is available within 24 to 48 hours of the summary page's entry.

The reports return from keypunching in the form of computer tapes which are loaded into our computer. Internal verification programs automatically ensure accuracy and alert us to any problems. As a final step, the hard copies of reports are filed. Storing hard copies is space-consuming but necessary. We can easily check the accuracy of our data base and immediately resolve any discrepancies. And, having hard copies close at hand lets us quickly answer any questions subscribers may have.

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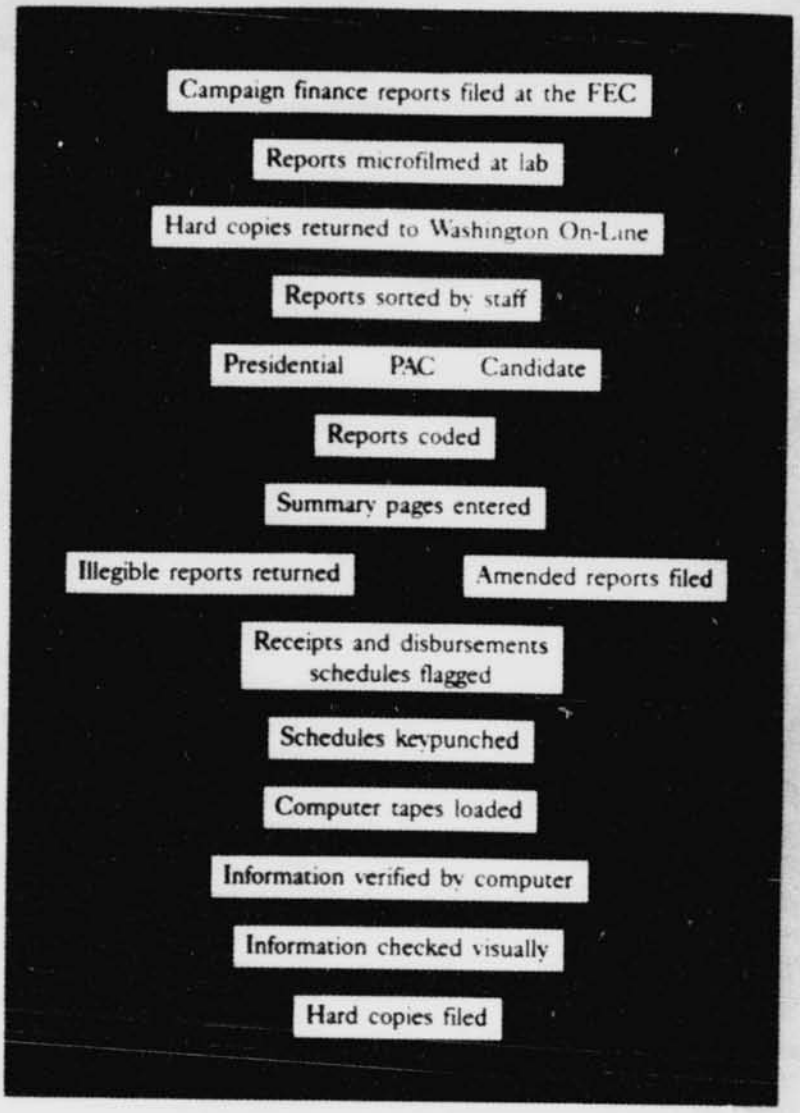
How We Gather and Organize Campaign Contribution Information



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Cosponsors: *Information Available in a Variety of Forms*

Imagine that you are a busy lobbyist trying to get an important bill passed. Because cosponsors can often determine a bill's fate, you urge potential supporters to cosponsor the bill. And because members can join in cosponsorship at nearly any stage of a bill's existence, you continue your efforts. Using our Congressional Bill Tracking System is an easy way to find out how your work has affected the bill's cosponsorship.

During Bill Tracking's development, we learned in a survey that you consider cosponsorship information crucial and that you want the information available in a variety of forms. We therefore devoted an entire option to cosponsorship and designed the program so that you could focus on either bills or members.

Most simply, we list cosponsors alphabetically. Enter any bill number or Bill-File to review all current cosponsors. You can also track cosponsors by the date they were added to or removed from a bill.

Or, concentrate on the individual members. By entering the name of any member, you can examine the member's cosponsorship history during the 99th Congress. The system will use the short titles to list all bills that the member has cosponsored.

Congressional Candidate Primaries and Runoffs

Primaries for Congressional candidates will be held on the following dates:

September 16:	Massachusetts
	Washington
September 20:	Hawaii
September 27:	Louisiana

If necessary, runoffs will be held on the following dates:

September 16:	Oklahoma
November 4:	Louisiana

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EXHIBIT C

WASHINGTON ON-LINE

Subscriber Newsletter

July 1986

Special Pricing Offer Celebrates Expansion of Our System!

Washington On-Line has expanded! We've added the Congressional Bill Tracking System℠ and the Congressional Vote Tracking System℠ to complement our original tracking services. Our unique system now consists of the Bill Text Tracking System℠, Campaign Contribution Tracking System℠, and the two new services, which are described in detail on the following pages.

These new services add to an already impressive array of information. Our comprehensive system details the 25,000 Congressional actions which have occurred since the beginning of this session, 1.6 million Federal campaign contributions, 2,000 committee and floor votes, and Congressional calendars with witness lists. Our staff of 20 legislative specialists gathers this information for you. Using a new computer, the staff enters and updates the data continuously.

To celebrate the system's expansion, we are offering our current subscribers a special introductory offer. Renew your present subscription before August 31 and receive a year's unlimited access to this unique system at the reduced rate of $7,500. Since you're already a subscriber, you don't have to pay the $750 initial access fee again. After August 31, the annual cost of the expanded system will be $12,500.

Our flexible pricing options help you get the maximum value from your Washington On-Line subscription. Our Individual System Design option, for example, is ideal if you need only specific services. Pay only for what you use and enjoy unlimited access to the services you choose. The Congressional Bill Tracking and Bill Text Tracking Systems are $3,500 each for a year's unlimited access. The Congressional Vote Tracking System is $3,000, and the Campaign Contribution Tracking System is $4,000.

Please call Ilka Oberst at 202/543-9101 to hear more about the expanded Washington On-Line system or to discuss pricing options in a personal consultation.

WASHINGTON ON-LINE: THE EXPANDED SYSTEM

YOUR OPTIONS:

1. Congressional Bill Text Tracking
2. Congressional Contribution Tracking
3. Congressional Bill Tracking
4. Congressional Vote Tracking
5. Exit

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Congressional Bill Tracking: New System Makes Legislative Monitoring Even Easier!

Our new Congressional Bill Tracking System™ gives you the broad, general picture on legislation and also helps you zero in on the details. The flexibility of personalized Bill-Files makes legislative monitoring even easier. Just select the option you need and produce a report instantly:

- *Description* contains the most complete information on bills. This option includes a summary of the bill, the sponsor and co-sponsors, a legislative history of the bill, and the date and time of any hearing associated with the bill.
- *Summary* provides a brief summary and notes on the bill's current status, a convenient way to get a quick overview of a bill.
- *Actions* displays a history of all of a bill's actions. You can track the most recent actions, all actions since a specific date, or the entire legislative history of a bill.
- *Co-Sponsors* lists the co-sponsors of a bill. You can track by member or by bill number; the latter lets you list co-sponsors alphabetically or chronologically by the date they signed on to a bill.
- *Calendar* gives you access to all available calendar information on any bill or Bill-File. You can further narrow your search by specifying floor or committee and organizing by date or by status.
- *Introductions* is a summary of all bills introduced on or since a specific date. Included is a list of sponsors and co-sponsors and any committees to which the bill has been referred.
- *Search* guides you to any bill summary mentioning the word or phrase you enter.
- *Bill-Files* let you organize and store information in the ways you find most useful. You can store an unlimited amount of information in as many separate Bill-Files as you need. Sub-categories, such as subject, position, or priority, allow you to create customized reports. For example, you could report on the current status of your top-priority bills. Adding, deleting, or modifying Bill-Files is easy, and you can add your own comments to bills in your files.

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Vote Tracking: New System Brings You Instant Vote Information

Do you need an easy way to analyze voting information? Would you like to be able to create sophisticated voting reports in seconds? In addition to simply listing the votes of every member of Congress on every bill, our new Congressional Vote Tracking System™ lets you tackle more ambitious tasks with ease. Simply choose the option which best suits your needs:

- *Member-Record* is Vote Tracking's most basic form of information. This option shows how a specific member or Member-File voted on any bill. You can specify a single vote, all votes during a certain time period, or all votes by status. In addition to displaying a member's vote, the system tells you whether the bill passed or failed and what the total votes were. The system will also reveal whether the member you're interested in abstained or was absent.
- *Vote By Bill Number* is another basic form of information. This option reverses the Member-Record's emphasis, letting you concentrate on a bill instead of a member. The system lists every floor or committee action that has a recorded vote and all the dates on which the bill has been voted on. When you select a date, the system will list all votes for that day's version of the bill.
- *Vote By Status* produces a numerically ordered listing of bills according to their status. You could, for example, specify only House floor votes or only Senate committee votes. An added feature lets you display votes by roll call number.
- *Comparison File* compares the votes of any group of members and also automatically calculates a member rating showing how often a group of members favors or opposes your positions.
- *Absentee Record* discloses a member's attendance record; this listing can be arranged alphabetically or by absentee percentage.
- *PAC Contributions* is an alphabetical listing of the amount and date of all PAC contributions to any member of Congress.
- *User Defined Files* lets you create the Member-Files, Vote-Files, and Rating-Files which make the preceding reports possible.

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Activity Summary: A One-Page Snapshot of Financial Activity

The detailed financial accountings which PACs and candidates are required to file with the Federal Election Commission (FEC) on a regular basis amount to thousands of pages. For a single report to exceed hundreds of pages is not at all unusual. These huge reports spill forth from the file cabinets in which they are stored, threatening to overwhelm the person searching for a simple overview of a committee's financial standing.

Washington On-Line's *Activity Summary* feature gives you an easy way to make sense of this sea of numbers. The system gives you immediate access to a one-page snapshot of each PAC or candidate's financial activity for the last three years. These broad, overall financial summaries are arranged in easy-to-read table form. These tables show information from the first page of the FEC's *Report of Receipts and Disbursements* forms across the top of your screen and list the filing dates down the left side. You instantly discover the committee's cash on hand at the beginning of the reporting period, receipts and expenditures, and cash on hand at the end of the reporting period.

This quick, convenient method lets you concentrate on using the information instead of looking for it. Check out the competition by investigating their financial condition. Discover where the big money is. Or, find out how much money a candidate already has before you contribute.

Our information is timely and accurate. Activity summaries are calculated from the summary page of the FEC reports, which is the first thing we enter upon receipt of the reports. Our computer calculates the totals and makes the information available to you within 48 hours of its filing with the FEC. We enter the information exactly as it appears on the FEC reports.

WASHINGTON ON-LINE ACTIVITY SUMMARY REPORT

NRA POLITICAL VICTORY FUND 1986 C00053553

START	ENDING	CASH AT START	RECEIPTS	EXPENSES	CASH AT END
01/01/86	01/31/86	1053965.91	31296.54	1624.94	1083637.51
02/01/86	02/28/86	1083637.51	877423.26	31250.00	1929810.77
03/01/86	03/31/86	1929810.80	508451.72	71672.00	2366590.52
		1053965.91	1417171.52	104546.94	2366590.52

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EXHIBIT C

WASHINGTON ON-LINE

Subscriber Newsletter

June, 1986

Introducing the WASHINGTON ON-LINE Subscriber Newsletter

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A new feature requested by subscribers adds to the flexibility of this search system. Keywording narrows your search considerably; keywording by page guides you to the exact line where the language you have entered appears. Locating words by page is important because bills range in length from 2 to 2,500 pages. The tax bill HR 3838, for example, is 1,357 pages long. The word "tobacco" appears only once, on page 1052.

To see how easy it is to search by keyword, type "Text Tracking." Choose the "single bill" option. Enter a bill number. Choose Option 3 to highlight the keyword you have chosen. Type "Y" for "yes" when the system asks if you wish to display only the pages with the phrase on them. The system will then indicate the bill's length and the estimated time it will take to scan. An asterisk will appear on the left margin of every line containing the specific phrase you requested.

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Washington On-Line Introduces Two New Systems

Washington On-line is happy to announce two new services created in response to subscriber demand. The Congressional Bill Tracking System℠ lets you track any bill's progress from introduction to the President's desk. Action reports give you the entire legislative history of every bill. Official bill summaries are available; keyword searching capabilities guide you to any summary mentioning the word or phrase you enter. A legislative calendar, including a witness list available in advance of hearings, keeps you up-to-date.

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EFFICIENCY: The bill-file system lets you organize information any way you want, both when you create bill-files and when you retrieve them. You have a variety of organizing possibilities when establishing bill-files. Create an unlimited number of bill-files, each containing an unlimited number of bills. Add an unlimited number of categories, identifying each bill according to your own organizational criteria. These might include client, position, subject, priority, department, or analyst. All subscriber-defined information can be updated or changed at your convenience. These categories make organizing legislative reports an easy, automated task.

FLEXIBILITY: Once this basic framework is in place, you are ready for even greater customization. You can retrieve reports containing summaries, actions, and calendars for any of the bills in your bill-files. Our sophisticated system, which we have developed over five years, also lets you cross-reference self-defined categories. You could, for example, create a personalized report by calling up all your first priority bills and a specific subject file, such as all bills affecting defense contracting procedures. You have unlimited space in each bill-file to add your own notes, including your position, priority, or any other kind of information you need.

To arrange for a demonstration of this new service, call Joan Phillips at 202 543-9101.

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Looking for John Smith? Contributor Name Search Helps You Out

Washington On-Line's Campaign Contribution Tracking System℠ lists 1.6 million individual contributions from 800,000 contributors. Subscribers can review any of these contributions and instantly find out who gave how much to whom when. Reports are on our system within 48 to 72 hours of being filed with the FEC.

The Contribution Tracking System, which was introduced in 1985, is refined continuously. Originally, subscribers could search for contributors by last name only. In December, we further refined search capabilities by enabling subscribers to search by last name and first initial.

In May, we made it possible to search by last and first names. First name search is an important addition. Our system lists 5,175 contributors with the last name of Smith. Ninety-nine contributors are listed as J. Smith. The chart below shows the system's ten most common last names and the number of contributors listed for each name.

MOST COMMON CONTRIBUTOR NAMES

To maintain the integrity of our database and to increase accuracy, we enter contribution information exactly as it is reported to the FEC. For example, contributors who file as J. Smith are listed on our system as J. Smith, not John Smith. Be sure to use the other search techniques if you don't find the contributor you're looking for with the first method you use. Also, the same individual is sometimes listed separately because reports have been filed under different addresses. Lawyers, for example, often give home and office addresses. Individuals with the same name but different addresses are listed next to each other so be sure to check both listings.

We will continue refining the search process to suit your needs. Please use the enclosed business reply card to inform us of your suggestions.

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EXHIBIT D

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, an unincorporated association, et al., Appellants,

v.

LEGI-TECH CORPORATION
(Two cases).

Nos. 85-6037, 85-6041.

United States Court of Appeals, District of Columbia Circuit.

Argued March 10, 1986.

Decided July 15, 1986.

Political congressional committee brought a copyright infringement and common-law misrepresentation action against information service for the copying, adaptation and distribution of campaign contribution information on public file at the Federal Election Commission. The United States District Court for the District of Columbia, Gesell, J., dismissed action. Appeal was taken. The Court of Appeals, Starr, Circuit Judge, held that action was within primary jurisdiction of Federal Election Commission.

Ordered accordingly.

J. Skelly Wright, Senior Circuit Judge, filed a concurring opinion.

Elections ⇐323

Copyright infringement and common-law misappropriation action filed by political congressional committee against information service for the copying, adaptation and distribution of campaign contribution information on public file at the Federal Election Commission presented a question that fell within primary jurisdiction of the Commission to interpret the Federal Election Campaign Act, which was ambiguous with respect to whether commercial activity like that of the information service was protected. Federal Election Campaign Act of 1971, §§ 301-306, as amended, 2 U.S.C.A. §§ 431-455.

Appeals from the United States District Court for the District of Columbia (Civil Action No. 85-03106).

Jan W. Baran, with whom Bruce G. Joseph and Carl R. Frank, Washington, D.C., were on brief, for appellants.

Bruce D. Sokler, with whom Thomas J. Casey and Terrence J. Leahy, Washington, D.C., were on brief, for appellee.

Before STARR and SILBERMAN, Circuit Judges and WRIGHT, Senior Circuit Judge.

Opinion for the Court filed by Circuit Judge STARR.

Concurring opinion filed by Senior Circuit Judge J. SKELLY WRIGHT.

STARR, Circuit Judge:

This is an appeal from the District Court's judgment dismissing the copyright infringement and common-law misappropriation action filed by the National Republican Congressional Committee (NRCC or Committee) against Legi-Tech Corporation for the copying, adaption and distribution of campaign contribution information on public file at the Federal Election Commission (FEC or Commission). Because this case presents a question that falls within the primary jurisdiction of the FEC to interpret the Federal Election Campaign Act (FECA),[1] we postpone consideration of this matter until the Commission has had an opportunity to express its views on the FECA issue.

I

The National Republican Congressional Committee is a non-profit, political associa-

1. Pub.L. No. 92-225, 86 Stat. 3 (1971) (current amended version principally codified at 2 U.S.C. §§ 431-455 (1982)).

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tion that supports Republican Party candidates for election to the United States House of Representatives. NRCC's primary activity is fundraising. Its principal business asset is its list of donors, created through an expensive and laborious process of targeting and soliciting likely contributors.

FECA requires the Committee to file with the Commission a list of the names and addresses of all contributors who donated more than $200 in any year. 2 U.S.C. § 434(b)(3)(A) (1982). The Commission, in turn, has a statutory obligation to make these lists promptly available for public inspection and copying, subject only to the limitation "that any information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes." 2 U.S.C. § 438(a)(4) (1982).[2]

Legi-Tech Corp. collects and transmits legislative and political information to subscribers over telecommunication facilities, so as to make large amounts of information accessible in a convenient, computerized form. When Legi-Tech began operations in 1981, it offered its services in California and New York, providing summaries of state legislation, recorded votes on bills and attendance records of state legislators. Legi-Tech's clients included newspapers, political parties, lobbyists, corporations, local governments, state agencies and trade associations. At the request of newspaper clients, Legi-Tech added to its data base publicly available information concerning political contributions to state legislators.

In 1985, Legi-Tech decided to expand its electronic information services to include public data concerning the federal government. The Campaign Contribution Tracking Service (CCTS or Tracking Service), which is the subject of this litigation, provides subscribers with computer access to all campaign contribution reports on file at the FEC.[3] The software on the CCTS system permits information to be requested in a wide variety of formats and thus enables customers to target their searches according to their specific needs.[4]

In September 1985, NRCC learned of Legi-Tech's plans to offer the Tracking Service and include as part of its data base the Committee's donor lists on file at the Commission. NRCC promptly sought a copyright registration for its FEC donor lists. After some hesitation, the Copyright Office issued certificates of registration while noting "the Office's uncertainty and desire for judicial guidance on the copyrightability of compilations of data." Joint Record Excerpts (JRE) at 67. On September 27, 1985, NRCC filed suit in federal district court against Legi-Tech, seeking relief under both the federal Copyright Act and the common law of misappropriation.

On October 15, 1985, the District Court issued an oral ruling denying NRCC's motion for preliminary injunctive relief. The District Court concluded that "[i]t would totally frustrate the Federal Election Campaign Act . . . to avoid disclosure by copyrighting the very facts that are required to be filed in the public interest." JRE at 9–10. A week later, upon the parties' stipulation, the District Court issued a final judgment rejecting all the Committee's claims. On October 24, 1985, the Committee filed a complaint with the Federal Election Commission concerning Legi-Tech's Tracking Service. The next day, NRCC appealed the District Court's order to this court.

II

Before us, the Committee argues at length that the District Court erred in con-

2. The "commercial purposes" prohibition does not apply to the use of "the name and address of any political committee to solicit contributions from such committee." 2 U.S.C. § 438(a)(4) (1982).

3. In addition, Legi-Tech supplements the data available from the FEC by including the phone numbers for about half the donors listed in FEC reports.

4. Legi-Tech includes a warning on its sales materials and data base informing customers of the solicitation- and commercial-purposes prohibition contained in FECA.

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cluding that FECA authorizes Legi-Tech's challenged activity. *See* Brief for Appellant at iii, 2, 13–19, 24–25, 28–30; Reply Brief for Appellant at 1–2, 4–5, 18–22. Appellant seeks to persuade us that Legi-Tech's commercial use of donor lists filed with the Commission not only is unauthorized but is in fact expressly prohibited by FECA. In making this argument, the Committee relies, among other things, upon the language, legislative history and underlying purpose of FECA and the regulations and decisions of the Commission interpreting that statute. NRCC would have us decide that whatever license to copy is provided by FECA, the statute clearly proscribes Legi-Tech's "wholesale commercial copying." Brief for Appellant at 19.

We are unconvinced, however, that "there is no risk ... that [copyright] protection of NRCC's compilations is inconsistent with the FECA." Reply Brief for Appellant at 4–5. The language of FECA plainly evinces Congress' intent that campaign contribution reports on file with the FEC be "available for public inspection ... and copying." 2 U.S.C. § 438(a)(4). Inasmuch as Congress expressly provided in FECA for public dissemination of the precise type of compilation at issue here, the provisions of the Copyright Act relied upon by NRCC, dealing with compilations generally, must be construed in a manner that will accommodate the Federal Election Campaign Act. *See generally MacEvoy Co. v. United States*, 322 U.S. 102, 107, 64 S.Ct. 890, 893, 88 L.Ed. 1163 (1944) ("Specific terms prevail over the general in the same or another statute which otherwise might be controlling." (citation omitted)). Such an interpretation of the Copyright Act seems particularly justified in light of the equitable doctrine of fair use, which permits limitation on copyright "for purposes such as criticism, comment, [and] news reporting." 17 U.S.C. § 107 (1982); *see Financial Information, Inc. v. Moody's Investors Service, Inc.*, 751 F.2d 501, 507–08 (2d Cir.1984) ("[T]he fair use doctrine 'offers a means of balancing the exclusive right of a copyright holder with the public's interest in dissemination of information affecting areas of universal concern....'" (citations omitted)).

Thus, NRCC's copyright action must fail if Legi-Tech's use of FEC reports is authorized by FECA.[5] Notwithstanding NRCC's arguments to the contrary, we conclude that FECA is ambiguous with respect to whether commercial activity like Legi-Tech's Tracking Service is protected. The statutory proscription of use of public campaign contribution reports for "soliciting contributions or for commercial purposes" arguably applies to any individual or organization that sells information obtained from FEC reports for a profit, including Legi-Tech. Such an expansive interpretation, however, would bar newspapers and other commercial purveyors of news from publishing the information contained in those reports under any circumstances. Such a result would obviously impede, if not entirely frustrate, the underlying purpose of the *disclosure* provisions of FECA. *See Buckley v. Valeo*, 424 U.S. 1, 66–68, 78, 82, 96 S.Ct. 612, 663, 664, 46 L.Ed.2d 659 (1976); *see also* S.Rep. No. 689, 93d Cong., 2d Sess. 1–2 (1974). In enacting FECA, Congress sought "to promote full disclosure of campaign-oriented spending to insure both the reality and the appearance of the purity and openness of the federal election process." *Buckley*, 424 U.S. at 78, 96 S.Ct. at 663 (footnote omitted). We are most reluctant to construe an exception to the FECA disclosure requirements so broadly as to vitiate the more general statutory mandate of public disclosure.

Moreover, the legislative history of the "commercial purposes" proviso unequivocally indicates that Congress intended a narrower proscription. In particular, the brief history of the "commercial purposes" floor amendment reveals that it was intended to protect campaign contributors from the barrage of solicitations they would receive if "list brokers" were allowed to sell donor lists on file at the FEC. 117 Cong.

5. NRCC's common-law misappropriation action would, *a fortiori*, also fail.

Rec. 30,057–58 (1971). The sponsor of the amendment, Senator Bellmon, expressly indicated that it would not prohibit newspapers from publishing lists of contributors. *Id.* at 30,058; *see also FEC Advisory Opinion 78: Campaign Use of Expenditure Information*, FED. ELECTION CAMP. FIN. GUIDE (CCH) § 5530 (1980) ("The prevention of list brokering, not the suppression of financial information, is the purpose of 2 U.S.C. § 438(a)(4) and [the implementing regulation of the commission]."). Senator Cannon, a co-sponsor of FECA, accepted the amendment, noting that it had "a laudable objective" but questioning how effectively it could be enforced. 117 Cong.Rec. at 30,057.

Based on our examination of the legislative history of the proviso and the general purpose of FECA as a whole, we understand Congress to have "left a gap for the [FEC] to fill" in determining what commercial activities fall within the proviso's prohibition (actively akin to that of a list broker) and what commercial activity is not proscribed (activity akin to that of a newspaper). *Chevron, U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843, 104 S.Ct. 2778, 2782, 81 L.Ed.2d 694 (1984); *see also FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27, 37, 102 S.Ct. 38, 44, 70 L.Ed.2d 23 (1981). Under these circumstances, a court may not substitute its construction of a statutory provision for a reasonable interpretation by the agency charged with administering the statute. *Chevron*, 467 U.S. at 844, 104 S.Ct. at 2782; *Democratic Senatorial Campaign Committee*, 454 U.S. at 39, 102 S.Ct. at 46.

The Commission has not yet squarely addressed the status under FECA of services like CCTS. More generally, the Commission has promulgated a regulation stating that

> The use of information, which is copied or otherwise obtained from reports filed [with the FEC], in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.

11 C.F.R. § 104.15(c) (1985).

At this juncture, it is unclear to us whether Legi-Tech's activities are protected by this regulation. The record before us fails to identify the subscribers to Legi-Tech's new Tracking Service. Furthermore, we do not know whether the FEC would deem Legi-Tech's communications to be "similar" to those of a newspaper or how the FEC would apply its "principal purpose" test to these facts. In light of the deference that must be accorded the FEC's interpretation of its own statute (and indeed its own regulation), any attempt on our part to resolve the present controversy would require judicial speculation as to the Commission's views.

To be sure, the Copyright Act provides us with a basis for resolving this controversy. But it is also well settled that "courts may route the threshold decision as to certain issues to the agency charged with primary responsibility for governmental supervision or control of the particular industry or activity involved." *Port of Boston Marine Terminal Association v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 68, 91 S.Ct. 203, 208, 27 L.Ed.2d 203 (1970) (citations omitted). Considerations of uniformity in the application of law, efficient use of judicial resources, and appropriate deference to Congress' mandate to the FEC combine to lead us here to invoke the equitable doctrine of primary jurisdiction and stay our hand until the FEC has had an opportunity to speak to this question. *See generally Nader v. Allegheny Airlines, Inc.*, 426 U.S. 290, 303–304, 96 S.Ct. 1978, 1986–87, 48 L.Ed.2d 643 (1976); *United States v. Western Pacific Railroad Co.*, 352 U.S. 59, 63–65, 77 S.Ct. 161, 164–66, 1 L.Ed.2d 126 (1956); 4 K. Davis, *Administrative Law Treatise*, Ch. 22 (2d ed.1983). Our limited review function is not rationally exercised by attempting to predict how the FEC would resolve this matter, *see Far East Conference v. United States*, 342

U.S. 570, 574–75, 72 S.Ct. 492, 494, 96 L.Ed. 576 (1952), especially when the identical controversy is already pending (at NRCC's behest) before the Commission, *see FPC v. Louisiana Power & Light Co.*, 406 U.S. 621, 647, 92 S.Ct. 1827, 1841, 32 L.Ed.2d 369 (1972). More important, our decision to postpone consideration is warranted in light of Congress' explicit decision to vest the Commission with "primary jurisdiction" over civil enforcement of FECA.[6] *Buckley*, 424 U.S. at 112 n. 153 96 S.Ct. at 679 n. 153 (citing 2 U.S.C. § 437c(b)); *see Democartic Senatorial Campaign Committee*, 454 U.S. at 37, 102 S.Ct. at 44; *cf. United States v. Philadelphia National Bank*, 374 U.S. 321, 353, 83 S.Ct. 1715, 1736, 10 L.Ed.2d 915 (1963) (primary jurisdiction "requires judicial abstention in cases where protection of the integrity of a regulatory scheme dictates preliminary resort to the agency which administers the scheme" (citations omitted)). Under these circumstances, we see no reason not to heed the salutary principle that "statutes agencies administer should be interpreted by the agencies before the courts interpret them." 4 K. Davis, *supra*, § 22:5, at 95 (emphasis deleted).[7]

Finally, Legi-Tech contends that we may pretermit the FECA issue entirely because the NRCC's donor lists are, in Legi-Tech's view, entirely outside the protections afforded by the Copyright Act. As the Copyright Office itself observed, however, the copyrightability of compilations of data is a highly uncertain area of the law which has divided courts and commentators alike. *See, e.g., Hutchinson Telephone Co. v. Frontier Directory Co.*, 770 F.2d 128 (8th Cir.1985) (following line of cases holding telephone directories to be copyrightable); *Moody's Investors Service*, 751 F.2d at 504–07 (discussing "opposing lines of cases and competing theories advanced by commentators" regarding copyrightability of compilations of data). We believe it unwise to add yet another voice to the current copyright cacophony when resolution of this issue may prove entirely unnecessary.

We therefore hold this case in abeyance pending an opportunity for the FEC to interpret the "commercial purposes" proviso as applied to Legi-Tech's Tracking Service.[8]

So Ordered.

J. SKELLY WRIGHT, Senior Circuit Judge, concurring:

I agree that this case should be held in abeyance pending the Federal Election Commission's (FEC) interpretation of the Federal Election Campaign Act (FECA). I write separately, however, to note two issues of special concern.

First, in deciding the scope of the FECA ban on commercial exploitation, the FEC should remain cognizant of the important and troubling First Amendment implications raised by any construction of the statute that bars the use of the information at issue in this case by organizations such as Legi-Tech.

Second, I am troubled by the implication that the National Republican Campaign Committee (NRCC) may pursue its copyright remedies at the same time it pursues its administrative remedies under FECA. In crafting the requirements for adminis-

6. All civil actions to enforce FECA are subject to initial determination by the Commission. 2 U.S.C. §§ 437c(b)(1), 437d(e) (1982).

7. If we were to decide the FECA issue now, it might be argued that the judiciary would thereby preclude the Commission from adopting a contrary but reasonable interpretation of the statute that it is charged with administering. We obviously need not address or decide this issue, but merely note that such a preclusion would arguably violate the spirit, if not the letter, of *Chevron*. Alternatively, if the Commission were free to reject our interpretation and proceeded to do so, the untoward result would be the inconsistent application of FECA. *Cf. Far Eastern Conference*, 342 U.S. at 574, 72 S.Ct. at 494 (judicial deference to agency's primary jurisdiction secures "[u]niformity and consistency in the regulation of business entrusted to a particular agency").

8. Even if the FEC's resolution of NRCC's administrative complaint fails to provide such an interpretation, it is possible that the FEC's views on the matter might be obtained through an advisory opinion. *See* 2 U.S.C. § 437f(a) (1982).

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trative review of alleged violations of FECA, Congress might well have thought that the newly-created scheme would be the exclusive remedial scheme with which to enforce the strictures of FECA. *See* 2 U.S.C. § 437d(e). If we find that the NRCC may nonetheless pursue its copyright claims in federal court regardless of its administrative remedies, we would have effectively created a private enforcement scheme. Whether Congress intended to permit such private enforcement seems doubtful in light of the explicit limitations on liability imposed by the Act. *See id.* § 437g(a)(6)(A) (civil penalty limited to $5,000 or the amount of the contribution or expenditure involved in the violation); *id.* § 437g(a)(6)(C) (civil penalty for willful violations limited to $10,000 or 200% of the amount of the contribution or expenditure involved in the violation).

This issue, however, need not be confronted by the court at this point. Should the Commission conclude that appellee's use of the lists is not barred by the FECA commercial exploitation prohibition, the court need not reach the issue whether the FEC enforcement scheme is exclusive. At that point, "NRCC's copyright action must fail [because] Legi-Tech's use of FEC reports is authorized by FECA." Opinion for the court at 6 (footnote omitted). The issue on the merits would then be clear, allowing this court to pretermit the more difficult jurisdictional question. *See Secretary of the Navy v. Avrech*, 418 U.S. 676, 678, 94 S.Ct. 3039, 3040, 41 L.Ed.2d 1033 (1974) (*per curiam*); *Doe v. U.S. Dep't of Justice*, 753 F.2d 1092, 1101 (D.C.Cir.1985).

Thus, because I agree that the case should be held in abeyance pending the Commission's adjudication of appellant's administrative complaint, I concur in Judge Starr's opinion for the court.

NORTHWEST AIRLINES, INC., Petitioner,

v.

FEDERAL AVIATION ADMINISTRATION, Respondent,

Larry W. Morrison, Air Line Pilots Association, International, Intervenors.

NORTHWEST AIRLINES, INC., Petitioner,

v.

FEDERAL AVIATION ADMINISTRATION, Respondent.

Nos. 84-1510, 85-1692.

United States Court of Appeals, District of Columbia Circuit.

Argued Dec. 18, 1985.

Decided July 18, 1986.

As Amended July 23, 1986.

Airline sought review of series of decisions by Federal Aviation Administration authorizing one of airline's former pilots to fly commercial passenger airplanes, after temporary suspension of his pilot certificate for flying while intoxicated. The Court of Appeals, Bork, Circuit Judge, held that airline lacked standing, as any threat to safety of airline's flights from recertification of pilot alone was far too speculative to provide basis for standing, argument that lenient policy of recertification made it more difficult for airline with stricter standards to deter violations among its employees was not sufficient, and arguments that airline might in future become obligated to rehire pilot did not present issue which was ripe for review.

Dismissed.

1. Action ⇐6

Expiration of "special issuance," a valid medical certificate to which federal air

EXHIBIT E

In re Cochise College Park, Inc., supra, 703 F.2d at 1358; *In re Johnson*, 518 F.2d 246, 256 (10th Cir.), *cert. denied*, 423 U.S. 893, 96 S.Ct. 191, 46 L.Ed.2d 125 (1975).

[5] The bankruptcy court faced an unusual situation when Kirschenbaum sought to stay dismissal of the Gorskis' Chapter XIII petition pending his appeal of the surcharge. If the court did not dismiss the petition, the defaulting debtors would continue to obtain judicial protection to which they were not entitled. On the other hand, dismissing the petition would eliminate the estate as the entity to which the judge had ordered the surcharge to be paid; this might well permit the trustee to avoid financial responsibility for his breach of duty. Apparently for this reason, the judge substituted the Treasury for the bankruptcy estate as the recipient of the surcharge. Nevertheless, we agree with the government that this form of sanction cannot stand because the purpose of the surcharge on these facts must be to benefit the creditors.

On the other hand, there is no doubt that the creditors were injured by the lack of any payments for nearly three years; indeed, the total injury may well have exceeded $500. Under the circumstances, we believe that the proper course is to remand the case to the district court to consider the government's suggestion that the surcharge be used to reimburse, on a pro-rated basis, those creditors who were injured by the three-year deferral in payments by the Gorskis. If this is not feasible, the court should consider what other sanction, if any, is appropriate. Since the bankruptcy petition was dismissed with prejudice shortly after the original imposition of the surcharge, we have no way of knowing whether any of the creditors has received full or partial payment of the debts. As already noted, appellant argues that following the government's suggestion would result in "an administrative nightmare" that would require the bankruptcy court "to reopen the case, notify parties and supervise the administration of the order of distribution" and the creditors to verify their debt. On the record before us, we cannot determine whether appellant's fears are justified. This is a task that more appropriately lies with the district and bankruptcy courts, to whom this argument has not as yet been made.[4]

We therefore affirm the finding of breach of duty and remand to the district court to determine, in light of this opinion, the proper remedy, if any, for the breach at this time. No costs.

LEGI-TECH, INC., Plaintiff-Appellant,

v.

David W. KEIPER, Commissioner of the Legislative Bill Drafting Commission of the State of New York, John J. Faso, Commissioner of the Legislative Bill Drafting Commission of the State of New York, Warren Anderson, Temporary President of the Senate of the State of New York, Stanley Fink, Speaker of the Assembly of the State of New York, and Mario Cuomo, as Governor of the State of New York, Defendants-Appellees.

No. 865, Docket 84-9021.

United States Court of Appeals, Second Circuit.

Argued Feb. 20, 1985.

Decided July 5, 1985.

Corporation which was engaged in marketing computerized legislative infor-

4. Appellant also suggests that since Chapter XIII petitions are entirely voluntary, the bankruptcy court would not have the "authority to reopen the case at this time." Appellant cites no authority and has not explained why the fact that a Chapter XIII petition is filed voluntarily should preclude a bankruptcy judge who has dismissed such a petition because of the debtor's noncompliance with the plan from reopening the proceedings. However, the contention, which is raised for the first time on appeal, need not be answered here and may be pressed on remand.

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mation retrieval service brought action against various state officials challenging constitutionality of New York statute prohibiting entities such as plaintiff from subscribing to a state-owned computerized data base containing, inter alia, full text of proposed legislation. Preliminary injunctive relief was denied by the United States District Court for the Northern District of New York, Roger J. Miner, J., 601 F.Supp. 371, and plaintiff appealed. The Court of Appeals, Winter, Circuit Judge, held that: (1) question whether plaintiff was able to obtain printed copies of pending bills or other legislative information on substantially the same terms as the state-owned service required remand for further findings before it could be determined whether the statute in question violated plaintiff's rights of free speech and press; (2) plaintiff had at least a limited right of access, notwithstanding the statute, to the state-owned service, such access being otherwise available to general public through subscription, though plaintiff, as competitor, could be required to pay "true cost" of the subscription, namely, revenues lost by the state service as result of competitive retransmission of the materials, though further factual findings were required with respect thereto; and (3) validity of statute would turn as well on finding to be made on remand whether costs of converting legislative texts to computerized format were either avoidable or de minimis, for in such case, plaintiff, if it otherwise had access to the texts on substantially same terms as state service, would not have shown harm from the statute.

Remanded.

1. Constitutional Law ⇐90.1(8)
Records ⇐31

New York statute [N.Y.Laws 1984, c. 257, § 5 et seq.] prohibiting entities such as corporate plaintiff, which marketed computerized legislative information retrieval service, from subscribing to state-owned computerized data base containing, inter alia, full-text information regarding proposed legislation, even though subscriptions were otherwise available to the general public, had effect not only of regulating access to information in a particular format, but implicated as well the corporation's First Amendment right of publication. U.S.C.A. Const.Amend. 1.

2. Constitutional Law ⇐90.1(1)

Information about legislative proceedings, and in particular, pending legislation, is absolutely vital to the functioning of government and to the exercise of political speech, which is at the core of the First Amendment. U.S.C.A. Const.Amend. 1.

3. Constitutional Law ⇐90.1(8)
Records ⇐31

Possibility that corporation which marketed computerized legislative information retrieval service might obtain copies of proposed legislation from the bills' sponsors did not remove allegedly unconstitutional onus placed upon the corporation by New York Statute [N.Y.Laws 1984, c. 257, § 5 et seq.] prohibiting entities such as corporation from subscribing to state-owned computerized data base containing, inter alia, full-text information regarding proposed legislation; anticipated helpfulness of individual sponsors was not the equivalent of process that automatically distributed newly proposed legislation to the state service. U.S.C.A. Const.Amend. 1.

4. Constitutional Law ⇐90.1(1)

Government may add its own voice to the debate over public issues, but it may not attempt to control or reduce competition from other speakers. U.S.C.A. Const. Amend. 1.

5. Federal Courts ⇐922

Question whether corporation, which marketed computerized legislative information retrieval service, was able to obtain printed copies of pending bills or other legislative information on substantially the same terms as state-owned computerized data base required remand for further findings before it could be determined whether New York statute [N.Y.Laws 1984, c. 257, § 5 et seq.] prohibiting entities such as corporation, interested in republishing the

materials in its own format, from subscribing to the state-owned service violated corporation's rights of free speech and press. U.S.C.A. Const.Amend. 1.

6. Constitutional Law ⇐90.1(8), 274.1(2)

Though New York had no constitutional obligation in the first instance to provide any access to state-owned computerized data base containing legislative information, once it determined to offer access to the general public by subscription, First and Fourteenth Amendments precluded discriminatory denial of such access to a competitive organ of the press, namely, a corporation engaged in marketing its own computerized legislative information retrieval service and seeking such access for admitted purposes of republishing the materials in its own format, at least where corporation did not seek special access but only that accorded the general public. U.S.C.A. Const.Amends. 1, 14; N.Y.Laws 1984, c. 257, § 5 et seq.

7. Constitutional Law ⇐90(1)

When government regulates speech in the name of an interest unrelated to the suppression of speech, regulation will survive constitutional challenge only if the government interest outweighs the burden and cannot be achieved by means that do not infringe First Amendment rights as significantly. U.S.C.A. Const.Amend. 1.

8. Records ⇐31

Corporation which marketed computerized legislative information retrieval service had at least a limited right of access, notwithstanding statutory prohibition [N.Y. Laws 1984, c. 257, § 5 et seq.], to state-owned computerized data base containing, inter alia, full-text information regarding proposed legislation, such access being otherwise available to general public through subscription, though the competing corporation could be required to pay "true cost" of the subscription, namely, revenues lost by state service as result of corporation's retransmission of the materials in its format. U.S.C.A. Const.Amend. 1.

9. Records ⇐31

Validity of New York statute [N.Y. Laws 1984, c. 257, § 5 et seq.] prohibiting entities such as corporate plaintiff herein, which marketed computerized legislative information retrieval service, from subscribing to state-owned computerized data base containing, inter alia, full-text information regarding proposed legislation would turn on finding to be made on remand as to whether, inter alia, costs of converting the legislative texts to computerized format were either avoidable or de minimis, for in such case, the competing corporation, if it otherwise had access to the texts on substantially same terms as the state-owned service, would not have shown harm from the statute. U.S.C.A. Const.Amend. 1.

Bruce D. Sokler, Washington, D.C. (Thomas J. Casey, Terrence J. Leahy, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., Washington, D.C., of counsel), for plaintiff-appellant.

Harvey M. Berman, New York City (Robert Abrams, Atty. Gen. of the State of N.Y., Robert Hermann, Sol. Gen., O. Peter Sherwood, Deputy Sol. Gen., New York City, of counsel), for defendants-appellees.

Before VAN GRAAFEILAND, WINTER and PRATT, Circuit Judges.

WINTER, Circuit Judge:

This is an appeal from Judge Miner's denial of a preliminary injunction. The appellant, Legi-Tech, Inc., seeks to enjoin the defendants, officials of New York State, from denying it access to a state-owned computerized database that contains legislative information and is available through subscription to the general public. Legi-Tech's complaint, brought under 42 U.S.C. § 1983 (1982), alleges an infringement of its rights under the First and Fourteenth Amendments. We conclude that the First Amendment may, under some circumstances, prohibit the state from denying Legi-Tech, an organ of the press, access to the database. However, the record on this ap-

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peal does not afford us sufficient information to resolve certain key factual issues. We therefore remand for further proceedings.

BACKGROUND

Legi-Tech is a California corporation that markets a computerized information retrieval service known as the "Legi-Tech System." This service offers to subscribers computerized legislative information concerning the New York and California legislatures. The information provided includes summaries of pending legislation, votes on bills, attendance and voting records of individual legislators, and campaign contributions to individual legislators. Legi-Tech's customers include lobbyists, news media, corporations, and governmental agencies.

Since 1984, the Legislative Bill Drafting Commission of the State of New York (the "Commission") has offered to the public a "Legislative Retrieval Service" known as LRS. Like the Legi-Tech System, LRS is a computerized database. LRS contains the full text of legislation pending in the New York Legislature, as well as summaries thereof and certain other information. It appears that the primary difference between the two services is that LRS offers the full text of New York bills, while Legi-Tech offers only summaries. Unlike Legi-Tech, LRS does not offer information about the voting and attendance records of, and campaign contributions to, individual legislators. LRS is limited to New York legislation, while Legi-Tech covers California as well.

Legi-Tech unsuccessfully attempted to subscribe to LRS when the latter was in its pilot stage, and again after it became available to the general public. On June 1, 1984, Legi-Tech brought a state court action for an injunction requiring the Commission to offer LRS to Legi-Tech on the same terms as offered to other customers. In response, New York enacted Chapter 257 of the New York Laws, the provision which is in issue in the instant case. It has not yet been officially codified.

Chapter 257 establishes a "Legislative Computer Services Fund" consisting of revenues derived from the sale of LRS or other data processing services or publications. It also provides that:

> Notwithstanding any provision of law to the contrary, the legislature is hereby authorized to engage in the sale of any of the foregoing services, programs or materials to such entities as the temporary president of the senate and speaker of the assembly, in their joint discretion, deem appropriate, except those entities which offer for sale the services of an electronic information retrieval system which contains data relating to the proceedings of the legislature.

Legi-Tech is clearly within the prohibitory portion of the statute, and the Commission dutifully denied Legi-Tech a subscription to LRS. Legi-Tech then filed the complaint in the instant case. It charges, *inter alia*, that Chapter 257 is unconstitutional on its face and as applied, in that it denies Legi-Tech and others freedom of speech and of the press, the only claims pressed on this appeal. The complaint seeks a declaration that Chapter 257 is unconstitutional, preliminary and permanent injunctions, and damages.

The district court rejected Legi-Tech's claim on the grounds that Chapter 257 does not deprive Legi-Tech of access to legislative information or restrict its ability to publish such information. It perceived the issue as analogous to claims of right to televise or tape courtroom trials, which have been recently rejected by this court. *Legi-Tech, Inc. v. Keiper*, 601 F.Supp. 371, 375 (N.D.N.Y.1984), citing ***Westmoreland v. Columbia Broadcasting System, Inc.***, 752 F.2d 16 (2d Cir.1984); ***United States v. Yonkers Board of Education***, 747 F.2d 111 (2d Cir.1984). It viewed Legi-Tech as merely claiming a right to greater convenience in gathering legislative materials otherwise available, 601 F.Supp. at 375, and in effect as attempting to free ride on New York's financial support for the services provided by LRS. The district court concluded that Chapter 257 "is reasonable

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since it only seeks to protect the state's natural monopoly on computer supplied legislative information. Indeed, were the state not able to restrict access to LRS, competitors could easily retransmit the state's data at lower prices and thereby eliminate LRS entirely." *Id.* at 381.

We do not agree with the district court's legal theories for the reasons stated *infra*. However, because our own view of the law requires the development of certain factual matters, we remand for further findings.

DISCUSSION

[1] This case arises out of advances in a developing technology and is governed neither by direct precedent nor by close analogue. It is important at the outset, therefore, to define with some care the relationship of the relief Legi-Tech seeks to the First Amendment's protection of freedom of speech and of the press.

The district court was, we believe, only partially correct in regarding Chapter 257 as limited to the regulation of access to information in a particular format. Because the sole reason for denying Legi-Tech access to LRS is Legi-Tech's ability and desire to republish it, the right of publication is also implicated. The effect on publication, moreover, may be more than trivial. For example, Chapter 257 may prevent Legi-Tech from publishing in a timely fashion the full text of pending bills in New York in a package with relevant political information such as voting records and campaign contributions.

[2] We further note that information about legislative proceedings, and in particular, pending legislation, is absolutely vital to the functioning of government and to the exercise of political speech, which is at the core of the First Amendment. *See Buckley v. Valeo*, 424 U.S. 1, 14, 96 S.Ct. 612, 632, 46 L.Ed.2d 659 (1976) (per curiam); *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272, 91 S.Ct. 621, 625, 28 L.Ed.2d 35 (1971); *Mills v. Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 1436, 16 L.Ed.2d 484 (1966).

Finally, we note that we are dealing in an area of rapidly developing technology and with novel and expanding forms of the exercise of the freedom of the press guaranteed by the First Amendment. Legi-Tech is currently the only entity that has been denied a subscription to LRS, but there is no reason to believe that this will long remain true. Legi-Tech and LRS use technology that is particularly well-suited to transmitting large amounts of rapidly-changing information. The ultimate sweep of Chapter 257 thus depends upon the development of that technology and of the commercial uses to which it may be put.

It is even now technologically possible to offer an "electronic newspaper" to subscribers who own personal computers. Such a service might transmit news items just as other services transmit stock market quotations or other information. If such a service included legislative information among its news items, it would fall within Chapter 257. On a more familiar level, a claim that the major wire services constitute "electronic information retrieval system[s]" that sometimes provide "data relating to ... the legislature" seems a colorable reading of the statute. It also seems obvious that Mead Data Corporation's "LEXIS/NEXIS" service and West Publishing Corporation's "WESTLAW" service, both familiar to most lawyers, do meet the statutory definition.

We take note of these matters, not because we intend to explore the application of Chapter 257 to such entities, but in recognition of the constitutional sensitivity of the issues raised by Legi-Tech's two-pronged challenge to Chapter 257. It claims that Chapter 257: (1) unconstitutionally discriminates between a state-owned member of the press, LRS, and other press organs by granting the former preferential access to pending legislation; and (2) unconstitutionally denies Legi-Tech equal access to LRS. We discuss these claims seriatim.

1. *The Claim of Discriminatory Access to the Texts of Newly Introduced Legislation*

Legi-Tech claims that Chapter 257 is unconstitutional because it, Legi-Tech, does

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not have the same access to the texts of newly introduced legislation as does LRS, and that this differential access, in conjunction with the prohibition against Legi-Tech's subscribing to LRS, is unconstitutionally discriminatory.

[3] Because the procedural posture of this case limits us to a record containing only conflicting affidavits, we are unable to determine with precision the respective times at which and methods by which Legi-Tech and LRS receive printed copies of proposed legislation after it has been introduced. It appears to be undisputed that LRS automatically receives copies of newly introduced legislation as well as other legislative information through a process which is not available to Legi-Tech. Legi-Tech flatly asserts that LRS frequently publishes legislative information before it is publicly available in other printed form, and that the gap between LRS transmission and other public access is often days. This can be of considerable importance, particularly given the usual legislative rush at the end of a session. Legi-Tech further claims that on some occasions legislation is enacted before printed copies are available to the public but after transmission by LRS. The state disputes these assertions [1] and also argues that such differential access, even if it exists, is irrelevant.

We believe, however, this factual issue is of central importance. We perceive no merit in the proposition that government may accord a state organ of communication preferential access to information and deny to the private press the right to retransmit the information. We cannot agree with the district court that Chapter 257 "is reasonable since it only seeks to protect the state's natural monopoly on computer supplied legislative information." 601 F.Supp. at 381. There is nothing natural about the alleged monopoly in the instant case. The monopoly, if it exists, arises out of the combination of LRS' special access to information and Chapter 257's prohibition on competitors from having access to LRS' database.

[4, 5] The evils inherent in allowing government to create a monopoly over the dissemination of public information in any form seem too obvious to require extended discussion. Government may add its own voice to the debate over public issues, *Community-Service Broadcasting v. FCC*, 593 F.2d 1102, 1110 n. 17 (D.C.Cir.1978) (en banc), but it may not attempt to control or reduce competition from other speakers. *Id.; cf. Buckley v. Valeo*, 424 U.S. 1, 48–49, 96 S.Ct. 612, 648–649, 46 L.Ed.2d 659 (1976) (per curiam) (government may not restrict speech of some persons in order to enhance the relative voice of others). When the state creates an organ of the press, as here, it may not grant the state press special access to governmental proceedings or information and then deny to the private press the right to republish such information. Such actions are an exercise of censorship that allows the government to control the form and content of the information reaching the public. As previously noted, even the limited monopoly alleged here, if shown to exist, prevents the early publication of the complete text of proposed legislation from appearing in a package with information about voting records and campaign contributions.

The issue to be determined on remand with regard to this claim, therefore, is whether Legi-Tech can obtain printed copies of pending bills or other legislative information on substantially the same terms as LRS. Because the validity of a state statute is involved, we are loath to resolve this factual issue on the basis of the affidavits before us, particularly since the district court made no clear findings with regard to it.

1. We are troubled by the state's assertion that even though LRS automatically receives newly introduced bills, Legi-Tech has comparable access because it may be able to obtain upon request a copy from bills' sponsors. We do not share the assumption that the anticipated helpfulness of individual sponsors is the equivalent of a process that automatically distributes newly proposed legislation.

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2. *The Claim of Equal Access to LRS*

[6] Legi-Tech also argues that, even if it were afforded the same access to newly introduced legislation as LRS, Chapter 257 is unconstitutional in that it denies to Legi-Tech, an organ of the press, the same access to LRS as is offered to the general public. The district court concluded that Legi-Tech was not denied a substantial right by Chapter 257 because it merely left Legi-Tech "to gather the information it seeks in a manner which it finds to be less convenient." 601 F.Supp. at 375. The court thus concluded that Legi-Tech's claims were not analogous to *In re Application of The Herald Co.*, 734 F.2d 93 (2d Cir.1984), which recognized a general right of access to pretrial courtroom proceedings, but more closely resembled cases such as *Westmoreland* and *Yonkers*. In *Westmoreland* a television network claimed a First Amendment right to televise judicial proceedings in certain circumstances. 752 F.2d at 21–24. Similarly, in *Yonkers*, a newspaper reporter asserted a First Amendment right to tape judicial proceedings. 747 F.2d at 112. Each of these cases thus involved a claim of right to a particular kind of access in addition to the general access afforded the public. In each case, we denied the claim.

We do not agree that the present case is closely analogous to either *Westmoreland* or *Yonkers*. Had the New York legislature not offered an LRS-type service at all, and had Legi-Tech claimed that offering such a service was constitutionally required, those cases might control. We face a different issue, however, for Chapter 257 denies to Legi-Tech the very access to information offered to the general public. Rather than seeking special access in addition to that enjoyed by the public, Legi-Tech seeks access equal to that offered the public.

Not surprisingly, there is support in the case law for the claim that the press has the same right of access to governmental proceedings as the general public. *Estes v. Texas*, 381 U.S. 532, 540, 85 S.Ct. 1628, 1631, 14 L.Ed.2d 543 (1965) (criminal trial). The present case differs from *Estes* and the subsequent decision in *Richmond Newspapers v. Virginia*, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) (plurality opinion) (press and public have right to attend criminal trials), because in those cases public access was a right whereas here no right exists to compel provision of a service such as LRS. New York thus argues that the lack of a constitutional right to a service such as LRS precludes any First Amendment claim from arising out of the legislature's operation of LRS. In effect it argues that because it can constitutionally refuse to provide LRS at all, it may discriminate in offering LRS so long as that discrimination does not violate the equal protection clause of the Fourteenth Amendment.

We do not agree that the discriminatory denial of access to an organ of the press can never affect First Amendment rights where access generally is not constitutionally mandated. The Supreme Court has squarely held that the government may not single out the press to bear special burdens, even if evenhanded imposition of the identical burdens would be constitutionally permissible. In *Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue*, 460 U.S. 575, 103 S.Ct. 1365, 75 L.Ed.2d 295 (1983), the Court held that taxing the press differently from other businesses violated the First Amendment. The dissent argued that, because taxation does not in itself infringe First Amendment rights, differential taxation is subject to scrutiny only under the equal protection clause. *Id.* at 598–600, 103 S.Ct. at 1379–1380 (Rehnquist, J., dissenting). However, the majority explicitly rejected this argument, which is identical to that pressed by New York in the instant case, and held that "singling out the press for taxation" violated the First Amendment. *Id.* at 585–86 n. 7, 103 S.Ct. at 1371–72 n. 7.

We do not think that the rationale of *Minneapolis Star* is limited to taxation. Should New York decide to deny access to LRS to newspapers and the broadcast me-

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dia as well as Legi-Tech, that decision would surely face a most hostile scrutiny under the First Amendment.[2] We say that because we believe it fairly obvious that the only purpose of such regulation would be to limit the dissemination of speech protected by the First Amendment, albeit only indirectly by limiting republication.

[7] Of course, that is not the issue before us, because New York claims that it is regulating access to LRS for reasons other than the suppression of speech, namely to prevent free riding on LRS' costly efforts. When government regulates speech in the name of an interest unrelated to the suppression of speech, the regulation will survive constitutional challenge "only if the governmental interest outweighs the burden and cannot be achieved by means that do not infringe First Amendment rights as significantly." *Minneapolis Star*, 460 U.S. at 586 n. 7, 103 S.Ct. at 1372 n. 7; *see United States v. O'Brien*, 391 U.S. 367, 376–77, 88 S.Ct. 1673, 1678–79, 20 L.Ed.2d 672 (1968). The Court in *Minneapolis Star* further noted that "differential treatment [of the press], unless justified by some special characteristic of the press, suggests that the goal of the regulation is not unrelated to suppression of expression." 460 U.S. at 585, 103 S.Ct. at 1371.

The district court identified as a "special characteristic" of Legi-Tech its role as a competitor of LRS. The court's argument, when unpacked, is that affording equal access to Legi-Tech would allow it to free ride on LRS' expenditures in rendering pending legislation suitable for electronic transmission. The effect of such free riding, it opined, would be to cause LRS to cease operation because the vast bulk of its subscribers would turn to Legi-Tech, which could offer all the services available from LRS as well as its other data at comparable or lower prices. LRS' demise would then diminish the information available to the public. *See* 601 F.Supp. at 381.

Our disagreement with the district court is not so much over its reasoning as over the application of that reasoning to Chapter 257. Viewed in its essentials, the argument is identical to that which justifies the existence of copyright laws in the face of the First Amendment, i.e. without protection from free riders, the incentive to compile and disseminate information would be destroyed. *Harper & Row, Publishers, Inc. v. Nation Enterprises*, — U.S. —, —, 105 S.Ct. 2218, 2223, 85 L.Ed.2d 588 (1985). The unspoken premise of the copyright laws, however, is that the profit motive which is the incentive for creation is also a disincentive for suppression of the work created, a premise of doubtful strength in the case of government.

The profit motive's weakness where government is concerned is starkly evident in Chapter 257's own provisions, which prohibit potential retransmitters from subscribing to LRS rather than offering subscriptions to them at prices that eliminate the potential for free riding. To revert to the copyright analogy, LRS is refusing to license reproduction at any price even though reproduction would increase purchases of the product without reducing LRS' incentive to produce more information.

It is our view that, absent an attempt to modify Chapter 257 so that it conforms to its ostensible purpose of preventing free riding, the prohibition affecting Legi-Tech cannot be regarded as "unrelated to the suppression of speech." We cannot at this distance claim to discern ulterior motives underlying Chapter 257. Nevertheless, one

2. In *Saxbe v. Washington Post Co.*, 417 U.S. 843, 94 S.Ct. 2811, 41 L.Ed.2d 514 (1974), the Court held that the Federal Bureau of Prisons could ban reporters from conducting interviews with specific inmates because the general public was not allowed access to specific inmates other than relatives, close friends, etc. The Court's approach strongly suggests that if the Bureau of Prisons decided to afford the general public broader access to inmates, it would have to permit the press the same degree of access even though the broader access was not constitutionally mandated.

effect of its prohibition on retransmittal is that the full text of legislation pending in the New York Legislature is not available at the present time in a computerized format that also catalogs campaign contributions to legislators, as well as their attendance and voting records. Similar effects diminishing the information available to the public will surely occur with the further development of the computerized format for news purposes.

We are assured by Legi-Tech that it makes no claim that LRS must allow those able and intending to retransmit LRS material to subscribe at the same price as those who have no such plans or ability. To the extent that concession means that Legi-Tech is willing to pay the true cost to LRS of its subscription, namely the revenue LRS will lose as a consequence of Legi-Tech's retransmission of LRS materials, we believe that LRS may not decline to offer subscription rights to Legi-Tech.

Counsel for the state has argued that establishing the price for retransmission rights is so complex as to be impossible. We agree that exact precision may not be achievable but believe that an adequate approximation, perhaps rough in the beginning but more exact over time, is within reach. LRS knows its own costs and has set a price for its present subscribers without difficulty. We cannot ignore, moreover, the ubiquitous role of government in regulating and setting rates in far more complex situations than this. We assume that Legi-Tech understands that our ruling anticipates its cooperation with New York authorities in providing whatever information about its operations is necessary to setting a reasonable price.

[8, 9] We thus recognize a limited right of access on Legi-Tech's part to LRS materials. We believe, however, that Legi-Tech has not, at this initial stage, proved an essential element of its claim. Although the parties made much at oral argument of the costs of converting printed material to a computerized format, the record, which consists largely of affidavits, provides little basis for us to make a judgment as to whether the costs of conversion of the materials offered by LRS are either necessary or significant. If these costs are either avoidable or *de minimis*, Legi-Tech's claim would fail for lack of any showing of harm. We cannot, therefore, reverse on this ground, although we trust that on remand a record will be developed to support appropriate findings.

Conclusion

Chapter 257 can be upheld, therefore, only if the district court on remand finds that Legi-Tech has access to the texts of proposed legislation on substantially the same terms as LRS and that the costs of converting those texts to a computerized format are neither avoidable nor *de minimis*. Both findings are necessary to Chapter 257's validity, because the elimination of a differential access to the texts of bills will not cure the discrimination in the offering of LRS to the general public but not to Legi-Tech.

Understandably, Legi-Tech has reminded us that urgency attends colorable claims that First Amendment rights are being infringed. We are mindful of that proposition but, given the importance of the unresolved factual issues outlined in this opinion and the sparseness of the present record, we must remand to the district court for proceedings consistent with this opinion.

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November 4, 1986

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: Legi-Tech, Inc., MUR No. 2094

Dear Mr. Steele:

Enclosed for your information is the most recent action by the court of appeals in National Republican Congressional Committee v. Legi-Tech Corporation, Nos. 85-6037 and 85-6041 currently pending in the D.C. Circuit. The Court had previously asked the parties for guidance on what it should in response to FEC Advisory Opinion 1986-25, involving Public Data Access, that had been formally brought to the Court's attention by NRCC. As shown in the enclosed order, while NRCC asked the Court to proceed now, the Court has decided to continue to hold the case in abeyance pending the outcome of the Commission's enforcement proceeding against Legi-Tech.

Sincerely,

Bruce Sokler

Bruce D. Sokler
Counsel for Legi-Tech, Inc.

Enclosure

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GENERAL COUNSEL
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 85-6037 and No. 85-6041 **September Term, 19** 86

NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, an Unincorporated Association, et al., Appellants

Civil Action No. 85-3106

v.

LEGI-TECH CORPORATION

Before STARR and SILBERMAN, Circuit Judges, and WRIGHT, Senior Circuit Judge.

ORDER

On consideration of the submissions of the parties in this case in response to this court's order of September 11, 1986 regarding the effects of Federal Election Commission Advisory Opinion 1986-25, it is

ORDERED by the court that the case remain in the posture set out in our original opinion, National Republican Congressional Committee v. Legi-Tech Corp., 795 F.2d 190 (D.C. Cir. 1986), pending a decision by the Federal Election Commission in the current enforcement action in this case.

Per Curiam

For the Court

George A. Fisher
Clerk

United States Court of Appeals
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GEORGE A. FISHER
CLERK

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Before the Federal Election Commission

In the Matter of	)	
	)	
Legi-Tech, Inc.	)	MUR 2094
	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On January 2, 1986, the Federal Election Commission ("Commission") determined there was reason to believe that Legi-Tech, Inc. ("Legi-Tech") violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15. The Commission's determination was based on a complaint filed by the National Republican Congressional Committee ("NRCC") alleging that Legi-Tech is violating the sale or use restriction of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15, by directly copying information contained in Commission reports and then using that information for commercial purposes by selling it to the public under the trade name "Washington On-Line."

On May 22, 1986, the Office of General Counsel mailed a brief to respondent indicating the General Counsel's intent to recommend to the Commission a finding of probable cause to believe that Legi-Tech violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15. Respondent requested and received an extension of time until June 22, 1986, to respond to the General Counsel's brief in this matter. On June 23, 1986, a response brief was received from Legi-Tech. On July 16, 1986, Legi-Tech submitted a supplemental response to the General Counsel's brief in this matter. On October 22, 1986, Legi-Tech submitted a further supplemental response in this matter.

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II. LEGAL ANALYSIS

The Office of General Counsel relies primarily upon its brief dated May 21, 1986, for the factual and legal analysis of the issues involved in this MUR. Respondent's submissions, though lengthy, contains little in the way of new factual information or legal argument, and therefore, nothing contained therein alters the discussion in this office's brief. However, several points in respondent's submissions need to be addressed for a full review of this matter.

1. Commercial Purpose

Legi-Tech continues to argue that its activities fall outside the bounds of the commercial purpose aspect of the sale or use restriction. A central issue raised in this case by respondent is whether Congress intended the phrase "for a commercial purpose" in Section 438(a)(4) to prohibit the sale of the disclosure lists themselves, as a commercial purpose. Respondent argues that the statute and its legislative history -- which focuses on protecting individuals from solicitation -- both demonstrate a far narrower purpose. Respondent cites, in support, the distinction drawn by the court in National Republican Congressional Committee v. Legi Tech Corporation, No. 85-6037, 85-6041 (D.C. Cir. July 15, 1986), in deferring to the Commission on precisely the issue here involved.

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In Public Data Access, Inc. ("PDA"), AO 1986-25, the Commission concluded that the manner in which PDA prepared its product (contributor information) was like list brokering, because it was processing the material in a way that made the information more useful for brokering purposes. The Commission stated that "[t]he format and content of PDA's lists are essentially indistinguishable from those of a list broker used for soliciting contributions or for commercial purposes." The Commission there articulated a broad resolution of the issue, concluding that the selling of lists of contributor identification information compiled from reports filed with the Commission presumably constituted use of such information for a commercial purpose. This conclusion seems to answer one of respondent's major points. For a major thrust of respondent's argument is that it escapes the reach of § 438(a)(4) in part because all it does do is to provide the same information as the Commission provides. If anything, respondent argues, its format of offering this service in connection with other services makes it less likely that the contributor information would be used for list brokering. Respondent thus attempts to pose its case as essentially putting the Commission directly on the horns of the dilemma that the court in NRCC v. Legi Tech left to the Commission: should the statute be read so broadly as to prohibit

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direct sale of information that a newspaper could print as part of its business. The Commission's decision in AO 1986-25 that any sale of a list would be seen as commercial purpose seems to have foreclosed the narrower approach advocated by respondent. The conclusion that any use of the contributor information constitutes a commercial purpose makes it unnecessary for the Commission to consider whether the manner in which Legi-Tech has offered the data is sufficient to constitute activity more akin to list brokering. 1/

Thus, the Commission determined that it was the use of the contributor information in the manner proposed by PDA which violates the Act. Similarly, here it is also the use of contributor information which gives rise to a violation of the Act by respondent. When respondent's activity is viewed in terms of what it is actually doing, that is, the sale for profit of contributor information in an electronic format, it is evident that the Campaign Contribution Tracking System ("CCTS") falls within the broad prohibition on commercial purpose, as applied by the Commission in AO 1986-25.

2. Exemption for News Media

As the Commission stated in AO 1986-25, "the 'commercial purpose' prohibition does not preclude the use of contributor information by newspapers, magazines, books or other similar communications, such as in news stories, commentaries, or

1/ Legi-Tech determined telephone numbers for some contributors and added these to the information in its data base.

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editorials, although such use may be incident to the sale of such communications."

Respondent has characterized their campaign contribution tracking system as a press function. For example, respondent states that it has eight "reporters" in Washington "covering the beat," yet the information which comprises CCTS is obtained solely by purchasing FEC microfilm reels. 2/ To characterize the purchase of these reels as "covering the beat" and their purchasers as "reporters" does not accord with the plain meaning of these words. In discussing its employees, respondent refers to them as "journalists," whose activities are "no different in substance from those of their colleagues who work for print publications." This statement alone demonstrates an exaggeration of what respondent's employees do with regard to information gathered from the FEC, since they do nothing other than purchase the microfilm. All their other activities, including attending legislative sessions and gathering bill texts, involve respondent's legislative services, and are in no way related to its CCTS function. To call these employees "journalists" simply ignores the fact that their activities do not resemble those of typical journalists.

2/ The telephone numbers which are added to the contributor information, as well as the inputting of all the information into the data base, is done so by outside firms, which can hardly be considered as "covering the beat" by "reporters."

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Respondent's use of the term "news article" is somewhat strained. Respondent states that it

> permits its subscribers to analyze the information in a multitude of ways, in effect creating millions of "news articles." It is the user who specifies the selection manipulation and distillation of data those articles are to contain. Users create their own "articles,"...

In its attempt to apply the term "news article" to its service, respondent undercuts its own argument. On the one hand, respondent argues that it "operates much like a daily newspaper," yet on the other it admits that CCTS does not present information in a manner similar to a newspaper, i.e. a news article, in that the user "creates" the "news article." Nothing more than raw data is provided by respondent.

Respondent continues to argue strongly that the fact that it is owned by a publishing company makes it a newspaper. Additionally, respondent asserts for the first time, that its entire package of services offered as Washington On-Line is identical to its New York services. Both points have little relevance to the resolution of this matter, for the same reason. The activity complained of is the use of contributor names through CCTS. This service may be purchased separately from any other service offered by respondent. Thus, the issue is not Legi-Tech's entire realm of services, but rather CCTS, which has been the subject of this office's analysis. 3/

3/ In addition, the Supreme Court, in FEC v. Massachusetts Citizens for Life, No. 85-701 (December 15, 1986) in discussing the scope of the press exemption under 2 U.S.C. § 431(9)(B)(i), commented that the distribution of a flyer by an entity that also distributes a newsletter, does not automatically entitle the flyer to the exemption.

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The latest submission by respondents, received on October 22, 1986, does include additional information which the Commission may find instructive in this matter. Respondents quote extensively from the legislative history to the anti-drug omnibus bill (H.R. 5484) recently passed by Congress. Of particular relevance are several statements by Representative English, Chairman of the House Subcommittee on Government Information, Justice and Agriculture of the House Committee on Government Information:

> No definition of "news media" has been included in the bill. It is difficult to write a comprehensive definition. "News media" obviously includes traditional newspapers such as the Washington Post, New York Times, Daily Oklahoman, and Journal of Commerce. Similarly, magazines, newsletters; television, radio, and other broadcasters; and book publishers also automatically qualify as traditional news media. Reporters, columnists, and writers whose work is published in any of these outlets also qualify....
>
> [A] computerized information service that provides subscribers with access to information obtained from the Government qualifies as news media because the services [sic] furthers the availability of government information to the public in the same way that a traditional newspaper does....
>
> In short, therefore, disseminating information is not intended to be a commercial use under the bill.

132 Cong. Rec. H 9464 (daily ed. Oct. 8, 1986) (remarks of Rep. English). Thus, Legi-Tech argues that the broad conclusion that

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any organization which regularly disseminates information electronically qualifies as a representative of the news media, supports Legi-Tech's specific contention that it is a press organ.

The Office of General Counsel believes that this legislative history is instructive but not determinative with regard to the issues in this particular MUR. The legislative history cited does not concern the Act, but rather, deals with the specific issue of which entities may qualify for reduced Freedom of Information Act ("FOIA") fees, a decidedly different issue from the commercial republication of contributor's names. Further, even in its latest submission, Legi-Tech continues to assert that its activities are similar to a newspaper's activities, but gives the Commission no specific examples of how that is so. Legi-Tech does state that its "news staff undertakes internal verification programs." However, these are apparently nothing more than the review for accuracy of the keypunching work performed by the outside firm hired by Legi-Tech.

A review of all of respondent's submissions in this matter reveals that, rather than offer any factual basis for its assertion that CCTS is a news medium, respondent instead merely uses the terminology set forth by this office in its brief to characterize the CCTS function. To merely use the words "reporter," "journalist" or "articles" in describing its business misrepresents the facts of this matter. Thus, in functional terms, the lack of authorship in what respondent is doing through CCTS, makes the latter a very dissimilar publication from a newspaper.

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3. Constitutional argument

Respondent continues to insist that the Second Circuit in Legi-Tech, Inc v. Keiper, 766 F.2d 728 (2d Cir. 1985) has ruled that Legi-Tech is an "organ of the press." However, not only does respondent's brief contain an erroneous citation for this proposition, a careful reading of that court's opinion indicates that the court did not directly address Legi-Tech's status as a news medium. It was not at issue in that case. The Second Circuit merely accepted Legi-Tech's self-classification as a press organ, and expressly did not rule on the constitutionality of the state statute in question, but rather remanded the case for a further factual determination.

Thus, respondent cannot point to any legal ruling declaring it a member of the press. Even so, respondent claims that the Office of General Counsel has "conceded that Legi-Tech's activities in New York are press functions," when this is certainly not the case. By their own admission, it was not until after the mailing of the General Counsel's brief that respondent's Washington and New York activities were purportedly made identical. Further, the facts addressed by the Keiper, supra, case are significantly different from those involved here. Keiper, supra, involved Legi-Tech's transmission of a state-published legislative news service, not the transmission of contribution data copied from disclosure reports.

Respondent's entire constitutional argument is based on the premise that Legi-Tech is a press organ. This conclusion is not

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fixed, as respondent would have the Commission believe. The opinion of the United States Court of Appeals for the District of Columbia Circuit in NRCC v. Legi Tech sheds substantial light on this issue. This cause of action was filed by the National Republican Congressional Committee based on copyright infringement and common-law misappropriation grounds. On July 15, 1986, the D.C. Circuit, based on the Commission's primary jurisdiction to interpret the Act, postponed consideration of the case until the Commission "has had an opportunity to express its views on the FECA issue." (at 2). However, much of the court's discussion is helpful concerning the issues of this MUR.

The court's factual discussion is enlightening. Rather than considering Legi-Tech's services as a whole, as respondent urges, the court, singles out and differentiates CCTS in its discussion of the litigation. However, even in its discussion of Legi-Tech itself, the court stops short of calling it a "press organ" or otherwise referring to it as a news medium, but instead refers to the corporation (Legi-Tech) as a collector and transmitter of information. More specifically, in its discussion of CCTS, the court refers to that as a "service," again consistent with the approach of the General Counsel's brief, that CCTS is a business service.

The D.C. Circuit clearly left it up to the Commission to determine whether CCTS is a news medium or list broker:

> Based on our examination of the legislative history of the proviso and the general purpose of FECA as a whole, we understand

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> Congress to have "left a gap for the [FEC] to fill" in determining what commercial activities fall within the proviso's prohibition (actively [sic] akin to that of a list broker) and what commercial activity is not proscribed (activity akin to that of a newspaper). (at 7).

Thus, if the Commission agrees with the analysis of the General Counsel's brief, that the service provided by CCTS is not activity akin to that of a newspaper or similar communication because it lacks the inherent characteristics of such news media, but is rather list brokering, involving the sale for profit of individual contributors' names, addresses, occupations, employers and telephone numbers in an electronic format, then CCTS would violate the Act.

The lengthy constitutional argument which respondent makes is not necessarily determinative of the resolution of this matter. Respondent argues that, as a press entity, it is afforded certain guarantees under the First Amendment to use information obtained from the FEC in the manner it so chooses. However, when viewed as a business enterprise engaged in commercial activity, i.e., list-brokering, respondent's First Amendment rights are somewhat different.

Within the realm of speech, respondent's activity is more closely akin to commercial speech rather than press speech. In two of the leading cases concerning commercial speech, the Supreme Court has recognized that constitutional protection attaches to that type of speech, since the free flow of

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commercial information is indispensable to an informed public. Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748 (1975), Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557 (1980). Thus, the government does not have complete power to regulate or suppress speech related to the economic interest of the speaker. Central Hudson Gas, supra. The Supreme Court, however, has also recognized that where the press function is absent, a business service engaged in commercial speech receives less First Amendment protection, and the protection available to particular commercial expression turns on the nature of the expression and of the governmental interests served by its regulations. Central Hudson Gas, supra. 4/ Here, the sale or use restriction serves a significant governmental interest, as is recognized in the legislative history to 2 U.S.C. § 438(a)(4), to protect the privacy of persons who make contributions from list brokers and the ensuing solicitations and harassment, with the end result being the discouragement of future contributions and support. It is precisely this list brokering that respondent is engaged in and thus, the governmental interest in protecting its citizens comes into play. Further, it is only the particular manner of respondent's use of FEC information that is prohibited by the Act, i.e., the direct sale of contributor information (in an

4/ The United States Supreme Court, in a recent commercial speech case, applied the test from Central Hudson Gas, supra, to uphold a ban on the advertising of gambling casinos, stating, "commercial speech receives a limited form of First Amendment protection..." Posadas de Puerto Rico Assoc. v. Tourism Company of Puerto Rico, No. 84-1903, slip op. at 11 (July 1, 1986)

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electronic format). Other conceivable uses of FEC information by respondent may or may not be equally proscribed and are not at issue.

A business enterprise engaged in a commercial transaction is not, by definition, necessarily engaged in speech protected by the First Amendment. American Future Systems, Inc. v. State University of New York College at Cortland, 565 F. Supp. 754 N.D.N.Y. 1983). For example, the prohibition on the sales of cookware to college students was found not to be a restriction of the First Amendment rights of the seller, and such a prohibition was permitted to stand. American Future Systems, Inc. v. Pennsylvania State University, 464 F. Supp. 1252 (D. Pa. 1979).

Applying the foregoing analysis, a commercial transaction, such as the type which respondent is engaged in, is not entitled to First Amendment protection. If respondent's activities are considered merely list-brokering in an electronic format, with financial gain as its principal objective, that is the very activity which Congress intended to protect against. Respondent is seeking to protect its right to sell something, in this case information, but this is a protection which is not generally afforded by the First Amendment. American Future Systems, Inc. v. Pennsylvania State University, supra. Because, respondent is seeking the right to sell FEC information that Congress has forbidden it to sell, in order to make a profit, the resolution of this matter has to be that respondent's activity is prohibited by 2 U.S.C. § 438(a)(4).

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4. Conclusion

For the reasons stated above and under the analysis contained in the General Counsel's brief, CCTS cannot be considered a press entity, but instead a method of list-brokering. Respondent has failed to offer any evidence to the contrary, and since respondent's entire constitutional attack on the sale or use restriction turns on this determination, it too must fail. Accordingly, the Office of General Counsel recommends that the Commission find probable cause to believe that Legi-Tech, Inc. violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

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IV. Recommendations

The Office of General Counsel recommends that the Commission:

1. Find probable cause to believe that Legi-Tech, Inc. violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15.

2. Approve the attached conciliation agreement.

3. Approve the attached letter.

29 Jan 1987
Date

Charles N. Steele
General Counsel

Attachments
1. NRCC v. Legi-Tech, Inc. decision
2. Late submission of respondent
3. Proposed conciliation agreement
4. Letter

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2094
Legi-Tech, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of February 18, 1987, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in MUR 2094:

1. Find probable cause to believe that Legi-Tech, Inc. violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15.

2. Approve the conciliation agreement attached to the General Counsel's report dated January 29, 1987.

3. Approve the letter attached to the General Counsel's report dated January 29, 1987.

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

Attest:

2-19-87
Date

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

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plhm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 20, 1987

Bruce D. Sokler, Esquire
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
1825 Eye Street, N.W.
Suite 1201
Washington, D.C. 20006

RE: MUR 2094
Legi-Tech, Inc.

Dear Mr. Sokler:

On February 18, 1987, the Commission determined that there is probable cause to believe your client committed a violation of 2 U.S.C. § 438(a)(4), a provision of the Federal Election Campaign Act of 1971, as amended and 11 C.F.R. § 104.15 of the Commission's regulations, in connection with Legi-Tech's campaign contribution tracking system which uses information obtained from Commission reports for commercial purposes.

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. If we are unable to reach an agreement during this 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 Federal Election Commission.

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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

97043841843

CCG# 2910

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
1825 Eye Street, N.W.
Washington, D.C. 20006

One Financial Center
Boston, Massachusetts 02111
Telephone: 617/542-6000
Telex: 94-0198
Telecopier: 617/542-2241

Telephone: 202/293-0500
Telecopier. 202/466-5479
Telex: 753689

March 17, 1987

BY HAND

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
87 MAR 17 P12: 35

Charles N. Steele
General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2094
Legi-Tech, Inc.

Dear Mr. Steele:

We have reviewed your letter of February 20, 1987, in which you reported that the Federal Election Commission has determined that there is probable cause to believe Legi-Tech, Inc. ("Legi-Tech") has committed a violation of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15 of the Commission's regulations. We have also reviewed the proposed conciliation agreement enclosed with the letter.

As you know, Legi-Tech has maintained throughout this proceeding that its electronic publication activities fully comply with the Federal Election Campaign Act. Legi-Tech qualifies for the exemption from the commercial sale or use provision in 11 C.F.R. § 104.15, which protects the use of information from FEC reports in "newspapers, magazines, books, or other similar communications." We have extensively briefed these issues in papers previously filed with the Commission. It would be useful, however, to summarize Legi-Tech's position:

-- Legi-Tech delivers to its subscribers campaign contribution information from FEC reports together with a wide variety of legislative and political information at the federal and state level. This information includes texts of legislation, calendars and agendas, members' voting records, and other information of interest to news organizations and participants in the legislative process. Its subscribers include a number of major news media companies.

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-- The Second Circuit Court of Appeals has explicitly held that Legi-Tech is an "organ of the press" that exercises First Amendment rights. Legi-Tech, Inc. v. Keiper, 766 F.2d 728, 730 (2d Cir. 1985). Moreover, in its copyright dispute with the National Republican Congressional Committee, Judge Wright of the D.C. Circuit has warned that "the FEC should remain cognizant of the troubling First Amendment implications raised by any construction of the statute that bars the use of the information at issue in this case by organizations such as Legi-Tech." National Republican Congressional Committee v. Legi-Tech Corporation, 795 F.2d 190, 194 (D.C. Cir. 1986).

-- To construe the media exemption to encompass Legi-Tech's activities would promote the purpose of disclosure underlying the Federal Election Campaign Act; would effectuate Congress' intent to ensure that FECA respects constitutional rights of speech and press; and would be consistent with court decisions that have broadly interpreted press exemptions to avoid unnecessary constitutional conflicts, in the context of FECA as well as other regulatory statutes.

-- To permit Legi-Tech to continue its news activities would comport with Congress' recent discussion of the meaning of "news media" in the 1986 amendments to the Freedom of Information Act. The legislative history of the amendments shows that "a computerized information service that provides subscribers with access to information obtained from the government qualifies as news media because the services furthers [sic] the availability of government information to the public in the same way that a traditional newspaper does." The history also states that "[t]he fact that a newspaper, publishers, information vendor, or author seeks to make a profit through publication does not affect the public interest nature of the disclosure." See 132 Cong. Rec. S 14298 (1986) (remarks of Sen. Leahy). Thus, the most recent statement by Congress on the issue of access to and disclosure of government information flatly contradicts the FEC's position in this proceeding that Legi-Tech is not entitled to rely on the exemption because it does not resemble a "traditional" newspaper and because its service is sold for profit.

-- If the Commission interprets the statute and regulations to preclude Legi-Tech from offering its news service, the statute and regulation as applied would be unconstitutional, on the grounds that (1) the sale or use

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restriction is a prior restraint on the expression of political speech; (2) the restriction is justified by no compelling government interest; and (3) Section 438(a)(4) is unconstitutionally vague and overbroad. Although the Commission is not in a position to challenge the constitutionality of its enabling statute, it has the obligation, where possible, to construe its own regulations to avoid potential constitutional conflicts.

-- Legi-Tech's electronic publication activities supplement the Commission's own efforts to provide computerized access to campaign contribution information. The FEC cannot justifiably bar private news organizations from undertaking the same information dissemination activities the Commission has initiated to fulfill its mission of disclosure.

Although Legi-Tech continues to be highly confident that its legal position is correct, and is fully prepared to defend that position if necessary, the company is interested in pursuing conciliation as a means of putting this proceeding to rest.

Sincerely,

Terrence J. Leahy

Terrence J. Leahy

cc: Bruce D. Sokler

2504m

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2094
Legi-Tech, Inc.	)	

GENERAL COUNSEL'S REPORT

I. DISCUSSION OF CONCILIATION EFFORTS

On February 20, 1987, the Commission informed counsel for Legi-Tech, Inc. of the Commission's findings of probable cause to believe that Legi-Tech violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15. At that time the Commission also tendered the conciliation agreement approved by the Commission in settlement of this matter.

Legi-Tech initially responded with a letter (Attachment 1) which, in essence, argued that Legi-Tech's activities were in compliance with the Act, and that if Legi-Tech's activities were in violation of the Act, then the Act is unconstitutional.

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Normally, in this situation the General Counsel's Office would recommend that the Commission authorize filing suit. In this instance, however, the General Counsel's Office recommends merging this matter into MUR 2361. (See report now on circulation.) In MUR 2094, the issue has been Legi-Tech's selling of information obtained from FEC reports for commercial purposes. In this MUR Legi-Tech has tried to argue that its service is the equivalent of electronic journalism and was never intended to be list brokering. In MUR 2361, however, there are allegations that Legi-Tech additionally developed lists from FEC reports and, in fact, sold them directly to a list broker. The

General Counsel's office believes that before the Commission brings this case to court we should investigate whether or not Legi-Tech has been engaged in intentional list brokering. The approach to be taken in court will change depending on the result of this investigation. Accordingly, this Office recommends merging this matter into MUR 2361.

II. RECOMMENDATIONS

1. Reject the counterproposal conciliation agreement submitted by Legi-Tech, Inc.

2. Merge this matter with MUR 2361.

3. Approve and send the attached letter.

Date 7/1/87

Lawrence M. Noble
Acting General Counsel

Attachments
1. Legi-Tech's initial response
2. Counterproposal
3. Letter

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
ACTING GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN JM

DATE: JULY 8, 1987

SUBJECT: OBJECTIONS TO MUR 2094 - GENERAL COUNSEL'S REPORT SIGNED JULY 1, 1987

The above-captioned document was circulated to the Commission on Thursday, July 2, 1987 at 12:00 P.M.

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

Commissioner Aikens	
Commissioner Elliott	X
Commissioner Josefiak	
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	X

This matter will be placed on the Executive Session agenda for July 14, 1987.

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2094
Legi-Tech, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 14, 1987, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 2094:

1. Reject the counterproposal conciliation agreement submitted by Legi-Tech, Inc.

2. Merge this matter with MUR 2361.

3. Approve and send the letter attached to the General Counsel's report dated July 1, 1987.

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

Attest:

7-15-87
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 22, 1987

Terrence J. Leany, Esquire
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
1825 Eye Street, N.W.
Washington, D.C. 20006

RE: MUR 2094
Legi-Tech, Inc.

Dear Mr. Leahy:

You were previously notified that on February 18, 1987, the Federal Election Commission found probable cause to believe your client, Legi-Tech, Inc., violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15 in connection with the captioned matter.

On July 14 , 1987, the Commission voted to reject the counterproposal conciliation agreement submitted by Legi-Tech, Inc. On that date the Commission also voted to merge this matter with MUR 2361.

Should you have any questions, please contact Sandra Robinson, the attorney handling MUR 2361, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
Acting General Counsel

cc: Frank Washington, Vice President
Legi-Tech, Inc.
507 Eighth Street, S.E.
Washington, D.C. 20003

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MUR 2307

AMERICAN CITIZENS FOR POLITICAL ACTION

COMPLAINT: DECEMBER 16, 1986

MERGED WITH MUR 2361: JULY 14, 1987

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RECEIVED AT THE FEC
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HERGE, SPARKS, CHRISTOPHER & BIONDI
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J. CURTIS HERGE
ROBERT R. SPARKS, JR.
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GEORGE V. BIONDI
DONNA LYNN MILLER

(703) 848-4700

December 16, 1986

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

Dear Sir:

This letter constitutes a complaint filed under and pursuant to 2 U.S.C. 437g(a)(1) by our client, Fund for a Conservative Majority, 412 First Street, S.E., Washington, D. C. 20003, which upon information and belief, alleges that Robert E. Dolan and American Citizens for Political Action (also konwn as The Reagan '86 Political Victory Fund) have violated the provisions of the Federal Election Campaign Act of 1971, as amended.

Specifically, Fund for a Conservative Majority believes the respondents have violated and continue to violate the provisions of 2 U.S.C. 438(a)(4), which provides, inter alia, that information copied from reports filed with the Federal Election Commission may not be used by any person for the purpose of soliciting contributions. In support of that belief, complainant submits herewith copies of two letter from Robert E. Dolan which solicit contributions to The Reagan '86 Political Victory Fund, "a special project" of American Citizens for Political Action. The reply address is given as "Office of the Chairman, Reagan '86 Political Victory Fund, A Project of American Citizens for Political Action, Washington, D. C. 20069-1025." Upon information and belief, those letters were mailed by respondents at various times in the months of October and December, 1986. Deleted from the enclosed copies of the letters are the names and addresses, which appeared on the originals, of the intended recipients of the letters.

The names deleted from the enclosed letters are pseudonyms, which, as authorized by 2 U.S.C. 438(a)(4), Fund for a Conservative Majority included in its reports filed with the

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Federal Election Commission in order to protect against the illegal use of the names and addresses of its contributors.

Submitted herewith under separate cover are ten (10) envelopes, containing solicitations mailed by respondents, each addressed to a pseudonym used by Fund for a Conservative Majority. Each pseudonym (name and address) appears in the list of pseudonyms Fund for a Conservative Majority previously registered with the Commission. A copy of that registration is included with the envelopes. The material submitted under separate cover is not part of this complaint and is provided only for the information of the Federal Election Commission. Pursuant to 11 CFR §104.3(e), the pseudonyms should not be made public.

Based upon the foregoing, it appears that Robert E. Dole and American Citizens for Political Action have violated and continue to violate the provisions of 2 U.S.C. 438(a)(4).

Very truly yours,

J. Curtis Herge

J. Curtis Herge
Counsel to Fund for a
Conservative Majority

Sworn to before me this 16th
day of December, 1986.

Sherley D. La Bonte
Notary Public

My commission expires: 4-20-87.

:sbl

Enclosures

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Office of the Chairman
Reagan '86 Political Victory Fund

[redacted]

Dear [redacted]

In this Holiday Season, I should be happy.

I should be happy, [redacted] But I must admit to you that I'm not.

Because today, the Reagan '86 Political Victory Fund faces a continuing, desperate financial emergency.

For even though two months have passed since the election, the Reagan '86 Political Victory Fund STILL faces $24,976 in unpaid campaign bills.

And to be honest with you, I'm worried sick about it.

I'm afraid our creditors will soon force the Reagan '86 Political Victory Fund to close our doors in a matter of weeks because of the unpaid bills.

That would be a tragedy for you, President Reagan and our Conservative America.

You know that when President Reagan counted on the Reagan '86 Political Victory Fund to help fight for his Conservative Senate, you and I did not let him down.

When President Reagan depended on the Reagan '86 Political Victory Fund to help his Conservative candidates fight the liberals, you and I did not let him down.

And now, [redacted] when our President urgently needs the Reagan '86 Political Victory Fund more than ever to fight for his Conservative Agenda...

...I'm afraid we won't be there to help him.

And that frightens me because today the anti-Reagan liberals have organized the most massive liberal war machine in American history to crush President Reagan's

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Conservative Agenda during his last two years in office.

Can we let our President down now in this dark hour for our Conservative America?

I know your answer, my friend.

I know you've never turned your back on President Reagan or our crucial fight for a Conservative America...and I know you never will.

Because you and I remember all too well what the liberals did to America before President Reagan came to Washington.

You haven't forgotten the liberals' spiraling interest rates and double-digit inflation.

You haven't forgotten that the liberals practically destroyed America's national defense.

And you haven't forgotten the liberals signed away the Panama Canal.

You, President Reagan and I haven't forgotten, my friend.

But the liberals have forgotten, as they always seem to.

And now, the liberals are fuming because President Reagan's programs have worked so well to strengthen America.

And the liberal appeasers are fuming because Ronald Reagan continues to have the overwhelming support of the American people for his defense programs.

But the liberals will not rest. They want to have one of their own in the White House soon.

They want to destroy President Reagan's most vital and courageous programs.

Can you and I stand by and let that happen?

Can you and I let the liberals destroy America AGAIN?

Once again, my friend, I know your answer.

You have stood by President Reagan and the Reagan '86 Political Victory Fund time and again.

So today, I know you will not let the liberal appeasers win a bitter victory against our President now.

I know you will not let the Reagan '86 Political Victory Fund close its doors forever because of unpaid campaign bills.

Because you know everything I spent, I spent for you, President Reagan, and our Conservative America.

You know that even though the election is over, our

27D43841857

President's Conservative battles are not over.

In fact, many of them have just begun, my friend.

Because the liberal appeasement lobby is right now recruiting more and more special-interest friends with huge bank accounts.

And because right now the liberals are mounting one of the most desperate attacks against a Conservative President that America has ever seen.

President Reagan urgently needs the help of the Reagan '86 Political Victory Fund to fight this growing liberal appeasement challenge to his authority as Commander-in-Chief.

But I must admit to you. Our battle is the most crucial Conservative battle ever fought in the history of America.

The liberals are too angry that our Conservative America is working and too vengeful to give up easily without a fight.

But we Conservatives are angry, too --

-- angry that liberals are destroying our national defense.

-- angry that liberals are weakening America's economy.

-- and angry that the liberals want to turn the clock back on everything Ronald Reagan has done to strengthen America.

Loyal Conservatives like you must never give up your vital fight for President Reagan's Conservative America.

President Reagan is extremely grateful to you, my friend.

The President is grateful that the Reagan '86 Political Victory Fund exists through your support to help fight the Conservative battles we must.

And I'm confident in your commitment to support President Reagan and the Reagan '86 Political Victory Fund.

But, I'm not happy today, my friend. I can't be.

Because in a matter of days I know our doors will close without your urgent contribution.

I'm not asking for a single penny for myself.

Because, my friend, you won't be helping me with your contribution today.

What you'll really be doing is helping me fight alongside our President against the liberals who want only to destroy President Reagan's programs.

Please, President Reagan is counting on the Reagan '86 Political Victory Fund to forge ahead.

[illegible], my friend, as National Chairman of the Reagan '86

9704341858

Political Vi[illegible]ry Fund, am counting on y[illegible] unselfish commitment today to help me pay the more than $24,976 in bills left over from our '86 fight to save the Senate.

I'm counting on your emergency $500.00 today. Please, [redacted] don't let me down.

Don't let our creditors shut us down just when President Reagan urgently needs our help to preserve his Conservative Agenda.

Please, [redacted] help me today to raise the $24,976 I need by the end of the month.

Because without your check for $500.00, I cannot guarantee the future of the Reagan '86 Political Victory Fund to the end of this month.

Please, I need your emergency $500.00 contribution today, there is no time left.

Together, [redacted] we've come so close to saving the Reagan '86 Political Victory Fund.

Please don't force me to close our doors now.

The liberals would be happy to see us go under.

But I know you will put your $500.00 check in the mail today. Please help me now when I need you the most.

Sincerely,

Robert E. Dolan

Robert E. Dolan
National Chairman

Please return entire page with your emergency check to:
REAGAN '86 POLITICAL VICTORY FUND
Washington, D.C. 20069-1025

Dear Chairman Dolan,

I can't let the Reagan '86 Political Victory Fund crumble to this financial emergency. To help you pay the $24,976 in unpaid campaign bills, I enclose:

( ) $500.00 ( ) Other $ _____

[redacted]

The Federal Election Commission requires that we ask:

[illegible]

9704384185 9

FROM _____

_____

_____

Place
Postage
Here

REAGAN '86 POLITICAL VICTORY FUND

A Project of American Citizens for Political Action

Washington, D.C. 20069-1025

AQV

9 7 0 4 2 8 4 1 8 0

FROM: _____

_____

_____

Place
Postage
Here

REAGAN '86 POLITICAL VICTORY FUND

A Project of American Citizens for Political Action

Washington, D.C. 20069-1025

AQT

970384186 1

plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 29, 1986

J. Curtis Herge, Esquire
Herge, Sparks, Christopher, and Biondi
Suite 200
8201 Greensboro Drive
McLean, VA 22102

Dear Mr. Herge:

This letter will acknowledge receipt of the complaint you filed on behalf of your client, Fund For A Conservative Majority, which we received on December 18, 1986, alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Robert E. Dolan, American Citizens For Political Action, and Randy Goodwin, as treasurer. The respondents will be notified of this complaint within five days.

Pursuant to your December 22, 1986, telephone conversation with Maura White Callaway of my staff, enclosed please find the materials you submitted with the complaint but requested not to be made part of the complaint. Insofar as you have requested the return of the materials, such materials will not be considered part of the complaint or relied upon in analyzing the allegations.

You will be notified as soon as the Commission takes final action on your complaint. Should you 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 the original complaint.

2704384186 2

For your information, we have attached a brief description of the Commission's procedures for handling complaints. We have numbered this matter MUR 2307. Please refer to this number in all future correspondence. If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Charles N. Steele
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosure

9704384863

pkm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 29, 1986

Randy Goodwin, Treasurer
American Citizens For Political Action
(aka The Reagan '86 Political Victory Fund)
2700 Virginia Avenue NW, #404
Washington, DC 20037

Re: MUR 2307

Dear Mr. Goodwin:

The Federal Election Commission received a complaint which alleges that American Citizens For Political Action (aka The Reagan '86 Political Victory Fund) and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2307. 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 you and American Citizens For Political Action (aka The Reagan '86 Political Victory Fund) in 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.

9704384184 64

If you have any questions, please contact Maura Callaway, the staff person assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

97043841865

pleen

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

December 29, 1986

Robert E. Dolan, National Chairman
American Citizens For Political Action
(aka The Reagan '86 Political Victory Fund)
2700 Virginia Avenue NW, #404
Washington, DC 20037

Re: MUR 2307

Dear Mr. Dolan:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2307. 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 you in 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.

9704384186 6

If you have any questions, please contact Maura Callaway, the staff person assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

97043841867

HERGE, SPARKS, CHRISTOPHER & BIONDI
ATTORNEYS AT LAW
SUITE 200
8201 GREENSBORO DRIVE
McLEAN, VIRGINIA 22102

J. CURTIS HERGE
ROBERT B. SPARKS, JR.
A. MARK CHRISTOPHER
GEORGE V. BIONDI
DONNA LYNN MILLER

(703) 848-4700

FEC
JAN 8 A8:59

January 5, 1987

97043841868

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
999 E Street
Washington, D. C. 20463

Attention: Lois G. Lerner
Associate General Counsel

RE: MUR 2037

Dear Mr. Steele:

This letter is written with reference to, and in furtherance of, the complaint filed on behalf of our client, Fund for a Conservative Majority, dated December 16, 1986, alleging an apparent violation of 2 U.S.C. 438(a)(4) by Robert E. Dolan and American Citizens for Political Action.

In the original complaint, it was stated that Robert E. Dolan and American Citizens for Political Action had mailed solicitations for contributions to individuals whose names and addresses appear as itemized contributors in reports filed with the Federal Election Commission by Fund for a Conservative Majority. Further, it was alleged that Robert E. Dolan and American Citizens for Political Action secured those names and addresses from those reports. As evidence in support of that allegation, we submit herewith three different solicitation packages mailed by Robert E. Dolan and American Citizens for Political Action. These packages bear the mail codes AQTX2, AQVX1 and AQ1OX. All three packages are addressed to: [redacted] Fund for a Conservative Majority previously informed the Federal Election

Commission that [redacted] is a pseudonym which was included in its reports as provided in 2 U.S.C. 438(a)(4).

Very truly yours,

J. Curtis Herge

J. Curtis Herge
Counsel to Fund for a
Conservative Majority

Sworn to before me this
5th day of January, 1987.

Shirley B. LaBorte
Notary Public

My Commission Expires: April 20, 1987.

:sbl

Enclosures

9704384186 9

WASHINGTON WORLD WIRE

SENDING: R. DLN, NTNL CHRMN - RGN '86 PLTCL VCTR FND

EMERGENCY ELECTION COMMUNICATION —
URGENT DELIVERY REQUESTED

[redacted]

AQTXZ

FRIEND:

PRESIDENT REAGAN'S ALL-OUT CAMPAIGN TO KEEP CONSERVATIVE MAJORITY CONTROL IN U.S. SENATE NOW IN DANGER.

MUST RECEIVE YOUR EMERGENCY ELECTION CONTRIBUTION OF AT LEAST $750.00 IMMEDIATELY.

ELEVENTH HOUR FIGHT FOR U.S. SENATE SLIPPING FROM REPUBLICAN CONTROL.

SENATE MAY FALL TO DEMOCRATS UNLESS YOU HELP NOW.

CRISIS FOR PRESIDENT REAGAN AND CONSERVATIVE AMERICA BEYOND WORDS IF DEMOCRATS RE-GAIN CONTROL OF U.S. SENATE.

TAX-INCREASES, DEFENSE-SLASHING, SOVIET-APPEASEMENT AND DECLINING ECONOMY IN STORE FOR AMERICA IF DEMOCRATS RE-GAIN SENATE CONTROL.

MUST RECEIVE YOUR EMERGENCY ELECTION CONTRIBUTION OF AT LEAST $750.00 IMMEDIATELY.

TIME CRUCIAL. NEED YOUR HELP NOW.

MUST GIVE PRO-REAGAN, CONSERVATIVE REPUBLICAN SENATE CANDIDATES MASSIVE FUNDING TO FIGHT DEMOCRAT SPECIAL-INTEREST CAMPAIGN DOLLARS.

MUST HAVE YOUR $750.00 OR MORE RIGHT NOW TO HELP PRO-DEFENSE, ANTI-APPEASEMENT REPUBLICAN SENATE CANDIDATES WIN ELECTION AND [illegible] OF PRESIDENT REAGAN IN U.S. SENATE.

MUST NOT LET PRESIDENT REAGAN BECOME LAME-DUCK IN LAST TWO YEARS BECAUSE OF DEMOCRAT-CONTROLLED SENATE.

MUST RECEIVE YOUR EMERGENCY ELECTION CONTRIBUTION OF AT LEAST $750.00 IMMEDIATELY TO HELP REPUBLICANS MAINTAIN CONTROL OF SENATE.

CRUCIAL YOU ACT NOW.

IMPORTANT YOU REFOLD THIS PAGE AND RETURN IN ENCLOSED EMERGENCY ENVELOPE WITH MAXIMUM CHECK FOR $750.00 OR MORE IMMEDIATELY.

PRESIDENT REAGAN AND REPUBLICAN CANDIDATES NEED YOU.

SEND $750.00.

CRUCIAL EMERGENCY: REPEAT — CRUCIAL EMERGENCY.

ROBERT DOLAN, NATIONAL CHAIRMAN, REAGAN '86 POLITICAL VICTORY FUND

** IMPORTANT INFORMATION ** PLEASE COMPLETE BELOW

ENCLOSED EMERGENCY CONTRIBUTION IS: ( ) $750.00 ( ) $ _____

TELEPHONE NUMBER IS: ( ) _____

THE FEDERAL ELECTION COMMISSION REQUESTS:

OCCUPATION: _____ EMPLOYER: _____

The Reagan '86 Political Victory Fund is a special project of and has been paid for by American Citizens for [illegible]
Not authorized by any candidate or candidate's committee

WASHINGTON WORLD

FROM _____

_____

_____

Place
Postage
Here

REAGAN '86 POLITICAL VICTORY FUND

A Project of American Citizens for Political Action

Washington, D.C. 20069-1025

AQT

WASHINGTON WORLD WIRE

RGN '86 PLTCL VCTRY FND SENDING: R.E. DOLAN 24-10-86 4:46PM EST

EMERGENCY COMMUNICATION: IMMEDIATE REPLY ESSENTIAL

FELLOW CONSERVATIVE:

JUST NOW ALERTED TO CRITICAL CRISIS FOR CONSERVATIVES -- THREATENS ENTIRE ELECTION!

LAST-DITCH LIBERAL-LOBBY ELECTION STRATEGY NOW DISCLOSED.

ALL PRESIDENT REAGAN'S CONSERVATIVE CANDIDATES IN SERIOUS DANGER.

LIBERAL ELECTIONS-LOBBY PLANNING MAJOR MUD-SLINGING CAMPAIGN TO DAMAGE REPUTATION AND CREDIBILITY OF CONSERVATIVE CANDIDATES.

LIBERAL ELECTIONS-LOBBY PLANNING ALL-OUT SMEAR ASSAULT ON VOTING RECORDS AND PERSONAL BACKGROUND OF CONSERVATIVE SENATE CANDIDATES.

LIBERAL ELECTIONS-LOBBY PLANS TO REVEAL MISLEADING -- DAMAGING INFORMATION ONLY DAYS BEFORE THE ELECTIONS.

YOU AND I KNOW LIBERAL ASSAULT IS PACK OF LIES!

MUD-SLINGING TACTICS OF LIBERALS ENDANGER FUTURE CONSERVATIVE CONTROL OF U.S. SENATE. MUST HOLD ONTO U.S. SENATE! MUST!

LIBERAL SMEAR CAMPAIGN CRITICALLY THREATENS PRESIDENT REAGAN'S CONTROL IN SENATE AND CONGRESS.

NATIONAL DEFENSE -- STAND TOUGH POLICY -- U.S. ECONOMY IN SERIOUS DANGER IF LIBERAL ASSAULT IS SUCCESSFUL.

MUST STOP LIBERAL ELECTIONS-LOBBY FROM SUCCESS -- REPEAT: REAGAN '86 POLITICAL VICTORY FUND MUST COUNTER-ATTACK AND STOP LIBERALS!

LESS THAN 15 DAYS LEFT BEFORE MOST CRUCIAL ELECTIONS FOR PRESIDENT REAGAN AND CONSERVATIVE AMERICA.

MUST START COUNTER-ATTACK ON LIBERALS NO LATER THAN OCTOBER 31.

NEED YOUR IMMEDIATE $35 OR MORE EMERGENCY CONTRIBUTION TO HELP PRO-REAGAN CONSERVATIVE CANDIDATES SURVIVE LIBERAL ASSAULT.

MUST RECEIVE YOUR EMERGENCY $35 OR MORE ON OR BEFORE OCTOBER 30.

ABSOLUTE CRISIS RIGHT NOW! MUST NOT LET MUD-SLINGING SMEAR CAMPAIGN OF LIBERAL ELECTIONS-LOBBY SUCCEED.

MUST ENSURE ELECTION VICTORY FOR PRESIDENT REAGAN'S CONSERVATIVE CANDIDATES. MUST PRESERVE CONSERVATIVE REPUTATION.

SEND $35 OR MORE IMMEDIATELY -- PLEASE -- ABSOLUTELY CRUCIAL. MUST RECEIVE YOUR HELP AND CONTRIBUTION ON OR BEFORE OCTOBER 30.

IN DESPERATION: ROBERT E. DOLAN -- NATIONAL CHAIRMAN

********** DETACH HERE

PLEASE COMPLETE INFORMATION AND RUSH IMMEDIATELY: CHECK PAYABLE TO: REAGAN '86 POLITICAL VICTORY FUND -- WASHINGTON, D.C. 20069-1025

CHAIRMAN DOLAN: STOP SMEAR CAMPAIGN. SAVE CONSERVATIVE CANDIDATES. ENCLOSED IS EMERGENCY CONTRIBUTION OF:

[ ]$35 [ ]$_____

FEDERAL ELECTION COMMISSION REQUESTED INFORMATION: PLEASE COMPLETE.

OCCUPATION: _____ EMPLOYER: _____

The Reagan '86 Political Victory Fund is a special project of and has been paid for by American Citizens for Political Action

Not authorized by any candidate or candidate's committee

WASHINGTON WOMEN'S

FIRST CLASS

FROM: _____

_____

_____

Place
Postage
Here

RUSH

REAGAN '86 POLITICAL VICTORY FUND

A Project of American Citizens for Political Action

Washington, D.C. 20069-1025

URGENT
DEADLINE

ACPS

Office of the Chairman
Reagan '86 Political Victory Fund

[redacted]

Dear Friend,

In this Holiday Season, I should be happy.

I should be happy. But I must admit to you that I'm not.

Because today, the Reagan '86 Political Victory Fund faces a continuing, desperate financial emergency.

For even though two months have passed since the election, the Reagan '86 Political Victory Fund STILL faces $24,976 in unpaid campaign bills.

And to be honest with you, I'm worried sick about it.

I'm afraid our creditors will soon force the Reagan '86 Political Victory Fund to close our doors in a matter of weeks because of the unpaid bills.

That would be a tragedy for you, President Reagan and our Conservative America.

You know that when President Reagan counted on the Reagan '86 Political Victory Fund to help fight for his Conservative Senate, you and I did not let him down.

When President Reagan depended on the Reagan '86 Political Victory Fund to help his Conservative candidates fight the liberals, you and I did not let him down.

And now when our President urgently needs the Reagan '86 Political Victory Fund more than ever to fight for his Conservative Agenda...

...I'm afraid we won't be there to help him.

And that frightens me because today the anti-Reagan liberals have organized the most massive liberal war machine in American history to crush President Reagan's

Washington, D.C. 20069-1025

A copy of our financial report is available from the Federal Election Commission

Conservative Agenda during his last two years in office.

Can we let our President down now in this dark hour for our Conservative America?

I know your answer, my friend.

I know you've never turned your back on President Reagan or our crucial fight for a Conservative America...and I know you never will.

Because you and I remember all too well what the liberals did to America before President Reagan came to Washington.

You haven't forgotten the liberals' spiraling interest rates and double-digit inflation.

You haven't forgotten that the liberals practically destroyed America's national defense.

And you haven't forgotten the liberals signed away the Panama Canal.

You, President Reagan and I haven't forgotten, my friend.

But the liberals have forgotten, as they always seem to.

And now, the liberals are fuming because President Reagan's programs have worked so well to strengthen America.

And the liberal appeasers are fuming because Ronald Reagan continues to have the overwhelming support of the American people for his defense programs.

But the liberals will not rest. They want to have one of their own in the White House soon.

They want to destroy President Reagan's most vital and courageous programs.

Can you and I stand by and let that happen?

Can you and I let the liberals destroy America AGAIN?

Once again, my friend, I know your answer.

You have stood by President Reagan and the Reagan '86 Political Victory Fund time and again.

So today, I know you will not let the liberal appeasers win a bitter victory against our President now.

I know you will not let the Reagan '86 Political Victory Fund close its doors forever because of unpaid campaign bills.

Because you know everything I spent, I spent for you, President Reagan, and our Conservative America.

You know that even though the election is over, our

President's Conservative battles are not over.

In fact, many of them have just begun, my friend.

Because the liberal appeasement lobby is right now recruiting more and more special-interest friends with huge bank accounts.

And because right now the liberals are mounting one of the most desperate attacks against a Conservative President that America has ever seen.

President Reagan urgently needs the help of the Reagan '86 Political Victory Fund to fight this growing liberal appeasement challenge to his authority as Commander-in-Chief.

But I must admit to you. Our battle is the most crucial Conservative battle ever fought in the history of America.

The liberals are too angry that our Conservative America is working and too vengeful to give up easily without a fight.

But we Conservatives are angry, too --

-- angry that liberals are destroying our national defense.

-- angry that liberals are weakening America's economy.

-- and angry that the liberals want to turn the clock back on everything Ronald Reagan has done to strengthen America.

Loyal Conservatives like you must never give up your vital fight for President Reagan's Conservative America.

President Reagan is extremely grateful to you, my friend.

The President is grateful that the Reagan '86 Political Victory Fund exists through your support to help fight the Conservative battles we must.

And I'm confident in your commitment to support President Reagan and the Reagan '86 Political Victory Fund.

But, I'm not happy today, my friend. I can't be.

Because in a matter of days I know our doors will close without your urgent contribution.

I'm not asking for a single penny for myself.

Because, my friend, you won't be helping me with your contribution today.

What you'll really be doing is helping me fight alongside our President against the liberals who want only to destroy President Reagan's programs.

Please, President Reagan is counting on the Reagan '86 Political Victory Fund to forge ahead.

And I, my friend, as National Chairman of the Reagan '86

Political Victory Fund, am counting on your unselfish commitment today to help me pay the more than $24,976 in bills left over from our '86 fight to save the Senate.

I'm counting on your emergency $500.00 today. Please don't let me down.

Don't let our creditors shut us down just when President Reagan urgently needs our help to preserve his Conservative Agenda.

Please help me today to raise the $24,976 I need by the end of the month.

Because without your check for $500.00, I cannot guarantee the future of the Reagan '86 Political Victory Fund to the end of this month.

Please, I need your emergency $500.00 contribution today, there is no time left.

Together we've come so close to saving the Reagan '86 Political Victory Fund.

Please don't force me to close our doors now.

The liberals would be happy to see us go under.

But I know you will put your $500.00 check in the mail today. Please help me now when I need you the most.

Sincerely,

Robert E. Dolan

Robert E. Dolan
National Chairman

Please return entire page with your emergency check to:
REAGAN '86 POLITICAL VICTORY FUND
Washington, D.C. 20069-1025

Dear Chairman Dolan,

I can't let the Reagan '86 Political Victory Fund crumble to this financial emergency. To help you pay the $24,976 in unpaid campaign bills, I enclose:

( )$500.00 ( )Other $ _____

AQVX1

The Federal Election Commission requires that we ask:

Occupation _____ Employer _____

The Reagan '86 Political Victory Fund is a special project of and has been paid for by American Citizens for Reagan
Not authorized by any candidate or candidate's committee

FROM

Place Postage Here

REAGAN '86 POLITICAL VICTORY FUND

A Project of American Citizens for Political Action

Washington, D.C. 20069-1025

AQV

Office of the Chairman
Reagan '86 Political Victory Fund
A Project of American Citizens for Political Action
Washington, D.C. 20069-1025

Bulk Rate
125

plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 14, 1987

J. Curtis Herge, Esquire
Herge, Sparks, Christopher and Biondi
Suite 200
8201 Greensboro Drive
McLean, Virginia 22102

Dear Mr. Herge:

This letter acknowledges receipt on January 8, 1987, of the supplement to the complaint you filed on behalf of your client, Fund for a Conservative Majority, against Robert Dolan, American Citizens for Political Action, and Randy Goodwin, as treasurer. The respondents will be sent copies of this supplemental information. You will be notified as soon as the Commission takes final action on your complaint.

Sincerely,

Charles N. Steele
General Counsel

By: Lois G. Lerner
Associate General Counsel

2704784182

Pl'ban

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 14, 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Randy Goodwin, Treasurer
American Citizens for Political Action
(aka The Reagan '86 Political Victory Fund)
2700 Virginia Avenue, N.W., #404
Washington, D.C. 20037

RE: MUR 2307
American Citizens
for Political Action;
Randy Goodwin, as
treasurer

Dear Mr. Goodwin:

On December 29, 1986, the Commission notified you of a complaint alleging that American Citizens for Political Action and you, as treasurer, violated certain sections of the Federal Election Campaign Act of 1971, as amended. On January 8, 1987, this Office received a supplement to the complaint which is enclosed for your information.

If you have any questions please contact Maura White Callaway at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosure

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plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 14, 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert Dolan, National Chairman
American Citizens for Political Action
(aka The Reagan '86 Political Victory
Fund)
2700 Virginia Avenue, N.W., #404
Washington, D.C. 20037

RE: MUR 2307
Robert Dolan

Dear Mr. Dolan:

On December 29, 1986, the Commission notified you of a complaint alleging that you violated certain sections of the Federal Election Campaign Act of 1971, as amended. On January 8, 1987, this Office received a supplement to the complaint which is enclosed for your information.

If you have any questions please contact Maura White Callaway at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosure

9704384184

RECEIVED AT THE FEC
CCC#2487
87 JAN 14 A11:54

January 12, 1987

Ms. Maura Callaway
Federal Election Commission
Washington, D.C. 20463

Dear Ms. Callaway:

RE: MUR 2307

This letter is designed to confirm the fact that on this date a fifteen day extention to respond to your offices' letter of December 29, 1986 has been granted to the respondent(s) in the above mentioned matter.

Thank you for attention to this matter.

Sincerely,

Robert E. Dolan

Robert E. Dolan

cc: Randy Goodwin

FEC
GENERAL COUNSEL
87 JAN 14 P3:38

7/0438418885

pdm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1987

Robert Dolan, National Chairman
American Citizens for Political Action
2700 Virginia Avenue, N.W., #404
Washington, D.C. 20037

Re: MUR 2307
Robert Dolan

Dear Mr. Dolan:

This is in response to your telephone call and letter of January 12, 1987, in which you requested a 15 day extension of time to respond to the complainant's allegations against you in the above-captioned matter.

I have reviewed your request and agree to the extension. Accordingly, your response is due no later than January 30, 1987. If you have any questions, please contact Maura White Callaway at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Lois G. L

By: Lois G. Lerner
Associate General Counsel

27043841886

Randy J. Goodwin
13421 Malena Drive
Santa Ana, California 92705
(714) 832-9285

RECEIVED AT THE FEC
CCG#2598
87 JAN 30 P 3: 52

January 24, 1987

Charles N. Steele
General Counsel
Federal Election Commission
Washington, D.C. 20463

RECEIVED
GENERAL COUNSEL
FEB 2 A10: 18

Re: MUR 2598

Dear Mr. Steele:

This is in response to your letter of 11-19-86 concerning MUR 2598.

I am willing to cooperate fully with the Commission and provide any information I may have that is relevant to the allegation. I am not now, nor have I ever been, involved in the day-to-day management of American Citizens for Political Action and, therefore, cannot shed any light on specific details of fund-raising transactions. American Citizens for Political Action is a corporation in which I have served as Treasurer.

Please be advised that for reasons unrelated to this MUR, I have resigned as treasurer of American Citizens for Political Action and as a member of the board of directors. I am advised that an amended statement of organization should soon be filed to reflect this change forthwith by ACPA.

In light of my resignation, please forward any and all correspondence concerning my involvement with this MUR to the address listed above.

To the best of my knowledge, American Citizens for Political Action has never used information copied from Federal Election Commission reports for the purpose of soliciting contributions.

Sincerely,

Randy Goodwin

Randy J. Goodwin

cc: Robert E. Dolan

Sworn to before me this 28, day of January, 1987

State of California
County of Orange

Notary Public

OFFICIAL SEAL
ERIKA C. LASCOE
Notary Public-California
ORANGE COUNTY
My Comm. Exp. Aug. 8, 1988

27043841867

RECEIVED AT THE FEC

87 JAN 31 A10:58

January 28, 1987

MUR 2307

Ms. Maura Callaway
Federal Election Commission
Reports Analysis Division
Washington, D.C.

Re: C00184861

Dear Maura:

As promised, for your files, please find enclosed herewith an amended Statement of Organization for American Citizens for Political Action.

Sincerely,

Robert E. Dolan
Chairman

9704384188 8

RECEIVED
GENERAL COUNSEL

_ FEB 3 A10:40

GCC#2577

LAW OFFICES
CANTER, DISKIN & BURKHOLDER
2020 K STREET, N. W. SUITE 350
WASHINGTON, D. C. 20006
(202) 861-0740

MACKENZIE CANTER III (VA, DC, MD)
MARK J. DISKIN (DC, MD)
CHRISTINA M. BURKHOLDER (CT, DC, VA)
KARL SCHMEIDLER (NY)
RICHARD DOERY (NY, DC)

OF COUNSEL
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600 CAMERON STREET
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(202) 861-0740

MARYLAND OFFICE
10220 RIVER ROAD
POTOMAC, MARYLAND 20854
(202) 861-0740

January 28, 1987

1

JAN 29 P12:00
GENERAL COUNSEL

VIA SPECIAL MESSENGER

Lois G. Lerner, Esq.
Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Matter Under Review ("MUR") ~~2037~~ 2307; American Citizens for Political Action, Robert E. Dolan

Dear Ms. Lerner:

Please find submitted herewith an executed designation of counsel form authorizing this law firm to appear on behalf of respondents American Citizens for Political Action ("ACPA") and Robert E. Dolan.

Respondents do not dispute transmitting the solicitation in issue, as identified in complainant's letter of December 16, 1986.

Respondents, however, state that respondents, directly or indirectly, did not cause any person to extract any names of persons from Federal Election Campaign reports, in violation of 2 U.S.C. §438(a)(4).

Respondents rented a mailing list from an independent third party mailing list broker and mailed solicitations to the persons on said list.

Respondents, therefore, are without information or knowledge as to the truth of Complainant's assertion that the solicitation was mailed to persons whose names were extracted from the Federal Election Commission reports filed by Fund for a Conservative Majority.

Accordingly, the respondents, respectfully, set forth the following denials and defenses:

1. **Deny** that the person(s) to whom the solicitations were sent were identified by the Complainant in its reports required by the Federal Election Campaign Act and demand strict proof thereof.

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2. **Deny** that the names on the mailing list were extracted from said reports filed by complainant and demand strict proof thereof.

3. Assuming, arguendo, that it is proved that said names were extracted by a third party from Federal Election Reports, in violation of 2 U.S.C. 438(a)(4), **deny** that their use by respondents in connection with the solicitation constitutes a violation of 2 U.S.C. 438(a)(4).

4. Assuming arguendo, that the averments set forth in paragraphs 1 and 2 above are proved, and, assuming, arguendo, further, that said use of said names by Respondents is deemed by the Federal Election Commission to be a violation of 2 U.S.C. Section 434(a)(4), Respondents respectfully raise the defense that the Fifth Amendment bars the imposition of any penalty, in the form of a civil penalty, or injunction, in the absence of a showing of scienter on the part of Respondents.

5. Respondents, further, raise the defense that 2 U.S.C. Section 438(a)(4) is unconstitutional as repugnant to the Fifth Amendment because it purports to provide for a civil penalty, in the absence of any required showing that the respondent possessed scienter.

6. Respondents raise the defense that 2 U.S.C. 438(a)(4) is unconstitutional as repugnant to the First Amendment because it unnecessarily and arbitrarily restricts freedom of speech and freedom of association of the respondents and of these individuals listed on said reports filed with the Federal Election Commission by purportedly barring respondents (and said individuals and persons similarly situated) from communicating with potential supporters of their causes and organizations.

7. Respondents demand a trial by jury on all issues of fact, as provided by the Constitution of the United States of America.

Respectfully submitted,

By: M Canter III

MacKenzie Canter, III

9704384189 0

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2307

NAME OF COUNSEL: MACKENZIE CANTER, III , MARK J. DISKIN

ADDRESS: CANTER, DISKIN & BURKHOLDER

Suite 350, 2020 K St., N.W.

Washington, D.C. 20006

TELEPHONE: 861-0740 (202)

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. 28, 1987

Date

Signature
Individually and on Behalf of
American Citizens for Political Action

RESPONDENT'S NAME: Robert E. Dolan and American Citizens for Political Action

ADDRESS: 2700 Virginia Ave., N.W., Suite 404

Washington, D.C. 20037

HOME PHONE:

BUSINESS PHONE: 333-2092

9704384189 1

SENSITIVE

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR 2307
DATE COMPLAINT RECEIVED: 12-18-86
DATE OF NOTIFICATION: 12-29-86
STAFF: Maura White Callaway

COMPLAINANT: Fund for a Conservative Majority

RESPONDENTS: American Citizens for Political Action
Robert E. Dolan, as treasurer

RELEVANT STATUTE: 2 U.S.C. § 438(a)(4)

INTERNAL REPORTS CHECKED: Public Records

FEDERAL AGENCIES CHECKED: None

87 FEB 10 A10:40
FEC
COMMISSION SECRETARY

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GENERATION OF MATTER

On December 18, 1986, the Fund for a Conservative Majority filed a complaint against Robert E. Dolan and American Citizens for Political Action. The complaint alleges that the respondents violated 2 U.S.C. § 438(a)(4) by using information contained in the complainant's reports to solicit contributions to The Reagan '86 Political Victory Fund, a special project of American Citizens for Political Action.

In support of its assertion the complainant provided copies of two letters signed by Robert Dolan, as National Chairman of the special project, which solicit contributions to The Reagan '86 Political Victory Fund. The complainant deleted the names and addresses of the intended recipients of the letters, and states that the letters were apparently mailed in October and

December 1986. Notification of the complaint was mailed to the respondents on December 29, 1986.*/

On January 8, 1987, the complainant filed a supplement to the complaint. The supplement constitutes copies of three different solicitation packages mailed by the respondents and addressed to one pseudonym contained on the list of pseudonyms filed by the complainant with the Commission. On January 14, 1987, copies of the supplemental material were mailed to the respondents.

On January 14, 1987, this office received a request from Robert Dolan for a 15 day extension of time to respond to the complaint's allegations. By letter dated January 28, 1987, Robert Dolan was notified that the requested extension had been granted. The respondents submitted their response to the complaint on January 29, 1987. Subsequent to review of the respondents' reply to the complaint's allegations, this office will prepare a report containing specific recommendations.

Date 2/9/87

Charles N. Steele
General Counsel

By: Lois G. Lerner
Lois G. Lerner
Associate General Counsel

---

*/ Notification of the complaint was also mailed to Randy Goodwin, as treasurer of American Citizens for Political Action. However, subsequent to the filing of the complaint Randy Goodwin resigned as treasurer and was replaced by Robert Dolan.

9704384189 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE
GENERAL COUNSEL

FROM: MWE MARJORIE W. EMMONS/ JOSHUA MCFADDEN JM

DATE: FEBRUARY 11, 1987

SUBJECT: MUR 2307 - FIRST GENERAL COUNSEL'S REPORT
SIGNED FEBRUARY 9, 1987

The above-captioned matter was received in the Office of the Secretary of the Commission Tuesday, February 10, 1987 at 10:40 A.M. and circulated to the Commission on a 24-hour no-objection basis Monday, February 10, 1987 at 4:00 P.M.

There were no objections received in the Office of the Secretary of the Commission to the First General Counsel's Report at the time of the deadline.

97043841894

GCC # 2741

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
919 EIGHTEENTH STREET, N.W.
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(617) 573-0002
ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 651-3000
300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
(213) 687-5000
333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0700

RECEIVED
87 FEB 23 P3:53
OFFICE OF THE
GENERAL COUNSEL

February 20, 1987

Ms. Maura Callaway
Federal Election Commission
Office of the General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2307 - American Citizens for Political Action

Dear Maura:

Enclosed please find a designation of counsel in the above matter. You will note this is a substitution of counsel. If you need anything else from me, the client or MacKenzie Canter, please let me know. We can discuss further on Monday.

Sincerely,

Kenneth A. Gross

97043841895

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2307

NAME OF COUNSEL: Kenneth A. Gross, Esq.*

ADDRESS: Skadden, Arps, et. al.
919 18th Street, N.W.
Washington, D.C. 20006

TELEPHONE: (202) 463-8700

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.

February 13, 1987
Date

Signature

RESPONDENT'S NAME: American Citizens for Political Action

ADDRESS: 2700 Virginia Avenue, N.W.
Washington, D.C. 20037

HOME PHONE: (202) 333-2092

BUSINESS PHONE:

From this point, Mr. Gross will replace MacKenzie Canter, III, the attorney who I previously designated. Please direct all future correspondence to Mr. Gross instead of Mr. Canter.

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
American Citizens for Political Action; Robert Dolan, as treasurer	)	MUR 2307

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On December 18, 1986, the Fund for a Conservative Majority filed a complaint against American Citizens for Political Action and Robert Dolan. On December 29, 1986, notification of the complaint was mailed to the respondents. On January 8, 1987, a supplement to the complaint was filed. A copy of the supplement was mailed to the respondents on January 14, 1987.1/ On January 14, 1987, the respondents submitted a request for a 15 day extension of time to respond to the complaint's allegations. By letter dated January 28, 1987, the respondents were notified that the requested extension had been granted. On January 29, 1987, the respondents submitted a response (Attachment 1). On February 10, 1987, a First General Counsel's Report was circulated to the Commission stating that subsequent to review of the respondents' response, this office would submit a report to the Commission containing specific recommendations.

II. FACTUAL AND LEGAL ANALYSIS

(A) The Facts

The complaint alleges that American Citizens for Political Action and Robert Dolan violated 2 U.S.C. § 438(a)(4) by using

1/ The complaint and supplement were also mailed to Randy Goodwin, who at that time was the treasurer of American Citizens for Political Action.

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information contained on the complainant's reports filed with the Commission to solicit contributions. In support of the allegation the complainant submitted copies of two letters soliciting contributions of $500 and $750, respectively, to the Reagan '86 Political Victory Fund, a "special project" of American Citizens for Political Action. The letters are from Robert Dolan, Chairman of the Reagan '86 Political Victory Fund, and the address on the reply envelope is listed as "Reagan '86 Political Victory Fund, a Project of American Citizens for Political Action." The complainant asserts that the letters were mailed by the respondents at various times during the months of October and December 1986. According to the complainant, the letters were mailed to pseudonyms contained on the complainant's reports filed with the Commission.2/

The supplement to the complaint constituted copies of "three different solicitation packages mailed by Robert E. Dolan and American Citizens for Political Action." The three packages are

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2/ The complainant deleted from the copies of the two letters the names and addresses of the intended recipients of the letters.

The complainant also included with the complaint "ten (10) envelopes, containing solicitations mailed by respondents, each addressed to a pseudonym used by Fund for a Conservative Majority." The complainant submitted this information "under separate cover" and noted that it "is not part of this complaint." For this reason, on December 29, 1986, the above documents were returned to the complainant's counsel after counsel requested their return rather than their disclosure to the respondents.

addressed to [redacted] The complainant informed the Commission on April 22, 1986, that [redacted] is a pseudonym which was included in its reports as provided in 2 U.S.C. § 438(a)(4). Two of the three letters comprising the supplement are virtually identical to the two letters appended to the December 18, 1986, complaint.3/ The third letter solicits contributions of $35, also with respect to the Reagan '86 Political Victory Fund.

In their response the respondents admit "transmitting" the solicitation letters appended to the December 18, 1986, complaint, but contend that they did not directly or indirectly "cause any person to extract any names of persons from Federal Election Campaign reports, in violation of 2 U.S.C. § 438(a)(4)." The respondents maintain that they rented a mailing list from an independent third party mailing list broker and mailed solicitations to persons on that list. It is, therefore, the respondents' position that they "are without information or knowledge as to the truth of Complainant's assertion that the solicitation was mailed to persons whose names were extracted

3/ Four of the five letters supplied by the complainant state: "The Reagan '86 Political Victory Fund is a special project of and has been paid for by American Citizens for Political Action. Not authorized by any candidate or candidate's committee." The remaining letter does not contain the above information. However, the poor quality of the reproduction of the bottom portion of the letter's pages, as well as the fact that the virtually identical version of the letter contains the above disclaimer, suggests that the original letter contained the disclaimer. Thus, the instant report does not contain a recommendation with respect to 2 U.S.C. § 441d(a).

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from the Federal Election Commission reports filed by Fund for a Conservative Majority."4/

On January 24, 1987, Randy Goodwin submitted a letter stating that he had resigned as treasurer of American Citizens for Political Action, and that he was never involved in the "day-to-day management" and "cannot shed any light on details of fundraising transactions." Mr. Goodwin stated in his response that to the best of his knowledge American Citizens for Political Action "has never used information copied from Federal Election Commission reports for the purpose of soliciting contributions." (Attachment 2.) On January 30, 1987, American Citizens for Political Action filed an amended Statement of Organization listing Robert Dolan as treasurer.

(B) The Applicable Law

Pursuant to 2 U.S.C. § 438(a)(4), any information copied from reports or statements required to be filed under the Federal Election Campaign Act of 1971, as amended, may not be sold or used by any person for the purpose of soliciting contributions or

---

4/ In addition to these arguments, the response denies that the persons "to whom solicitations were sent were identified by the Complainant in its reports," and denies that the names on the mailing list were extracted from said reports. The response also contains the argument that 2 U.S.C. § 438(a)(4) is "unconstitutional as repugnant to the First Amendment because it unnecessarily and arbitrarily restricts freedom of speech and freedom of association of the respondents and of these individuals listed on said reports filed with the Federal Election Commission by purportedly barring respondents (and said individuals and persons similarly situated) from communicating with potential supporters of their causes and organizations."

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for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee. A political committee may submit ten pseudonyms on each report filed in order to protect against the illegal use of names and addresses of contributors, provided such committee attaches a list of such pseudonyms to the appropriate report.

(C) Application of the Law to the Facts

The information in hand indicates that the names of contributors listed on the complainant's reports were in fact used and possibly sold by persons for commercial purposes and to solicit contributions. The documented solicitations by the "The Reagan '86 Victory Fund" of the complainant's pseudonym supports this view.5/ Although the respondents deny that they copied the names from the complainant's reports, they have not substantiated this claim by providing the name of the entity or person from whom they purportedly rented the mailing list at issue. In view of the lack of any evidence corroborating the respondents' assertion, and in order to investigate the complainant's allegation and the respondents' role therein, it

5/ The complaint's allegations go solely to a violation of 2 U.S.C. § 438(a)(4). This office makes no recommendation with respect to the naming of the American Citizens for Political Action's "special project." In Common Cause v. Federal Election Commission the court determined that an unauthorized political committee may not use the name of a candidate in a "project," but the court stayed the effect of its decision pending appeal. Common Cause v. Federal Election Commission, No. 83-2199 (D.D.C. opinion filed December 30, 1986; order granting stay filed January 28, 1987), appeal pending, No. 87-5036 (D.C. Cir.).

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is the recommendation of this office that the Commission find reason to believe American Citizens for Political Action and Robert Dolan, as treasurer, violated 2 U.S.C. § 438(a)(4).6/

III. RECOMMENDATIONS

1. Find reason to believe American Citizens for Political Action and Robert Dolan, as treasurer, violated 2 U.S.C. § 438(a)(4).

2. Approve the attached letter, questions, and request for documents.

Charles N. Steele
General Counsel

2/20/87
Date

BY: Lawrence M. Noble
Deputy General Counsel

Attachments
1. Response from Canter
2. Response from Goodwin
3. Letter, questions and document request

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6/ Insofar as Robert Dolan is now the treasurer of American Citizens for Political Action, no separate recommendation is being put forth with respect to him as National Chairman of "The Reagan '86 Political Victory Fund."

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
American Citizens for Political Action; Robert Dolan, as treasurer	)	MUR 2307

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 26, 1987, the Commission decided by a vote of 6-0 to take the following actions in MUR 2307:

1. Find reason to believe American Citizens for Political Action and Robert Dolan, as treasurer, violated 2 U.S.C. § 438(a)(4).

2. Approve the letter, questions, and request for documents, as recommended in the General Counsel's Report signed February 20, 1987.

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

Attest:

2-26-87
Date

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

Received in the Office of Commission Secretary: Fri., 2-20-87,
Circulated on 48 hour tally basis: Tues., 2-24-87,
Deadline for vote: Thures., 2-26-87,

27043841903

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 2, 1987

Kenneth A. Gross, Esquire
Skadden, Arps, Slate, Meagher and Flom
919 Eighteenth Street, N.W.
Washington, D.C. 20006-5503

RE: MUR 2307
American Citizens for
Political Action;
Robert Dolan, as treasurer

Dear Mr. Gross:

The Federal Election Commission notified your clients on December 29, 1986, 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 clients at that time. On January 14, 1987, a copy of the supplement to the complaint was also forwarded to your clients.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on February 26, 1987, determined that there is reason to believe American Citizens for Political Action and Robert Dolan, as treasurer, violated 2 U.S.C. § 438(a)(4), a provision of the Act. Specifically, it appears that American Citizens for Political Action and Robert Dolan, as treasurer, used information copied from reports required to be filed with the Commission for the purpose of soliciting contributions.

Your clients' response to the Commission's initial notification of this complaint did not provide complete information regarding the matter in question. Please submit answers to the enclosed questions and request for documents within 15 days of receipt of this letter. Statements should be submitted under oath. You may also submit any factual or legal materials that you believe are relevant to the Commission's analysis of this matter. Please file any such materials along with your clients' response to the enclosed questions.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be

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pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel is not authorized to give extensions beyond 20 days.

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

If you have any questions, please contact Maura White Callaway, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Scott E. Thomas
Chairman

Enclosure
Questions and Request for Documents

9704384190 5

Questions and Request for Documents to: American Citizens for Political Action and Robert Dolan

1. State the name, address, and telephone number of the person or entity from whom the mailing list referred to in your response dated January 28, 1987, was rented. If the list was rented from an entity, state the name of the entity's principal officer or employee.

2. State the name, address, and telephone number of the person or entity from whom the mailing list containing the name was rented. If the list was rented from an entity, state the name of the entity's principal officer or employee.

3. For each mailing list identified in response to questions and 2, state the name and address of the owner of each list.

4. State the meaning of the following codes contained on the solicitation letters mailed by American Citizens for Political Action to AQTX2, AQVXI; and AQ10X.

5. State the name, if any, of each mailing list identified in response to questions 1 and 2, and state the number of names contained on each list.

6. State the dates of the rentals of each mailing list identified in response to questions 1 and 2.

7. State the terms of the rental of each mailing list identified in response to questions 1 and 2, and whether the use of each list was limited to a one-time solicitation.

8. State whether at the time of the rental of the mailing list(s) identified in response to questions 1 and 2 an inquiry was made as to the source of the names on the mailing list(s). If the answer is yes, state the name of the person making the inquiry, the name of the person of whom the inquiry was made, and the answer received to the inquiry.

9. Provide originals or true copies of all documents, including correspondence, notes, memoranda, contracts, invoices, and pamphlets concerning your rental of the list(s) identified in response to questions 1 and 2.

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CCC#292

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

919 EIGHTEENTH STREET, N.W.
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(617) 523-0002

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LOS ANGELES, CALIFORNIA 90071
(213) 687-5000

333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0700

March 17, 1987

Ms. Sondra Robinson
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2307 ACPA

Dear Ms. Robinson:

On February 26, 1987, the Commission found reason to bleieve that American Citizens for Political Action ("ACPA") and Robert Dolan, as treasurer, violated 2 U.S.C. § 438(a)(4). The Commission also approved questions and requests for documents. I am in the process of compiling the response to the questions, requests of documents and the reason to believe finding but will need an additional fifteen days so that the response is complete.

Accordingly, ACPA and Robert Dolan, as treasurer, request an extension of time for an additional fifteen days to respond to the pending inquiry. Your cooperation in this matter is greatly appreciated.

Very truly yours,

Kenneth A. Gross

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 20, 1987

Mr. Kenneth A. Gross
Skadden, Arps, Slate, Meagher & Flom
919 Eighteenth Street, N.W.
Washington, D.C. 20006-5503

Re: MUR 2307
American Citizens for
Political Action
Robert Dolan, as treasurer

Dear Mr. Gross:

This is in response to your letter dated March 17, 1987, which we received on March 18, 1987, requesting an extension of fifteen (15) days to respond to questions and requests for documents. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on April 6, 1987.

If you have any questions, please contact Sandra Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
Acting General Counsel

9704384190 8

GCC# 3055

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(617) 523-0002
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WILMINGTON, DELAWARE 19801
(302) 651-3000
300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
(213) 687-5000
333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0700

April 6, 1987

87 APR 6 P5:51
RECEIVED
OFFICE OF THE
GENERAL COUNSEL

Sandra Robinson, Esquire
Office General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2307 - American Citizens for Political Action
Robert Dolan, as Treasurer

Dear Ms. Robinson:

American Citizens for Political Action ("ACPA") and Robert Dolan, as treasurer, respectfully submit this response to the Commission's finding of reason to believe. Attached to this response are the answers to the questions which accompanied the reason to believe finding. This response demonstrates that the Commission should take no further action and close the file against the respondents.

I. ACPA's Conduct was Permissible

Over the past election cycle, ACPA has developed an extensive mailing list and has used the proceeds from the use of the lists to make expenditures on behalf of candidates who are sympathetic to its political philosophy. ACPA's contributor base is essential to its ability to carry out its political aims. As part of that process, ACPA arranged through its treasurer, Robert Dolan, to obtain additional names for its mailing list when it heard of the Washington On-Line ("WOL") service. WOL is a computer service which provides the names and addresses of contributors. Consequently, on May 22, 1986, Mr. Dolan through his company, International Funding Institute, contracted with WOL for services. The names were brokered to ACPA by a company called The Best Lists ("TBL"). Finally, the names which are the subject of this matter, identified by codes AQTX2, AQVX1 and AQ10X, were put into use on October 20, and 24, 1986, and

9704384190 9

November 24, 1986, respectively. Each mailing contained approximately 5,000 names (see answer to Question 5 for exact numbers).

ACPA used the information originally obtained from WOL with the understanding that it was permissible. The WOL contract provides no warning that the use of the materials is prohibited. Furthermore, Mr. Dolan sought a legal opinion concerning the use of the service and was assured of its legality.

However, ACPA and Mr. Dolan do not wish to engage in conduct that may be viewed as illegal. It is for that reason, that ACPA has discontinued the use of the names obtained from WOL. Although in taking such action, the respondents do not waive their constitutional rights -- rights which are bottomed on legal precedent which overwhelmingly substantiates the legality of the respondents' conduct. However, even putting these weighty constitutional concerns aside, based on prior Commission action the Commission should take no further action in this matter.

II. Prior Commission Action

In MUR 1869 the Commission dismissed allegations filed by the Americans for Democratic Action ("ADA") against the American Democratic Political Action Committee ("ADPAC"). In that matter, the Commission did not attempt to ascertain whether ADPAC obtained names from a source which may have copied ADA's contributors from the public record. This was true even though there was some evidence suggesting that ADA names may have come from the FEC reports. Although the ADA did not support their allegations with the use of pseudonyms, they did claim that their contributor names were not made available to the public except through the FEC record and did show that ADPAC in fact solicited their contributors. In response ADPAC denied the allegations and described their solicitation practices as follows:

> ADPAC utilizes prospect lists, for the telephone bank and direct mail programs, which are rented from list managers and brokers who, in turn, rent and manage lists owned by candidates

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> and organizations. In those rental arrangements, ADPAC is not provided with nor otherwise aware of the original owner's identity; lists are referred to solely as Active Liberal Donors, Democratic Activists . . . and other generic terms.

In the present case the mechanics of the list acquisition and use process were similar. However, in MUR 1869 every presumption weighed in favor of the respondent. The Commission concluded that the respondent did not obtain the names from a source that may have copied the information from the public record and found no reason to believe a violation occurred without an investigation. In the present case, the respondent should be entitled to the same treatment. It is true that in the present MUR, the Commission has evidence that the names were copied from the public record by WOL. The culpability of the user of the list, however, should be treated in a manner consistent with MUR 1869.

III. ACPA's Conduct was Constitutional

While an agency is not empowered to declare the statute it administers unconstitutional, the agency is charged with responsibility of finding a construction of the statute which avoids the constitutional question. See Crowell v. Benson, 285 U.S. 22, 62 (1932). This argument is particularly compelling when as in the present case, the constitutional infirmity of 2 U.S.C. § 438(a)(4) looms so large. Prior restraint of the activity in question can be justified only on the basis of a compelling governmental interest. The legislative history to § 438(a)(4) suggests that the governmental concern in placing the sale or use restriction on the public information was the privacy of the individual contributor. However, the restriction on the use of names for solicitation purposes is not the type of governmental interest that has been held to justify such a restraint. Such a restriction may be sustained only under the most compelling circumstances, which do not exist in this case. See Metromedia, Inc. v. San Diego, 453 U.S. 490 (1981). In that case the Court invalidated a billboard restriction that applied only to noncommercial advertisements and not commercial ones. The Court

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in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Counsel, Inc., 425 U.S. 748, 761 (1976), stressed that speech is protected under the First Amendment "even though it is carried in a form that is 'sold' for profit". See Buckley v. Valeo, 424 U.S. 1, 35-59 (1976); New York Times Co. v. Sullivan, 376 U.S. 254, 266 (1964).

In Ryan v. Kirkpatrick, 669 S.W.2d 215 (Mo. 1984), the Supreme Court of Missouri concluded that a Missouri statute which is almost identical to § 438(a)(4) was unconstitutional. The court noted the only conceivable justification for a sale or use restriction on public information is an invasion of privacy. However, the Supreme Court has already addressed this issue and concluded that such a potential invasion of privacy does not constitute a sufficient state interest to infringe protected speech. Consolidated Edison v. Public Service Commission, 447 U.S. 530, 542-45, n. 11 (1980) (the Court stated that "the customer of Consolidated Edison may escape exposure to objectionable material simply by transferring the bill insert from the envelope to the wastebasket"). See Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 633 (the Court concluded that door-to-door solicitation, which is much more of an intrusion than receiving mail, does not constitute a sufficient invasion of privacy to justify banning such practice). The Missouri court in Ryan described as follows the alternatives a person has if he does not want to be solicited:

> There are ample revetments of defense to repel unwanted forays by fund seekers. Offended addressees of campaign solicitations may, of course, ignore them. And notice may be given to the Post Office Department to halt further mailings. [citations omitted].

669 S.W. at 219.

These inconveniences pale when weighed against the First Amendment rights of the political speech in issue in this matter.

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IV. Conclusion

The respondents did not copy any information from the public record, they merely used information purchased from a third party. To find a violation in this attenuated circumstance flies in the face of the established principal that the Commission should construe the statute to avoid raising constitutional issues. To construe § 438(a)(4) as a violation under the facts of this case contravenes that principal and squarely confronts the respondents' constitutional rights. Moreover, as a practical matter, the Commission has already achieved greater relief than could be achieved through a protracted proceeding. Not only do the respondents believe that they would ultimately prevail if the Commission were to challenge this matter through the courts, but even if the constitutionality of the provision were upheld, and the respondents continued to use the list through the pendency of such proceedings, the complainants and the Commission would have won a Pyrrhic victory.

The assessment of a penalty and an injunction against using such lists several months or years from now would do the complainants no good. Thus, the complainants and the FEC have achieved the most effective relief that could be obtained in such a matter, the immediate cessation of the use of lists. Thus, unlike the usual situation where "corrective action" is taken such as a respondent returning an illegal contribution or amending a reporting violation, substantive relief has already been achieved with little or no damage to the complainants or the public.

Therefore, it is respectfully requested that the Commission take no further action, (which will leave the reason to believe finding intact) and that the Commission impose no further penalty.

Very truly yours,

Kenneth A. Gross

Attachment

9704384913

Questions and Request for Documents to: American Citizens for Political Action and Robert Dolan

1. State the name, address, and telephone number of the person or entity from whom the mailing list referred to in your response dated January 28, 1987, was rented. If the list was rented from an entity, state the name of the entity's principal officer or employee.

A. The mailing list referred to in the January 28, 1987, response was rented from The Best Lists, Inc. ("TBL"). 2070 Chain Bridge Road, Suite 380, Vienna, Virginia 22180 (703) 442-7595. Ronald Canfur is a principal of TBL.

2. State the name, address, and telephone number of the person or entity from whom the mailing list containing the name was rented. If the list was rented from an entity, state the name of the entity's principal officer or employee.

A. See answer to question 1.

3. For each mailing list identified in response to question 1 and 2, state the name and address of the owner of each list.

A. The original source of the names used in the mailing referred to in question 1 is Washington On-Line ("WOL"), 507 Eighth Street, S.E., Washington, D.C. 20003.

4. State the meaning of the following codes contained on the solicitation letters mailed by American Citizens for Political Action to AQTX2, AQVXI, and AQ10X.

A. AQTX2, AQVXI and AQ10X are codes used to track mailings.

5. State the name, if any, of each mailing list identified in response to questions 1 and 2, and state the number of names contained on each list.

A. The name of the mailing lists identified in response to question 1 is called Active Republican Donors. The number of names on each list by code is as follows: AQTX2 5,000, AQVX1 3,177, AQ10X 5,466.

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6. State the dates of the rentals of each mailing list identified in response to questions 1 and 2.

A. The mailing dates of the mailing lists referred to in question 1 and 2 are as follows:

AQTX2	10/20/86
AQVX1	10/24/86
AQ10X	11/24/86

7. State the terms of the rental of each mailing list identified in repsonse to questions 1 and 2, and whether use of each list was limited to a one-time solicitation.

		Total Paid
AQTX2	$80 per 1,000 Names	$405.00
AQVX1	$150 per 1,000 Names	$486.32
AQ10X	$150 per 1,000 Names	$819.90

Each list was limited to a one-time solicitation.

8. State whether at the time of the rental of the mailing list(s) identified in response to questions 1 and 2 an inquiry was made as to the source of the names on the mailing list(s). If the answer is yes, state the name of the person making the inquiry, the name of the person of whom the inquiry was made, and the answer received to the inquiry.

A. None.

9. Provide originals or true copies of all documents, including correspondence, notes, memoranda, contracts, invoices, and pamphlets concerning your rental of the list(s) identified in response to questions 1 and 2.

A. Copies of the invoices between ACPA and TBL are attached.

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The Best List
2070 Chain Brid
Suite 380
Vienna, Virginia 22180
(703) 442-7595

INVOICE

SOLD TO

AMERICAN CITIZENS FOR POLITICAL ACTION
2700 VIRGINIA AVENUE, NW
SUITE 404
WASHINGTON, DC 20037

SHIPPED TO

SATURN
ATTN: TERRY WALKER

DATE	MAIL DATE	OUR ORDER NO.	YOUR ORDER NO.	KEY CODE	TERMS	INVOICE NO.
12-30-86	11-24-86	7303	VERBAL	ADVX1	NET 30	7277

QUANTITY	DESCRIPTION	PRICE	AMOUNT
5,466	ACTIVE REPUBLICAN DONORS (MULTI DONORS)	$150.00	$ 819.90
	HOUSE MAILING		

PAID FEB 04 1987
1651

ORIGINAL

THANK YOU

TOTAL $ 819.90

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The Best Lists, Inc.
2070 Chain Bridge Road
Suite 380
Vienna, Virginia 22180
(703) 442-7595

INVOICE

SOLD TO

AMERICAN CITIZENS FOR POLITICAL ACTION
2700 VIRGINIA AVENUE, NW
SUITE 404
WASHINGTON, DC 20037

SHIPPED TO

WIB
2727 MERRILEE DRIVE
FAIRFAX, VIRGINIA 22030
ATTN: LINDA RUSSELL

DATE	MAIL DATE	OUR ORDER NO.	YOUR ORDER NO	KEY CODE	TERMS	INVOICE NO
11-03-86	10-24-86	7147	VERBAL	AQIOX	NET 30	7027

QUANTITY	DESCRIPTION	PRICE	AMOUNT
3,177	ACTIVE REPUBLICAN DONORS MULTI DONORS	$150.00	$ 476.55
	Key Charge	$ 1.50	$ 4.77
	Shipping Charges		$ 5.00
	HOUSE MAILING		
		TOTAL	$ 486.32

PAID
Ck# 1590

ORIGINAL

THANK YOU

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The Best Lists, Inc.
2070 Chain Bridge Road
Suite 380
Vienna, Virginia 22180
(703) 442-7595

INVOICE

SOLD TO

AMERICAN CITIZENS FOR POLITICAL ACTION
2700 VIRGINIA AVENUE, NW
SUITE 404
WASHINGTON, DC 20037

SHIPPED TO

SATURN CORPORATION
IN HOUSE

ATTN: TERRY WALKER

DATE	MAIL DATE	OUR ORDER NO	YOUR ORDER NO	KEY CODE	TERMS	INVOICE NO.
11-03-86	10-20-86	7086	VERBAL	AQTX2	NET 30	7026

QUANTITY	DESCRIPTION	PRICE	AMOUNT
5,000	ACTIVE REPUBLICAN DONORS	$ 80.00	$ 400.00
	Shipping Charges		$ 5.00
	HOUSE MAILING		

PAID DEC 02 1986
CR# 1584

ORIGINAL

THANK YOU

TOTAL $ 405.00

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2107
(202) 371-7000

TELEX: 904343
SKARSLAW-WASH
TELECOPIER:
(202) 393-5760

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 735-3000
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 573-0002
ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 651-3000
300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
(213) 687-5000
333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0700

June 17, 1987

Sandra Robinson, Esq.
Office General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20036

Re: MUR 2307 - American Citizens for Political Action

Dear Sandra:

Please note that as of close of business June 12, 1987, the offices of Skadden, Arps, Slate, Meagher & Flom have moved to the following address:

1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

The firm's new telephone number is (202) 371-7000. My direct line is (202) 371-7007. Please update your files accordingly.

Very truly yours,

Kenneth A. Gross
Attorney for ACPA

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MUR 2346

AMERICAN CITIZENS FOR POLITICAL ACTION
AFGHAN MERCY FUND

COMPLAINT: FEBRUARY 11, 1987

MERGED WITH MUR 2361: JULY 14, 1987

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GCCH 2691

Republican
National
Committee

E. Mark Braden
Chief Counsel

Michael A. Hess
Randall Davis
Deputy Chief Counsels

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
87 FEB 12 P4:36

February 11, 1987

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: American Citizens for Political Action

Dear Mr. Steele:

This letter is a complaint filed on behalf of the Republican National Committee (RNC) pursuant to 2. U.S.C. 437(a)(1). The RNC alleges, upon information and belief, that Robert E. Dolan and American Citizens for Political Action (also known as the Reagan Political Victory Fund) have violated the Federal Election Campaign Act of 1971, as amended.

The RNC alleges that the respondents have violated and continue to violate the provisions of 2 U.S.C. 438(a)(4), which provides that any information copied from reports filed with the Federal Election Commission may not be used by any person for the purpose of soliciting contributions.

In support of this allegation, the RNC submits with this complaint a copy of two letters which solicit contributions for the "Reagan Political Victory Fund," identified as "A Project of American Citizens for Political Action." The return address is listed as P.O. Box 96092, Washington, D.C. 20090. The solicitations are signed by Robert E. Dolan, and were, upon information and belief, mailed by respondents in January, 1987.

The letter in question was addressed to two of the pseudonyms authorized to be included on the RNC's reports filed with the Commission, pursuant to 2 U.S.C. 438(a)(4). The names and addresses of those two pseudonyms have been deleted from the enclosed letters.

Upon information and belief, the RNC further alleges that respondents have obtained telephone numbers of individuals listed on RNC reports filed with the Commission and have made telephone solicitations of a number of those individuals. The format of these solicitations was designed to lead a potential contributor into believing that the solicitor was associatied with the RNC.

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Dwight D. Eisenhower Republican Center: 310 First Street Southeast, Washington, D.C. 20003. (202) 863-8638. Telex: 701144

In addition to the enclosed letters, the RNC also includes herewith an affidavit by Leah Geraghty, RNC Finance Director, in support of the above allegations. Based on these allegations, it appears that respondents have violated the provisions of 2 U.S.C. 438(a)(4). The RNC requests that appropriate review and action be undertaken.

Sincerely,

E. Mark Braden

Sworn to and subscribed before me this 12th day of February, 1987.

Philip A. Guarino
Notary Public

My Commission expires: My Commission Expires June 14, 1991

Enclosures

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AFFIDAVIT OF LEAH M. GERAGHTY

Leah M. Geraghty, being first duly sworn hereby deposes and says:

1. My name is Leah Geraghty, and I am Director of Finance for the Republican National Committee.

2. My business address is 310 First Street, S.E., Washington, D.C. 20003.

3. The RNC has provided a list of pseudonyms that appear on its filings with the FEC, as provided by 2 U.S.C. 438(a)(4).

4. In January, 1987, mail solicitations from the "Reagan Political Victory Fund," identified as "A Project of American Citizens for Political Action," were delivered to two of these pseudonyms. These mailings were then forwarded to the RNC, pursuant to a contract with a professional monitoring service.

5. In January, 1987, an employee of the Finance Division received a telephone call from a past contributor to the RNC. The contributor reported that he had received a telephone call from an individual soliciting funds for the Reagan Political Victory Fund. The contributor pointed out that he only made political contributions to the RNC, and questioned the solicitor about why he was called. The solicitor told the contributor that he had given to the Fund in the past, and was told the amount of his last contribution to the Fund. The contributor pointed out to the RNC that that was the amount of his last contribution to the RNC, and that he had never contributed to the Fund.

5. I certify, under penalty of perjury, that the above is true and correct according to my information and belief.

Leah Geraghty
Leah Geraghty

2/12/87
Date

Subscribed and sworn to before me on this 12th day of February, 1987.

Philip A. Guarino
Notary Public

My Commission Expires: _____.

My Commission Expires June 14, 1991

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Office of the Chairman
Reagan Political Victory Fund
A Project of American Citizens for Political Action

P.O. Box 96092
Washington, D.C. 20090

sent to legal
2/2/84

OPEN IMMEDIATELY: ***Membership Card Enclosed***

JAN 27 1987

POSTMASTER: Deliver to addressee only.

Office of the Chairman

Reagan Political Victory Fund

Dear Friend,

As Chairman of the Reagan Political Victory Fund, I am honored to send you your 1987 Membership card.

Your commitment to the Reagan Political Victory Fund has proven you a loyal, concerned and proud American.

President Reagan, the Conservative leaders of our nation and I send you our most heart-felt thanks for supporting our Conservative cause even when the going got tough.

Your commitment to the Reagan Revolution has played a key role in the Conservative resurgence for a strong America.

And please know today, that as a card-carrying member of the Reagan Political Victory Fund, your commitment to the Conservative strength and security of our nation now becomes even stronger.

By carrying your membership card, you make your annual commitment to the urgent fight against the liberal-controlled Congress that now wants to destroy all that you, President Reagan and I have accomplished.

And that is the most important and difficult challenge that you have faced as a Conservative.

I ask you right now to take your membership card, sign it, and place the card in your wallet.

Your commitment to the Reagan Political Victory Fund is your commitment to America.

And be assured the Reagan Political Victory Fund and I are committed to you and the prosperous future of our great nation.

Because President Reagan and I know we can count on your loyalty and support, I also know that you must be warned as to

P.O. Box 96092 • Washington, D.C. 20090

A copy of our financial report is available from the Federal Election Commission on request.

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what lies [illegible]ad for you, me and the [illegible]an Political Victory Fund in 1[illegible].

This year, my friend, is the most crucial and adverse year you and I have faced in many years.

The new, liberal-controlled Congress has the power to decide the future of America far into the 1990's.

And be assured, my friend, that the liberals know how to use their power to destroy all that President Reagan was able to accomplish the last six years.

You and I must put our strongest efforts into upholding President Reagan's vital national defense programs and curbing the liberal special-interest tide sweeping the nation.

The Democrat political machine has already built a massive special-interest warchest to defeat our President's programs.

The Democrats are determined to use their control of the U.S. Senate and House to raise your taxes and support their liberal hand-out programs.

The Democrats are fully prepared to wage the fiercest political campaign in American history to reverse all that you, President Reagan and I have accomplished for the strength and security of America.

And if the Democrats win their liberal war of waste and appeasement, I fear that America faces a dim future.

A future that you and I will be a part of.

A future in which our children and grandchildren must live.

You and I, as Conservative Americans, have a duty and responsibility to uphold the progress of the Reagan Revolution.

You know that since President Reagan has been in office, the sky-high interest rates imposed upon you and me by the Carter Administration have fallen dramatically.

Since President Reagan has been in office, inflation has dropped from 13% to under 4%.

And since President Reagan has been in office, America -- weak and apologetic under the Carter Administration -- has gained strength and international respect among world leaders.

America is back, my friend.

And it is your duty and mine to insure that America

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remains strong, free and prosperous.

But we now must face the most crucial and most adverse battle ever for the sake of our nation.

The Democrats now control both the House and the Senate.

If the liberals have their way, America will be thrown right back to where we started!

The liberals are determined to undo all the progress accomplished by a Conservative administration!

The liberals want to raise your taxes!

Cut our national defense!

Continue and expand the social hand-out programs that put our nation in the catastrophic economic condition it was before President Reagan took over!

The liberals will take our country back to six years ago.

And tell me -- were you better off six years ago than you are now? Was America?

I say NO!

I hope that you, too, will now say NO to the liberals and their all-out offensive to destroy the Reagan Agenda.

And today you can say NO to the liberals by saying YES to the Reagan Political Victory Fund.

Your membership contribution today will help the Reagan Political Victory Fund mount a massive campaign to stop the liberals from abusing their control in the U.S. Congress.

Your contribution will strengthen the Conservative fight against the onslaught of liberal special-interest groups.

And your membership commitment to the Reagan Political Victory Fund today is your commitment to a strong America.

It's your responsibility, my fellow Conservative, to uphold the progress of the Reagan Agenda for America.

Your membership commitment to the Reagan Political Victory Fund today is our best weapon in 1987.

It's your future that's on the line.

And we have very little time.

Already here in Washington, I see the Democrat-controlled Senate flexing it's muscle against President Reagan.

Already, the special-interest liberals are moving in to

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slash vita[illegible]rtions of our national [illegible]nse programs.

Already, we Conservatives face the battle of our lives to save our strong America.

So today, as you make your annual membership contribution to the Reagan Political Victory Fund, I ask you also enclose an emergency contribution to help wage our vital battle.

Could you possibly send an extra $1,500.00 along with your membership contribution?

Isn't the secure future of America worth your emergency contribution of $1,500.00 today?

It's absolutely vital I receive your support right away.

Sincerely,

Robert E. Dolan

Robert E. Dolan
National Chairman

P.S. Your 1987 Membership in the Reagan Political Victory Fund means more today than ever before. Your continued commitment to America and to President Reagan is deeply appreciated. And your maximum, emergency support right now is crucial.

Please return entire page with membership contribution to:
REAGAN POLITICAL VICTORY FUND
P.O. Box 96092 Washington, D.C. 20090

Dear Chairman Dolan,

You have my 1987 membership commitment to the Reagan Political Victory Fund. I realize the battle to protect America from the liberal-controlled Senate is crucial to President Reagan, the Conservative movement and to America.

( ) $2,000.00 -- Annual Membership Commitment

Along with my membership commitment, I enclose an emergency:

( ) $1,500.00 ( ) $_____ ( ) Total $ _____

BQAX1

Please make check payable to: REAGAN POLITICAL VICTORY FUND

The Federal Election Commission requests we ask:

Occupation: _____ Employer: _____

The Reagan Political Victory Fund is a special project of and has been paid for by American Citizens for Political Action. Not authorized by any candidate or candidate's committee.

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Place Postage Here

Reagan Political Victory Fund

A Project of American Citizens for Political Action

P.O. Box 96092
Washington, D.C. 20090

QA

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The Reagan Political Victory Fund is leading the Conservative movement in commitment and action. As Conservative Americans, we are working toward a brighter, more prosperous American future in the tradition of the Reagan Agenda.

Robert E. Dolan
National Chairman

The Reagan Political Victory Fund

Thanks to you, the Reagan Political Victory Fund is leading the Conservative political movement in commitment and action. With the continued support of loyal Conservatives like you, we are working toward a brighter, more prosperous American future in the tradition of the Reagan Agenda.

Please detach this card, sign it and carry it with you. Your commitment to the Reagan Political Victory Fund is the valued and driving spirit behind our vital work for a better tomorrow.

The Reagan Political Victory Fund

Hereby Declares

1987

To be an HONORED MEMBER
In Good Standing

Reagan Political Victory Fund
A Project of American Citizens for Political Action

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Office of the Chairman
Reagan Political Victory Fund
A Project of American Citizens for Political Action

P.O. Box 96092
Washington, D.C. 20090

U.S. MONITOR SERVICE
RECEIVED BY D

Pushcart 1880s
125
Bulk Rate
USA

JAN 2...

OPEN IMMEDIATELY: ***Membership Card Enclosed***

POSTMASTER: Deliver to addressee only.

Office of the Chairman

Reagan Political Victory Fund

Dear Friend,

As Chairman of the Reagan Political Victory Fund, I am honored to send you your 1987 Membership card.

Your commitment to the Reagan Political Victory Fund has proven you a loyal, concerned and proud American.

President Reagan, the Conservative leaders of our nation and I send you our most heart-felt thanks for supporting our Conservative cause even when the going got tough.

Your commitment to the Reagan Revolution has played a key role in the Conservative resurgence for a strong America.

And please know today, that as a card-carrying member of the Reagan Political Victory Fund, your commitment to the Conservative strength and security of our nation now becomes even stronger.

By carrying your membership card, you make your annual commitment to the urgent fight against the liberal-controlled Congress that now wants to destroy all that you, President Reagan and I have accomplished.

And that is the most important and difficult challenge that you have faced as a Conservative.

I ask you right now to take your membership card, sign it, and place the card in your wallet.

Your commitment to the Reagan Political Victory Fund is your commitment to America.

And be assured the Reagan Political Victory Fund and I are committed to you and the prosperous future of our great nation.

Because President Reagan and I know we can count on your loyalty and support, I also know that you must be warned as to

P.O. Box 96092 • Washington, D.C. 20090

A copy of our financial report is available from the Federal Election Commission on request

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what lie[illegible]ead for you, me and the [illegible]gan Political Victory Fund in 1987.

This year, my friend, is the most crucial and adverse year you and I have faced in many years.

The new, liberal-controlled Congress has the power to decide the future of America far into the 1990's.

And be assured, my friend, that the liberals know how to use their power to destroy all that President Reagan was able to accomplish the last six years.

You and I must put our strongest efforts into upholding President Reagan's vital national defense programs and curbing the liberal special-interest tide sweeping the nation.

The Democrat political machine has already built a massive special-interest warchest to defeat our President's programs.

The Democrats are determined to use their control of the U.S. Senate and House to raise your taxes and support their liberal hand-out programs.

The Democrats are fully prepared to wage the fiercest political campaign in American history to reverse all that you, President Reagan and I have accomplished for the strength and security of America.

And if the Democrats win their liberal war of waste and appeasement, I fear that America faces a dim future.

A future that you and I will be a part of.

A future in which our children and grandchildren must live.

You and I, as Conservative Americans, have a duty and responsibility to uphold the progress of the Reagan Revolution.

You know that since President Reagan has been in office, the sky-high interest rates imposed upon you and me by the Carter Administration have fallen dramatically.

Since President Reagan has been in office, inflation has dropped from 13% to under 4%.

And since President Reagan has been in office, America -- weak and apologetic under the Carter Administration -- has gained strength and international respect among world leaders.

America is back, my friend.

And it is your duty and mine to insure that America

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remains st[illegible], free and prosperous.

But we now must face the most crucial and most adverse battle ever for the sake of our nation.

The Democrats now control both the House and the Senate.

If the liberals have their way, America will be thrown right back to where we started!

The liberals are determined to undo all the progress accomplished by a Conservative administration!

The liberals want to raise your taxes!

Cut our national defense!

Continue and expand the social hand-out programs that put our nation in the catastrophic economic condition it was before President Reagan took over!

The liberals will take our country back to six years ago.

And tell me -- were you better off six years ago than you are now? Was America?

I say NO!

I hope that you, too, will now say NO to the liberals and their all-out offensive to destroy the Reagan Agenda.

And today you can say NO to the liberals by saying YES to the Reagan Political Victory Fund.

Your membership contribution today will help the Reagan Political Victory Fund mount a massive campaign to stop the liberals from abusing their control in the U.S. Congress.

Your contribution will strengthen the Conservative fight against the onslaught of liberal special-interest groups.

And your membership commitment to the Reagan Political Victory Fund today is your commitment to a strong America.

It's your responsibility, my fellow Conservative, to uphold the progress of the Reagan Agenda for America.

Your membership commitment to the Reagan Political Victory Fund today is our best weapon in 1987.

It's your future that's on the line.

And we have very little time.

Already here in Washington, I see the Democrat-controlled Senate flexing it's muscle against President Reagan.

Already, the special-interest liberals are moving in to

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slash vital portions of our national defense programs.

Already, we Conservatives face the battle of our lives to save our strong America.

So today, as you make your annual membership contribution to the Reagan Political Victory Fund, I ask you also enclose an emergency contribution to help wage our vital battle.

Could you possibly send an extra $3,600.00 along with your membership contribution?

Isn't the secure future of America worth your emergency contribution of $3,600.00 today?

It's absolutely vital I receive your support right away.

Sincerely,

Robert E. Dolan

Robert E. Dolan
National Chairman

P.S. Your 1987 Membership in the Reagan Political Victory Fund means more today than ever before. Your continued commitment to America and to President Reagan is deeply appreciated. And your maximum, emergency support right now is crucial.

Please return entire page with membership contribution to:
REAGAN POLITICAL VICTORY FUND
P.O. Box 96092 Washington, D.C. 20090

Dear Chairman Dolan,

You have my 1987 membership commitment to the Reagan Political Victory Fund. I realize the battle to protect America from the liberal-controlled Senate is crucial to President Reagan, the Conservative movement and to America.

( ) $4,800.00 -- Annual Membership Commitment

Along with my membership commitment, I enclose an emergency:

( ) $3,600.00 ( ) $_____ ( ) Total $ _____

BQAX1

Please make check payable to: REAGAN POLITICAL VICTORY FUND

The Federal Election Commission requests we ask:

Occupation: _____ Employer: _____

The Reagan Political Victory Fund is a special project of and has been paid for by American Citizens for Political Action
Not authorized by any candidate or candidate's committee

9704384194

Place
Postage
Here

Reagan Political Victory Fund

A Project of American Citizens for Political Action

P.O. Box 96092
Washington, D.C. 20090

2A

9704384193 5

The Reagan Political Victory Fund is leading the Conservative movement in commitment and action. As Conservative Americans, we are working toward a brighter, more prosperous American future in the tradition of the Reagan Agenda.

Robert E. Dolan

Robert E. Dolan
National Chairman

The Reagan Political Victory Fund

Thanks to you, the Reagan Political Victory Fund is leading the Conservative political movement in commitment and action. With the continued support of loyal Conservatives like you, we are working toward a brighter, more prosperous American future in the tradition of the Reagan Agenda.

Please detach this card, sign it and carry it with you. Your commitment to the Reagan Political Victory Fund is the valued and driving spirit behind our vital work for a better tomorrow.

The Reagan Political Victory Fund

Hereby Declares

1987

To be an HONORED MEMBER
In Good Standing

Reagan Political Victory Fund
A Project of American Citizens for Political Action

GCC# 2692

Republican National Committee

E. Mark Braden
Chief Counsel

Michael A. Hess
Randall Davis
Deputy Chief Counsels

87 FEB 12 P4:35

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

February 11, 1987

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: Afghan Mercy Fund

Dear Mr. Steele:

This letter is a complaint filed on behalf of the Republican National Committee (RNC) pursuant to 2. U.S.C. 437(a)(1). The RNC alleges, upon information and belief, that Tony Campaigne, Anne Hurd, and the "Afghan Mercy Fund" have violated the Federal Election Campaign Act of 1971, as amended.

The RNC alleges that the respondents have violated and continue to violate the provisions of 2 U.S.C. 438(a)(4), which provides that any information copied from reports filed with the Federal Election Commission may not be used by any person for the purpose of soliciting contributions.

In support of this allegation, the RNC submits with this complaint a copy of a letter which solicits contributions for the "Afghan Mercy Fund." The return address is listed as P.O. Box 5920, Washington, D.C. 20016. The solicitation lists Tony Campaigne and Anne Hurd as President and Project Director, respectively. The solicitation was, upon information and belief, mailed by respondent in January, 1987.

The letter in question was addressed to one of the pseudonyms authorized to be included on the RNC's reports filed with the Commission, pursuant to 2 U.S.C. 438(a)(4). The name and address of that pseudonym has been deleted from the enclosed letter.

9704384193 6

Based on these allegations, it appears that respondent has violated the provisions of 2 U.S.C. 438(a)(4). The RNC requests that appropriate review and action be undertaken.

Sincerely,

E. Mark Braden

Sworn to and subscribed before me this 12th day of February, 1987.

Philip A. Guarino
Notary Public

My Commission expires: My Commission Expires June 14, 1991

Enclosures

9704384197

GORDON J. HUMPHREY
UNITED STATES SENATOR

Dear Friend,

As a United States Senator, it is my duty to tell you the truth -- no matter how awful. Right now, the Soviet Union is waging the cruelest, most barbaric war in modern history. People are being systematically murdered.

Right now in Afghanistan, children's hands are being blown off by special Soviet bombs that are designed to look like toys.

Right now, women are being forced into small rooms and are blown up by grenades tossed inside by Soviet soldiers asking, "Where is your God now?"

And right now, old men are being forced to lie on the ground so tanks can run over them.

I have seen the reports. I have heard the testimony and what I am about to tell you is terrifying.

The Soviets have even thrown babies into fires and burned them alive. In some villages every man, woman and child has been killed. The entire free people of Afghanistan are the targets of this brutal Soviet effort.

Reports here in Washington tell me that almost every family has lost at least one member to the Soviet war machine. Over one third of the Afghan people have been forced to flee their country.

Nearly one half million women and children have been killed. Thousands of children have lost an arm or a leg. Right now, the Soviet Union is using jets, helicopters, tanks and napalm to destroy the lives of innocent children.

First, Soviet jets destroy every home in the village.

Second, helicopters come and spray the entire area with machine guns.

Third, tanks and troops kill the rest of the innocent civilians they find. And, finally, napalm is used to

Afghan Mercy Fund ○ Washington, D.C. 20016 ○ (202) 628-1000

Not Printed or Mailed at Government Expense

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ensure their grizzly work is complete.

This happened yesterday, it's happening today and it will happen tomorrow.

To break their parents' will, the Soviet military has even resorted to murdering children. In addition, over 10,000 children have been taken to the Soviet Union for "re-education."

If you ever saw what napalm does to a child, you would have nightmares. If you saw what the Soviets have done to the children, you would cry. I know. I have seen the children. I have read the reports.

The Soviets drop small bombs disguised as "toys" to terrorize and maim children. When a child picks up that "toy" -- it explodes in her face. The child loses an arm, a leg, is disfigured or may even be blinded.

All this, to teach the child's parents a lesson. My friend, I am horrified that children and babies must be tortured like this. I ask you please help me get these innocent people the medical assistance they so desperately need.

Thankfully, many children do not have to die in agony because they don't have the proper medical help -- thanks to the Afghan Mercy Fund.

I may be a United States Senator, but I humbly ask you to help me save a child's life. The Afghan Mercy Fund needs medicine and other medical supplies to take inside Afghanistan.

I need you to send your check today. You can help save a life. You can help bring urgently needed medical help to children inside Afghanistan.

Can I count on you for $35, $50, or even $100?

Please, my friend, the innocent people of Afghanistan are victims of unspeakable Soviet terror and desperately need your help.

The Afghan Mercy Fund, working with the German Afghanistan Committee, has a network of clinics and medical stations inside Afghanistan to help people who are suffering from this brutal Soviet assault. It is one of the most extensive medical programs inside Afghanistan today. In the name of decency and humanity, please send them your tax-deductible check today.

I'm counting on your maximum donation today. Thank you in advance for your help.

Sincerely,

Gordon Humphrey

Gordon J. Humphrey
United States Senator

9704384193 9

EMERGENCY REPLY TO

SENATOR GORDON HUMPHREY

c/o Afghan Mercy Fund
P.O. Box 5920
Washington, D.C. 20016
(202) 628-1000

Dear Senator Humphrey,

The barbaric war the Soviet Union is waging against innocent men, women and children in Afghanistan is a sin against humanity.

I am outraged and am now making my commitment to you and the Afghan Mercy Fund.

To help you get the medical supplies and relief that is so desperately needed by the Afghan people, I am enclosing my tax-deductible gift of:

( ) $35 ( ) $50 ( ) $100 ( ) $ _____

Please make your check payable to:
THE AFGHAN MERCY FUND

AJ128

Thank you for your compassion and much needed help!

THE AFGHAN MERCY FUND
is a project of
The Mercy Fund

National Board of Advisors

Tony Campaigne
President
Afghan Mercy Fund

Gordon Humphrey
Senator, New Hampshire
Chairman Senate
Task Force on Afghanistan

Malcolm Wallop
Senator, Wyoming

Anne Hund
Project Director
Afghan Mercy Fund

Paul Simon
Senator, Illinois

Habib Meyar
President
Afghan Community of America

Christopher Dodd
Senator, Connecticut

Denny Hundeshagen
President
German Afghanistan Committee

Not Printed or Mailed at Government Expense

9704384194 0

9 7 0 4 3 8 4 1 9 4 1

FROM

Place Postage Here

Afghan Mercy Fund
Friendship Station
Post Office Box 5920
Washington, D.C. 20016

A J

NONPROFIT ORG
WASHINGTON D.C.
U.S. POSTAGE .0 5
FB METER

SENATOR GORDON J. HUMPHREY
c/o Afghan Mercy Fund
Washington Headquarters
P.O. Box 5920
Washington, D.C. 20016

U.S. MONITOR
RECEIVED BY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 19, 1987

E. Mark Braden, Chief Counsel
Republican National Committee
310 First Street, SE
Washington, DC 20003

Dear Mr. Braden:

This letter will acknowledge receipt of your complaint which we received on February 12, 1987, alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by American Citizens For Political Action and Robert Dolan, as treasurer, Mr. Tony Campaigne, Ms. Anne Hurd, and the Afghan Mercy Fund. The respondents 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 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 the original complaint. For your information, we have attached a brief description of the Commission's procedures for handling complaints. We have numbered this matter MUR 2346. Please refer to this number in all future correspondence. If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Charles N. Steele
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

9704384194 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 19, 1987

Anne Hurd, Project Director
Afghan Mercy Fund (The Mercy Fund)
PO Box 5920
Washington, DC 20016

Re: MUR 2346

Dear Ms. Hurd:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2346. 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 you in 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, you should advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

97043841943

If you have any questions, please contact Carol Laham, the attorney assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

97043841944

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 19, 1987

Tony Campaigne, President
Afghan Mercy Fund (The Mercy Fund)
PO Box 5920
Washington, DC 20016

Re: MUR 2346

Dear Mr. Campaigne:

The Federal Election Commission received a complaint which alleges that you and the Afghan Mercy Fund (The Mercy Fund) may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2346. 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 you and the Afghan Mercy Fund (The Mercy Fund) in 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, you should advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

9704384194 5

If you have any questions, please contact Carol Laham, the attorney assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

97043841946

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 19, 1987

Robert Dolan, Treasurer
American Citizens For Political Action
2700 Virginia Avenue, NW
#404
Washington, DC 20037

Re: MUR 2346

Dear Mr. Dolan:

The Federal Election Commission received a complaint which alleges that American Citizens For Political Action and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2346. 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 you and American Citizens For Political Action in 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, you should advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

97043841947

If you have any questions, please contact Carol Laham, the attorney assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

97043841948

GCC 2811

RECEIVED AT THE FEC

87 MAR 2 P1:19

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
919 EIGHTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-5503
(202) 463-8700

TELEX 904343
SKARSLAW-WASH
TELECOPIER:
(202) 293-3931

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 735-3000

ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 523-0002

ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 651-3000

300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
(213) 687-5000

333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0100

February 25, 1987

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

Re: MUR 2346

Dear Carol:

Enclosed please find a designation of counsel in MUR 2346. As you may know, I represent the same respondent in MUR 2307. I assume there is a likelihood that, that matter will be reassigned to you in view of Maura's impending event. It is my understanding that the Commission's consideration of that matter is imminent.

I will forward a complete response to MUR 2346 within the allotted time and look forward to discussing these matters with you further.

87 MAR 2 P2:55

RECEIVED
GENERAL COUNSEL

Sincerely,

Kenneth A. Gross

Enclosure

9704384949

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2346

NAME OF COUNSEL: Kenneth A. Gross, Esq.

ADDRESS: Skadden, Arps et al.
919 18th Street, N.W.
Washington, D.C. 20006

TELEPHONE: (202) 463-8700

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.

February 25, 1987
Date

Signature

RESPONDENT'S NAME: American Citizens for Political Action

ADDRESS: Robert E. Dolan, as treasurer
2700 Virginia Avenue, N.W., Suite 404
Washington, D.C. 20037

HOME PHONE:

BUSINESS PHONE: (202) 333-2092

9704384190

GCC#2804

RECEIVED AT THE FEC

87 MAR 2 A8:51

THE MERCY FUND

THE MERCY FUND, 2812 WOODLAND DRIVE N.W., WASHINGTON, DC 20008
TELEPHONE 202/745-7544 TELEX 279675 WASH

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

87 MAR 2 A10:32

February 26, 1987

Ms. Lois G. Lerner
Associate General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Dear Ms. Lerner:

In response to your letter numbered MUR 2346, as soon as I received the original complaint from the RNC (yesterday) I called Mr. Mark Braden and explained that Response Dynamics does all of our mailing. I further explained that they rent many lists every month for us and that if he contacted Response Dynamics directly (442-7595) they would tell him exactly who rented us the list in question. (I believe it is called "Active Republican Multi Donors.")

Mr. Braden thanked me for offering to cooperate with him and said he would take it from their as we had no part in the making of the list.

I explained this to Ms. Carol Laham and she told me this should resolve the matter as far as the FEC and Mercy Fund are concerned as we had no part in the assembling/compiling of the list in question.

For your information, I later received a call from Robert E. Dolan and he told me that he was the person who acquired the list and sold it to Response Dynamics and that he would be handling this directly with the parties concerned.

If I can be of further assistance in this matter, please do not hesitate to contact me.

Sincerely,

Antony L. Campaigne
Chairman

ALC/tc

9704384195 1

GCC#2877

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
87 MAR 12 P6:05

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
919 EIGHTEENTH STREET, N.W.
WASHINGTON, D.C. 20006
(202) 463-8700

TELEX 904343
SKARSLAW-WASH
TELECOPIER:
(202) 293-3931

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 735-3000
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 523-0002
ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 651-3000
300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
(213) 687-5000
333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0700

March 12, 1987

Carol Laham, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2346 RNC Complaint
Against ACPA

Dear Ms. Laham:

I represent the American Citizens for Political Action ("ACPA") and Robert E. Dolan, as treasurer, in the referenced action. This letter is in response to the February 11, 1987 complaint which alleges that the respondents violated 2 U.S.C. § 438(a)(4). In support of the allegation, the complainant submitted copies of two letters which were apparently mailed to two pseudonyms with which the complainant "salted" its contribution list. The complainant further alleges that the respondents obtained telephone numbers of individuals listed on the complainant's reports filed with the Federal Election Commission ("FEC" or "Commission") and made telephone solicitations to a number of those individuals. Allegedly, the format of the telephone solicitations were designed to lead a potential contributor into believing that the solicitor was associated with the complainant.

I. ACPA's mailings.

During the past election cycle, ACPA developed and maintained an extensive mailing list. To supplement that list, on May 22, 1986, Bob Dolan, through his company which handles such matters, contracted with Washington On-Line ("WOL"), a time sharing service, which provides computer access to contributor names. It took several months to integrate the new names into ACPA's system. ACPA's first two mailings using the WOL names were sent on October 20 and 24, 1986. These were small test mailings by direct mail standards, the two October mailings

9704384195 2

involved only 5,000 and 3,177 letters, respectively. On November 7, 1986, a third mailing was further reduced to 2,290 letters. While the service was used on other occasions, in dollar terms, ACPA's total use of the WOL service resulted in an average net yield of only $740.

Upon receipt of this complaint, ACPA discontinued the use of all names obtained from WOL and so informed the RNC. Although Mr. Dolan believed that the use of the names was legally permissible, it was never his intention to engage in conduct which would be looked upon with disfavor by other political groups, nor did he intend to engage in conduct that was considered to be improper or illegal. Moreover, neither Mr. Dolan nor any entity connected with him ever copied any names from the FEC public record. The WOL service was the sole source of the names which could have resulted in the present complaint.

II. Afghan Mercy Fund mailing.

While making no reference to the Afghan Mercy Fund ("AMF") in the complaint against ACPA, the complainant included as part of the attachments to its complaint, a letter sent by AMF on the stationery of Senator Gordon J. Humphrey. Mr. Dolan has spoken with Mr. Tony Campaigne, President of AMF, about this matter. Although Mr. Dolan is not connected with AMF he did allow AMF to the use the mailing list which he obtained from WOL. Apparently, that list caused AMF to solicit a "salted" name. Neither Mr. Campaigne nor anyone connected with AMF knew that the list they were using contained names that were originally obtained from the FEC public record. Mr. Dolan regrets that the WOL service, which was the source of those names, apparently caused another organization to solicit a "salted" name. This explanation is provided with the hope that the Commission takes this information into consideration while reviewing any allegations made against AMF with regard to that matter.

III. ACPA's telephone solicitation.

The complaint alleges that the respondents have obtained telephone numbers of individuals listed on the complainant's FEC reports and have made telephone solici-

9704384193 3

tations which were designed to mislead the potential contributor into believing that the solicitor was associated with the complainant. On a very limited basis, ACPA did conduct telephone solicitations, however the telephone numbers used were not obtained from the WOL service or copied from the FEC public record. In fact the allegation is curious in that the Federal Election Campaign Act ("FECA" or the "Act") does not require the disclosure of telephone numbers to the FEC.

The complainant also suggests that the ACPA solicitor somehow misrepresented himself as a representative of the complainant. In making this allegation the complainant relies on an affidavit of Leah Geraghty, however nothing in the affidavit suggests that the solicitor set himself out as a representative of the complainant. Furthermore, ACPA's telephone callers are instructed to follow a prepared script which makes it clear that the caller is calling on behalf of the respondent and makes no reference whatsoever to the complainant. The allegations are not only without factual support, but also as a matter of law, do not constitute a violation under the FECA. See MUR 1869 where the Commission dismissed a similar allegation where such a claim was made without substantiation.

IV. Constitutional concerns.

While Mr. Dolan has agreed to discontinue the use of the WOL names in an effort to resolve this matter, he does so without waiving his constitutional rights. The solicitation restriction on the use of contributor lists filed with the FEC is an unconstitutional restriction on political speech. This is particularly true in this case, where an intermediary, WOL, supplied the names and ACPA as a secondary user of the information solicited contributions with the understanding that such use was permissible. While, it is not the purpose of this response to expound upon the compelling constitutional arguments in the respondents' favor, such rights will be exercised in the event this matter cannot be resolved.

In addition, it may be inferred from the decision in NRCC v. Legi-tech, No. 85-604 (D.C. Cir. July 15, 1985), that the enforcement action involving the WOL

9704384195 4

service is still pending in that as of the date of this response the resolution of that matter has not been made public. In agreeing to hold the appellate action in abeyance, Senior Circuit Judge Wright admonished the Commission to remain cognizant of the important and troubling First Amendment questions raised in that case. Likewise, in this case the respondents constitutional rights should also be taken into consideration; however the respondents do not solely rely on these arguments.

Coupled with the constitutional contentions, ACPA argues that the following factors should also be taken into consideration, a) it has voluntarily agreed to discontinue the use of the WOL service, b) it did not intend to violate any provision of law and from the beginning acted with the understanding that the activity was permissible, and c) that the use of the service netted a small average return. Accordingly, the respondents respectively request that the Commission find no reason to believe that they violated the Act. In the alternative, if the Commission believes that an inadvertent violation did occur as a matter of law, the respondents request that the Commission find reason to believe a violation occurred, take no further action and close the file.

Very truly yours,

Kenneth A. Gross

Kenneth A. Gross

2704384195 5

GCC 2932

RECEIVED AT THE FEC

87 MAR 20 A9:21

THE MERCY FUND

THE MERCY FUND, 2812 WOODLAND DRIVE N.W., WASHINGTON, DC 20008
TELEPHONE 202/745-7544 TELEX 279675 WASH

87 MAR 20 A10:11

March 18, 1987

Ms. Lois G. Lerner
Associate General Counsel
Federal Election Commission
999 E. Street, NW
Washington, D.C. 20463

Dear Ms. Lerner:

Enclosed is a letter from Skadden, Arps, Slate, Meagher and Flow. The second page of the letter points out that The Mercy Fund had no part in the compiling of the list mentioned in MUR 2346 RNC Complaint.

I would therefore appreciate it if you dropped the Fund from the complaint as we are obviously innocent victim of any possible wrong doing.

Obviously, we remain willing to cooperate with you in the future should you so desire.

Please don't hesitate to get back to me if you need any further assistance.

Respectfully,

Antony L. Campaigne
Chairman

ALC/tc
enclosure

9704384195 6

National Advisory Board

Gordon J. Humphrey
U.S. Senator, New Hampshire
Chairman
Senate Task Force on Afghanistan

William Bradley
U.S. Senator, New Jersey

Christopher Dodd
U.S. Senator, Connecticut

Paul Simon
U.S. Senator, Illinois

Malcolm Wallop
U.S. Senator, Wyoming

Denny Hondeshagen
President
German Afghanistan

Habib Mayar
President
Afghan Community in America

RECEIVED BY FEC
6 CC# 2963
87 MAR 25 A10:56

Republican
National
Committee

E. Mark Braden
Chief Counsel

Michael A. Hess
Randall Davis
Deputy Chief Counsels

March 23, 1987

87 MAR 25 P12:20

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: The Afghan Mercy Fund

Dear Mr. Steele:

Enclosed is a copy of a letter received from The Mercy Fund, indicating that the Fund had no part in compiling the list for the mailing complained of in MUR 2346. It appears that the Fund may have been the unknowing victim of someone else's violations. The RNC has no reason to disbelieve this explanation.

The Mercy Fund has provided us with information that served as the basis of a subsequent complaint against "The Best Lists." MUR 2361. That matter, along with MUR 2346 against American Citizens for Political Action and Robert E. Dolan, should be sufficient to identify the actual guilty party.

While I understand that such a request has no direct effect on a matter under review, I would join in The Mercy Fund's request that the Commission find no reason to believe a violation has been committed by the Fund, and that the file on this MUR be closed.

Very truly yours,

E. Mark Braden

EMB:hjd
Enclosure

cc: Honorable Gordon J. Humphrey
Antony L. Campaigne

9704384195 7

THE MERCY FUND

THE MERCY FUND, 2812 WOODLAND DRIVE N.W., WASHINGTON, DC 20008
TELEPHONE 202/745-7544 TELEX 279675 WASH

MAR 19 1987

March 18, 1987

Mr. E. Mark Braden
Chief Counsel
Republican National Committee
Dwight D. Eisenhower Republican Center
310 First Street SE
Washington, D.C. 20003

Dear Mr. Braden:

Enclosed is a letter from Skadden, Arps, Slate, Meagher and Flow. The second page of the letter points out that The Mercy Fund had no part in the compiling of the list mentioned in MUR 2346 RNC Complaint.

I would therefore appreciate it if you dropped the Fund from the complaint as we are obviously innocent victim of any possible wrong doing.

Obviously, we remain willing to cooperate with you in the future should you so desire.

Please don't hesitate to get back to me if you need any further assistance.

Respectfully,

Antony L. Campaigne
Chairman

ALC/tc
enclosure

National Advisory Board

Gordon J. Humphrey
U.S. Senator, New Hampshire
Chairman
Senate Task Force
on Afghanistan

William Bradley
U.S. Senator, New Jersey

Christopher Dodd
U.S. Senator, Connecticut

Paul Simon
U.S. Senator, Illinois

Malcolm Wallop
U.S. Senator, Wyoming

Denny Hundeshagen
President
German Afghanistan Committee

Habib Mayar
President
Afghan Community in America

27043841928

SENSITIVE

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

FIRST GENERAL COUNSEL'S REPORT

MUR #2346
DATE COMPLAINT RECEIVED BY OGC: 2/12/87
DATE OF NOTIFICATION TO RESPONDENT(S): 2/19/87
STAFF MEMBER: Sandra H. Robinson

87 APR 6 P4:16
RECEIVED OFFICE OF THE SEC COMMISSION SECRETARY

COMPLAINANT: Republican National Committee

RESPONDENTS: American Citizens for Political Action (aka The Reagan '86 Political Victory Fund) and Robert Dolan, as treasurer

Afghan Mercy Fund, and Tony Campaigne and Ann Hurd

RELEVANT STATUTES: 2 U.S.C. § 438(a)(4)
2 U.S.C. § 441d

I. GENERATION OF MATTER

On February 12, 1987, the Republican National Committee ("RNC") filed a complaint against Robert E. Dolan and American Citizens for Political Action ("ACPA") (aka the Reagan Political Victory Fund) and against the Afghan Mercy Fund ("the Fund"), Tony Campaigne, President, and Ann Hurd, Project Director, charging that each respondent violated 2 U.S.C. § 438(a)(4). Respondents allegedly copied information from reports filed by the RNC with the Commission, which included pseudonyms authorized to be included on RNC's reports. The complaint alleges that respondents solicited contributions from pseudonyms copied from said reports.

In support of its allegations, the complainant provided copies of two letters signed by Robert Dolan for ACPA soliciting

9704384195 9

political contributions, and one letter on behalf of the Fund soliciting charitable contributions. The complainant deleted the names and addresses of the pseudonyms from each letter.

The complaint further alleged that ACPA has contacted persons listed on the RNC's Commission reports by telephone to solicit contributions and that the solicitors have represented themselves as soliciting funds on behalf of the RNC.

The complainant provided an affidavit signed by the Director of Finance of the RNC with respect to its allegations against ACPA.

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II. FACTUAL AND LEGAL ANALYSIS

The issues in this matter, as well as the parties involved, overlap with those of MUR 2307 and a more recently filed complaint, MUR 2361. On February 26, 1987, the Commission found reason to believe that the respondent in MUR 2307 violated 2 U.S.C. § 438(a)(4). In two of these matters (MUR 2346 and 2361) the RNC is the complainant; the Fund for a Conservative Majority filed the complaint in the first matter (MUR 2307). Robert Dolan and ACPA are named respondents in MURs 2307 and 2346; the Afghan Mercy Fund is a respondent in MUR 2346; and the Best Lists is the named respondent in MUR 2361 with respect to the Afghan Mercy Fund mailing. All of the complaints charge violations of 2 U.S.C. § 438(a)(4). A chronology of events to date follows:

12/18/76	MUR 2307 opened. Fund for a Conservative Majority filed complaint against Robert Dolan and ACPA.

1/8/87	Supplement to MUR 2307 filed.
2/12/87	MUR 2346 opened. RNC filed complaint against Robert Dolan and ACPA, and against the Afghan Mercy Fund, Tony Campaigne and Ann Hurd.
2/26/87	Reason to believe a violation occurred was found by the Commission and letter and questions were mailed to respondents regarding MUR 2307.
3/5/87	MUR 2361 opened.
3/12/87	Response received from attorney for R. Dolan and ACPA re MUR 2346.
3/17/87	Request for 15-Day extension of time to reply from respondent in MUR 2307. (Granted.)

A response was received from respondent in MUR 2361 on March 31, 1987. This Office will review the responses from respondents in all three matters and will prepare a report containing specific recommendations. Because the complaints are so interrelated, this Office will also recommend merging the three to allow more efficient handling of these matters.

Lawrence M. Noble
Acting General Counsel

Date 4/6/87

BY: George F. Rishel
Acting Associate General Counsel

9704384196

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
ACTING GENERAL COUNSEL

FROM: MWE MARJORIE W. EMMONS/JOSHUA MCFADDEN JM

DATE: APRIL 8, 1987

SUBJECT: MUR 2346 - FIRST GENERAL COUNSEL'S REPORT SIGNED APRIL 6, 1987

The above-captioned matter was received in the Office of the Secretary of the Commission Monday, April 6, 1987 at 4:16 P.M. and circulated to the Commission on a 24-hour no-objection basis Tuesday, April 7, 1987 at 11:00 A.M.

There were no objections received in the Office of the Secretary of the Commission to the First General Counsel's Report at the time of the deadline.

9704384196 2

RECEIVED AT THE FEC
GCC# 3679
87 JUN 24 A10:51

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2107
(202) 371-7000

TELEX: 904343
SKARSLAW-WASH
TELECOPIER
(202) 393-5760

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 735-3000

ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 523-0002

ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 651-3000

300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
(213) 687-5000

333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0700

June 17, 1987

Sandra Robinson, Esq.
Office General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20036

Re: MUR 2346 - American Citizens for Political Action

Dear Sandra:

Please note that as of close of business June 12, 1987, the offices of Skadden, Arps, Slate, Meagher & Flom have moved to the following address:

1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

The firm's new telephone number is (202) 371-7000. My direct line is (202) 371-7007. Please update your files accordingly.

Very truly yours,

Kenneth A. Gross
Attorney for ACPA

87 JUN 24 P3:27
RECEIVED
GENERAL COUNSEL
27044019963

MUR 2361

THE BEST LISTS
COMPLAINT: MARCH 5, 1987

INTERNATIONAL FUNDING, INC.
INTERNAL: APRIL 6, 1988

MURS 2307, 2346 AND 2094 MERGED
INTO MUR 2361 ON JULY 14, 1987

97043841961

RECEIVED AT THE FEC
GCC#2853
87 MAR 9 AM 11:43

Republican
National
Committee

E. Mark Braden
Chief Counsel

Michael A. Hess
Randall Davis
Deputy Chief Counsels

87 MAR 9 PM 2:24
RECEIVED
OFFICE OF THE
GENERAL COUNSEL

March 5, 1987

Charles N. Steele, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: The Best Lists

Dear Mr. Steele:

This letter is a complaint filed on behalf of the Republican National Committee (RNC) pursuant to 2. U.S.C. 437(a)(1). The RNC alleges, upon information and belief, that The Best Lists has violated the Federal Election Campaign Act of 1971, as amended.

The RNC alleges that the respondent has violated and continues to violate the provisions of 2 U.S.C. 438(a)(4), which provides that any information copied from reports filed with the Federal Election Commission may not be used by any person for the purpose of soliciting contributions.

In support of this allegation, the RNC submits with this complaint a copy of a letter which solicits contributions for the "Afghan Mercy Fund." The solicitation was, upon information and belief, mailed by the Afghan Mercy Fund in January, 1987.

The letter in question was addressed to one of the pseudonyms authorized to be included on the RNC's reports filed with the Commission, pursuant to 2 U.S.C. 438(a)(4). The name and address of that pseudonym has been deleted from the enclosed letter.

On February 11, 1987, the RNC filed a complaint against the Afghan Mercy Fund in connection with this mailing. Mr. Antony L. Campaigne, President of the Fund, has responded to our complaint by indicating that the pseudonym

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was on a list of names purchased from The Best Lists, located at 2070 Chain Bridge Road, Vienna, Virginia 22180. A copy of Mr. Campaigne's letter is enclosed. Based on these allegations, it appears that respondent has violated the provisions of 2 U.S.C. 438(a)(4). The RNC requests that appropriate review and action be undertaken.

Very truly yours,

E. Mark Braden

E. Mark Braden

Enclosures

Sworn to and subscribed before me this 12th day of March, 1987.

Philip A. Guarino

Notary Public

My Commission expires: My Commission Expires June 14, 1992

9704384196 6

THE MERCY FUND

THE MERCY FUND, 2812 WOODLAND DRIVE N.W., WASHINGTON, DC 20008
TELEPHONE 202/745-7544 TELEX 279675 WASH

FEB 26 1987

February 24, 1987

Mr. E. Mark Braden
Chief Counsel
Republican National Committee
Dwight D. Eisenhower Republican Center
310 First Street Southeast
Washington, DC 20003

Dear Mr. Braden,

I received your letter of February 11, 1987.

I frankly don't know what list we have mailed that you are talking about, but I can assure you we have not copied any of your names.

The Mercy Fund is a rather substantial mailer. In December and January, for example, we mailed approximately 635,000 names, all of which were purchased through a list broker.

Rather than going through the F.E.C. etc., I would suggest you call Best Lists at 442-7595. Tell them which code the mailing was and then we will tell you who we bought the list from, and you can pursue them.

Sincerely,

Antony L. Campaigne
President

P.S. This letter, obviously, was written before our conversation but confirms everything we talked about. TC

National Advisory Board

Gordon J. Humphrey
U.S. Senator, New Hampshire
Chairman
Senate Task Force on Afghanistan

William Bradley
U.S. Senator, New Jersey

Christopher Dodd
U.S. Senator, Connecticut

Paul Simon
U.S. Senator, Illinois

Malcolm Wallop
U.S. Senator, Wyoming

Denny Hundeshagen
President
German Afghanistan Committee

Habib Mayar
President
Afghan Community in America

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GORDON J. HUMPHREY
UNITED STATES SENATOR

Dear Friend,

As a United States Senator, it is my duty to tell you the truth -- no matter how awful. Right now, the Soviet Union is waging the cruelest, most barbaric war in modern history. People are being systematically murdered.

Right now in Afghanistan, children's hands are being blown off by special Soviet bombs that are designed to look like toys.

Right now, women are being forced into small rooms and are blown up by grenades tossed inside by Soviet soldiers asking, "Where is your God now?"

And right now, old men are being forced to lie on the ground so tanks can run over them.

I have seen the reports. I have heard the testimony and what I am about to tell you is terrifying.

The Soviets have even thrown babies into fires and burned them alive. In some villages every man, woman and child has been killed. The entire free people of Afghanistan are the targets of this brutal Soviet effort.

Reports here in Washington tell me that almost every family has lost at least one member to the Soviet war machine. Over one third of the Afghan people have been forced to flee their country.

Nearly one half million women and children have been killed. Thousands of children have lost an arm or a leg. Right now, the Soviet Union is using jets, helicopters, tanks and napalm to destroy the lives of innocent children.

First, Soviet jets destroy every home in the village.

Second, helicopters come and spray the entire area with machine guns.

Third, tanks and troops kill the rest of the innocent civilians they find. And, finally, napalm is used to

Afghan Mercy Fund ○ Washington, D.C. 20016 ○ (202) 628-1000

Not Printed or Mailed at Government Expense

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ensure their grizzly work is complete.

This happened yesterday, it's happening today and it will happen tomorrow.

To break their parents' will, the Soviet military has even resorted to murdering children. In addition, over 10,000 children have been taken to the Soviet Union for "re-education."

If you ever saw what napalm does to a child, you would have nightmares. If you saw what the Soviets have done to the children, you would cry. I know. I have seen the children. I have read the reports.

The Soviets drop small bombs disguised as "toys" to terrorize and maim children. When a child picks up that "toy" -- it explodes in her face. The child loses an arm, a leg, is disfigured or may even be blinded.

All this, to teach the child's parents a lesson. My friend, I am horrified that children and babies must be tortured like this. I ask you please help me get these innocent people the medical assistance they so desperately need.

Thankfully, many children do not have to die in agony because they don't have the proper medical help -- thanks to the Afghan Mercy Fund.

I may be a United States Senator, but I humbly ask you to help me save a child's life. The Afghan Mercy Fund needs medicine and other medical supplies to take inside Afghanistan.

I need you to send your check today. You can help save a life. You can help bring urgently needed medical help to children inside Afghanistan.

Can I count on you for $35, $50, or even $100?

Please, my friend, the innocent people of Afghanistan are victims of unspeakable Soviet terror and desperately need your help.

The Afghan Mercy Fund, working with the German Afghanistan Committee, has a network of clinics and medical stations inside Afghanistan to help people who are suffering from this brutal Soviet assault. It is one of the most extensive medical programs inside Afghanistan today. In the name of decency and humanity, please send them your tax-deductible check today.

I'm counting on your maximum donation today. Thank you in advance for your help.

Sincerely,

Gordon Humphrey

Gordon J. Humphrey
United States Senator

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EMERGENCY REPLY TO

SENATOR GORDON HUMPHREY

c/o Afghan Mercy Fund
P.O. Box 5920
Washington, D.C. 20016
(202) 628-1000

Dear Senator Humphrey,

The barbaric war the Soviet Union is waging against innocent men, women and children in Afghanistan is a sin against humanity.

I am outraged and am now making my commitment to you and the Afghan Mercy Fund.

To help you get the medical supplies and relief that is so desperately needed by the Afghan people, I am enclosing my tax-deductible gift of:

( ) $35 ( ) $50 ( ) $100 ( ) $_____

Please make your check payable to:
THE AFGHAN MERCY FUND

AJ128

Thank you for your compassion and much needed help!

THE AFGHAN MERCY FUND
is a project of
The Mercy Fund

National Board of Advisors

Tony Campaigne
President
Afghan Mercy Fund

Gordon Humphrey
Senator, New Hampshire
Chairman Senate
Task Force on Afghanistan

Malcolm Wallop
Senator, Wyoming

Anne Hurd
Project Director
Afghan Mercy Fund

Paul Simon
Senator, Illinois

Habib Mayar
President
Afghan Community of America

Christopher Dodd
Senator, Connecticut

Denny Hundeshagen
President
German Afghanistan Committee

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FROM

Place Postage Here

Afghan Mercy Fund

Friendship Station
Post Office Box 5920
Washington, D.C. 20016

A J

SENATOR GORDON J. HUMPHREY
c/o Afghan Mercy Fund
Washington Headquarters
P.O. Box 5920
Washington, D.C. 20016

NONPROFIT ORG

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 16, 1987

E. Mark Braden, Chief Counsel
Republican National Committee
Dwight D. Eisenhower Republican Center
310 First Street, SE
Washington, DC 20003

Dear Mr. Braden:

This letter will acknowledge receipt of your complaint which we received on March 9, 1987, alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by The Best Lists. 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 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 the original complaint. For your information, we have attached a brief description of the Commission's procedures for handling complaints. We have numbered this matter MUR 2361. Please refer to this number in all future correspondence. If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Charles N. Steele
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

9704384197 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 16, 1987

The Best Lists
2070 Chain Bridge Road
Vienna, VA 22180

Re: MUR 2361

Gentlemen:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2361. 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 you and The Best Lists in 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, you should advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Sandra Robinson, the attorney assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

97043841974

GCC# 3017

LAW OFFICES

JACKSON & CAMPBELL, P.C.

ONE LAFAYETTE CENTRE

SUITE 300 SOUTH

1120 20TH STREET, N.W.

WASHINGTON, D.C. 20036-3437

INT'L TELEX: 64706

TELECOPIER (202) 457-1678

(202) 457-1600

BENJAMIN W. DULANY*
KENNETH WELLS PARKINSON
DANIEL WEBSTER COON*
ARTHUR C. ELGIN, JR.*
JAMES P. SCHALLER*
JO V. MORGAN, JR.*
JOHN A. NEVIUS
PATRICIA D. GURNE
NICHOLAS STILLWELL McCONNELL**
ALAN R. SWENDIMAN*
SIDNEY C. COUSINS, JR.*
PATRICK L. WOODWARD*
JAMES R. MICHAL*
M. ELIZABETH MEDAGLIA*
DAVID H. COX*
MICHAEL J. McMANUS*
JOHN J. BRENNAN, III*
RICHARD W. BRYAN*
CHRISTINE A. NYKIEL*
PAUL S. SCHLEIFMAN*
TIMOTHY R. DINGILIAN*
ANTOINETTE A. LeBEL
RICHARD J. DeFEO, JR.
MARY LYNN REED*
MARC E. ROSENDORF*
WARREN C. LUTZ*

* ALSO ADMITTED IN MARYLAND
* ALSO ADMITTED IN VIRGINIA

THOMAS SEARING JACKSON*
EDMUND D. CAMPBELL*
OF COUNSEL

MARYLAND OFFICE
200 A MONROE STREET
ROCKVILLE, MARYLAND 20850
(301) 340-0450

VIRGINIA OFFICE
1008 NORTH RANDOLPH STREET
SUITE 104
ARLINGTON, VIRGINIA 22201
(703) 522-1330

DIRECT DIAL NUMBER

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

March 31, 1987

HAND-DELIVERED

Lois G. Lerner, Esquire
Associate General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2361
R&C Complaint Against Best Lists, Inc.

Dear Ms. Lerner:

This firm represents Best Lists, Inc. ("Best Lists") in the above-referenced action. This letter is in response to yours of March 16, 1987 and the Complaint dated March 5, 1987 by the Republican National Committee ("Complainant"), which alleges that Best Lists violated 2 U.S.C. § 438(a) (4). In support of the allegation, the Complainant submitted a copy of a letter which apparently was mailed to a pseudonym authorized to be included in the Complainant's reports filed with the Federal Election Commission ("Commission"). The Complainant alleges that Best Lists copied information from reports filed by the Complainant with the Commission.

Best Lists is a national broker of names in the direct response industry. In late October, 1986, Best Lists was contacted by Robert E. Dolan, Treasurer of American Citizens for Political Action ("ACPA"). Mr. Dolan stated that ACPA owned a particular list and wanted to employ Best Lists' services to rent it. Best Lists had no knowledge of where Mr. Dolan obtained the list. From late November through early January, Best Lists rented the list provided by Mr. Dolan to three organizations.

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On February 6, 1987, Best Lists was informed that the list provided by Mr. Dolan was compiled from filings with the Commission. Upon this notification, Best Lists circulated an internal memo to cease all use of the list immediately. All activity with respect to the list has been suspended since that date.

The list in question was provided to Best Lists by Mr. Dolan. The circumstances under which it was compiled are set forth in a letter dated March 12, 1987 to the Commission from Kenneth A. Gross, counsel for ACPA and Mr. Dolan, a copy of which is enclosed. According to Mr. Gross' letter, the sole source of the list was a firm known as Washington On-Line. (See letter, p. 2.) No representative or employee of Best Lists ever copied a report or list filed by the Complainant with the Commission. At no time was Best Lists ever involved in the compilation of the list in question.

This is the first instance that Best Lists has in any way been contacted by the Commission. Best Lists did not knowingly, nor did it intend to, engage in any conduct that might be considered to be improper or illegal. When notified of the problem, it immediately discontinued use of the list provided by Mr. Dolan.

Consequently, Best Lists respectively requests that the Commission find no reason to believe that it violated the Federal Election Campaign Act of 1971. In the alternative, if the Commission believes that an inadvertent violation may have occurred, Best Lists requests that the Commission take no further action and close the file.

Very truly yours,

Alan R. Swendiman

ARS/lg

Enclosure as stated

9704384197 6

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2361

NAME OF COUNSEL: David H. Cox, Esquire

ADDRESS: Jackson & Campbell, P.C.
1120 20th Street, N.W.
Suite 300 South
Washington, D.C. 20036

TELEPHONE: (202) 457-1634

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.

March 30, 1987
Date

Donald J. Hopper - Exec. V.P.
Signature

RESPONDENT'S NAME: BEST LIST, INC.

ADDRESS: 2070 Chain Bridge Road
Suite 400
Vienna, Virginia 22180

HOME PHONE:

BUSINESS PHONE: (703) 442-7595

9704384197 7

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
American Citizens for Political Action and Robert E. Dolan, as treasurer	)	MUR 2307
	)	
Afghan Mercy Fund, and Tony Campaigne, as President and Anne Hurd, as Project Director	)	MUR 2346
	)	
The Best Lists	)	MUR 2361

GENERAL COUNSEL'S REPORT[1/]

I. BACKGROUND

In MUR 2361 the Republican National Committee ("RNC") filed a complaint against The Best Lists on March 9, 1987. The complaint alleged that respondents violated 2 U.S.C. § 438(a)(4) by copying information from financial disclosure reports filed by the RNC with the Commission, and subsequently using that information for the purpose of soliciting contributions. The RNC was permitted to use pseudonyms on its disclosure reports, pursuant to 2 U.S.C. § 438(a)(4). Allegedly, a pseudonym from the RNC disclosure reports was solicited. The RNC learned of the alleged prohibited action by The Best Lists from information generated by its earlier complaint in MUR 2346.

In MUR 2346 the RNC filed a complaint on February 12, 1987 against the Afghan Mercy Fund ("the Mercy Fund"), Tony Campaigne, as President, and Anne Hurd, as Project Director; and against

1/ This report discusses issues in each of the above-captioned matters and is intended to serve as a First General Counsel's Report for MUR 2361 and a General Counsel's Report for MUR 2307 and MUR 2346.

9704384197 8

American Citizens for Political Action ("ACPA") and Robert E. Dolan, as treasurer, alleging that each had violated 2 U.S.C. § 438(a)(4). The complaint charged that respondents copied information from the RNC disclosure reports, which included pseudonyms. ACPA allegedly solicited at least two of these pseudonyms, and the Mercy Fund allegedly solicited at least one pseudonym, for contributions. The complaint further alleged that ACPA and Mr. Dolan solicited contributions via telephone from persons found on the RNC disclosure reports, during which conversations an association between the RNC and ACPA was implied. In response to this complaint, the Mercy Fund submitted a written statement to the RNC denying involvement with compiling the list in question and further stated that it acquired the list through The Best Lists, a list broker. The RNC subsequently filed the complaint in MUR 2361. The issues in MURs 2361 and 2346 are based on the same set of facts. Therefore, both matters will be discussed in this report.

On February 26, 1987, in MUR 2307, the Commission found reason to believe American Citizens for Political Action and Robert E. Dolan, as treasurer, violated 2 U.S.C. § 438(a)(4). The complaint in this matter was filed on December 18, 1986 by the Fund for a Conservative Majority. This matter is also considered closely related to the issues in the above matters, and will be briefly discussed.

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II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended, requires the Commission to make reports and statements filed with it available for public inspection within 48 hours of such filing. Political committees are permitted to submit up to 10 pseudonyms on each report filed, to protect against the illegal use of the names and addresses of contributors. Copies of the public information may be provided to any person upon request, at his or her expense. Persons obtaining this information are prohibited from selling or using it for the purpose of soliciting contributions or for commercial purposes. The only exception is that the name and address of any political committee may be used to solicit contributions from such committee. 2 U.S.C. § 438(a)(4).

A. MUR 2307 - Respondents: American Citizens for Political Action and Robert E. Dolan, as treasurer

The Fund for a Conservative Majority alleged that respondents, ACPA and Mr. Dolan, solicited contributions from pseudonyms found on the complainant's disclosure reports filed with the Commission. Respondents' written reply asserted that they had obtained the list of names in question from an independent third party. See, MUR 2307, General Counsel's Report, signed February 20, 1987.

On February 26, 1987, the Commission found reason to believe that respondents violated 2 U.S.C. § 438(a)(4) and approved

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interrogatories and a request for documents. A requested extension of time was granted, and answers were subsequently submitted. Attachment I.[2/]

Respondents deny copying names from the Commission's public record and identify Washington-On-Line ("WOL"), located at 507 Eighth Street, S.E., Washington, D.C., as the source of the names in question. WOL is a computerized information service established and operated by Legi-Tech, Inc. See, MUR 2094. Respondents explained that Mr. Dolan, through his company, International Funding Institute, contracted with WOL to purchase a list of contributor names on May 22, 1986. The names were brokered to ACPA through The Best Lists. Copies of three invoices from The Best Lists to ACPA were provided to substantiate their relationship. Attachment I (9-11). Mail dates on the invoices coincide with the dates of the three mailings by ACPA (October 20 and 24, 1986, and November 24, 1986), which resulted in this complaint being filed. The name of the list is identified on the invoices and by respondents as "Active Republican Donors," with "Multi Donors" included in the name on two of the invoices.

It is noted that in their response to the complaint in MUR 2346, ACPA and Mr. Dolan asserted that the list of names in that matter was also obtained from WOL. The May 22nd date is repeated

2/ Respondents' answers are discussed briefly here to demonstrate an interrelatedness between the issues and facts of all matters discussed in this report. A more detailed discussion of the responses will be made in a later report.

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as the contract date and the mailing dates identified are October 20 & 24, 1986, and November 7, 1986. The name of the list is not identified by these respondents, but Tony Campaigne, co-respondent in MUR 2346, stated that he "believe[s] it is called 'Active Republican Multi Donors.'" Attachment IV. Both Mr. Dolan and Mr. Campaigne, in MUR 2346, admit that the list of names used by the Mercy Fund came from Mr. Dolan. This admission is corroborated by the response of the Best Lists in MUR 2361, discussed below. It can be presumed that the list of names at issue in each of the matters discussed in this report is the same, and that the circumstances of its development and use in each instance are intertwined. Therefore, this Office recommends merging MUR 2307 and MUR 2346 with MUR 2361.

This Office also recommends that the Commission find reason to believe Legi-Tech, Inc., the company which operates the Washington-On-Line information service, violated 2 U.S.C. § 438(a)(4).[3/]

B. MUR 2346 - Respondents: American Citizens for Political Action and Robert E. Dolan, as treasurer; and Afghan Mercy Fund, and Tony Campaigne, as President, and Anne Hurd, as Project Director

The RNC filed a complaint against ACPA and Mr. Dolan and against the Mercy Fund, Mr. Campaigne and Ms. Hurd, alleging that each respondent copied information from the RNC disclosure reports for the purpose of soliciting contributions. Allegedly,

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3/ In a report in MUR 2094, circulated contemporaneously with this report, this Office is also recommending that MUR 2094 be merged with MUR 2361. The letter to Legi-Tech, Inc., notes this action.

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at least two pseudonyms from the RNC reports were solicited by ACPA, and at least one pseudonym was solicited by the Mercy Fund. The complainant submitted copies of the letters of solicitation, but deleted the names and addresses of the addressees. An affidavit signed by Leah Geraghty, Director of Finance for the RNC, was submitted in support of the allegations against ACPA.

In the complaint against ACPA, it is also alleged that respondents solicited contributions via telephone from pseudonyms found on the complainant's disclosure reports. It is alleged that during these telephone calls, respondents represented themselves as associated with the complainant, by referring to the receiver-of-the-call's last contribution to the RNC as a contribution to the "Reagan Political Victory Fund," a project of ACPA.[4/] ACPA and Mr. Dolan obtained legal counsel, who submitted a written response to the complaint.

ACPA and Mr. Dolan deny that they, or any connected entity, copied names from the Commission's public record. As in MUR 2307, it is stated that these respondents acquired the names on the list through the Washington-On-Line ("WOL") service. ACPA reportedly integrated names from WOL with its own system and used

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4/ As noted in MUR 2307, General Counsel's Report, signed February 20, 1987, the complainant's allegations there went solely to a violation of 2 U.S.C. § 438(a)(4). This Office made no recommendation with respect to the naming of ACPA's "special project." The report cited Common Cause v. FEC, No. 83-2199 (D.D.C.), in which the District Court determined that an unauthorized political committee may not use the name of a candidate in a "project," but the decision was stayed pending an appeal by the Commission, No 87-5036 (D.C. Cir.). This is also the circumstance in MUR 2346.

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the resultant list for three different mailings. ACPA netted an average of $740 from these mailings. Respondents state that upon receiving the complaint, they discontinued use of all names obtained from WOL. Counsel asserts that "[t]he WOL service was the sole source of the names which could have resulted in the present complaint." Attachment III.

ACPA and Mr. Dolan admit that the telephone solicitations occurred, but deny that telephone numbers were obtained from WOL or the Commission's public record. Respondents also deny inferring during the telephone solicitations that ACPA is associated with the RNC. It is explained that each caller is required to use a prepared script that identifies ACPA and makes no reference to the complainant. A copy of the script was not provided. It is further argued that the allegations are without factual support and, as a matter of law, do not constitute a violation of the Federal Election Campaign Act of 1971, as amended. Attachment III(2,3).

Counsel for ACPA and Mr. Dolan continued his argument by stating that, although Mr. Dolan has voluntarily stopped using the names obtained from WOL, he does not waive his constitutional rights. Specifically, counsel argued that the solicitation restriction on the use of contributor names, particularly in this instance where they were obtained through a third party, is an unconstitutional restriction on political speech.

It is the position of this Office that additional information is needed to verify respondents' assertions that WOL

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was the "sole source" of the names used which led to the filing of the complaint in MUR 2346. This Office, therefore, recommends a finding of reason to believe that respondents, ACPA and Mr. Dolan, as treasurer, violated 2 U.S.C. § 438(a)(4), to be followed by an investigation into the original source of the names at issue.

Mr. Campaigne provided information to the Commission and to the RNC, on behalf of the Afghan Mercy Fund and associates, denying the allegations in the complaint. Attachments IV & V. He referred the complainant to The Best Lists, the brokerage company that supplied the Mercy Fund with the list it used. Attachment VI(1).

Counsel for ACPA has further substantiated the Mercy Fund's assertion that it was not involved with compiling the list of names. He admits that Mr. Dolan allowed the Mercy Fund "the use" of ACPA's list, which allegedly was obtained from WOL, and that neither Mr. Campaigne nor the Mercy Fund knew the list contained names from the Commission's public record. Attachment III(2). This explanation is also corroborated by the response of The Best Lists in MUR 2361, discussed below.

The responses from each party in MUR 2346 indicate that the Afghan Mercy Fund, Mr. Campaigne and Ms. Hurd may not have been involved with compiling the list of names at issue. This Office, however, makes no recommendations at this time with respect to these respondents, pending answers to the interrogatories being sent to the other respondents.

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C. **MUR 2361 - Respondent: The Best Lists**

The complainant in this matter, the RNC, alleged that The Best Lists sold a list of names to the Afghan Mercy Fund for the purpose of soliciting contributions. Allegedly, the list included at least one pseudonym found in the RNC's disclosure reports filed with the Commission. In a letter, attached to the complaint, Tony Campaigne informed the RNC that the Mercy Fund had obtained the list through The Best Lists. A copy of the solicitation letter mailed to the pseudonym was also attached to the complaint, however, the name and address of the addressee were deleted. The complaint alleged that the letter was mailed in January, 1987.

Legal counsel for The Best Lists submitted a written statement denying respondent's involvement with compiling the list in question. Attachment II. Specifically, it is explained that respondent, as a national broker of names, was contacted in late October, 1986, by Robert E. Dolan, treasurer of ACPA, requesting respondent's assistance with renting a list owned by ACPA. Respondent claims to have no knowledge of how the list was obtained by ACPA. The respondent did rent the list to three organizations between November, 1986 and January, 1987. It is stated that on February 6, 1987, when respondent learned that the list may have been compiled from reports filed with the Commission, use of the list was terminated. It is noted that the complaint in this matter was filed on March 9, 1987. Respondent does not disclose from whom or how it learned of the list's

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alleged source prior to receiving notification of the present complaint.

Respondent does not deny having used the list for commercial purposes, but does deny having any control over, or involvement with, the manner in which it was compiled. As noted above, respondents, ACPA and Mr. Dolan, in MUR 2346 acknowledged that the mailing list used by the Mercy Fund came from them. It is also noteworthy that in MUR 2307, ACPA and Mr. Dolan stated that the list of names they acquired from WOL were brokered through The Best Lists. Assuming the mailing list in each matter is exactly the same or partially so, the role of The Best Lists, and the information it knew about the source of the list is not clearly discernable. This Office, therefore, recommends that the Commission find reason to believe The Best Lists violated 2 U.S.C. § 438(a)(4), to be followed by an investigation into The Best Lists' role in distributing the list of names.

III. RECOMMENDATIONS

1. Merge MURs 2307 and 2346 with 2361.

2. Find reason to believe The Best Lists violated 2 U.S.C. § 438(a)(4).

3. Find reason to believe American Citizens for Political Action and Robert E. Dolan, as treasurer, violated 2 U.S.C. § 438(a)(4).

4. Find reason to believe Legi-Tech, Inc. violated 2 U.S.C. § 438(a)(4).

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5. Approve the attached Factual and Legal Analysis.

6. Approve the attached letters, interrogatories and requests for production of documents.

Date 7/1/87

Lawrence M. Noble
Acting General Counsel

Attachments
1. Responses to reason to believe finding and interrogatories-MUR 2307.
2. Response to Complaint - MUR 2361.
3. Response to Complaint from ACPA - MUR 2346
4-5. Responses to Complaint from the Mercy Fund - MUR 2346
6. Request from the Complainant - MUR 2346
7. Factual and Legal Analysis re Legi-Tech, Inc.
8. Letters (3), Interrogatories and Requests for Production of Documents

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: LAWRENCE M. NOBLE
ACTING GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /JOSHUA MCFADDEN JM

DATE: JULY 8, 1987

SUBJECT: OBJECTIONS TO MURs 2361, 2346 & 2307 - GENERAL COUNSEL'S REPORT
SIGNED JULY 1, 1987

The above-captioned document was circulated to the Commission on Thursday, July 2, 1987 at 12:00 P.M.

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

Commissioner Aikens	
Commissioner Elliott	X
Commissioner Josefiak	
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	X

This matter will be placed on the Executive Session agenda for July 14, 1987.

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
American Citizens for Political Action and Robert E. Dolan, as treasurer	)	MUR 2307
	)	
Afghan Mercy Fund, and Tony Campaigne, as President and Anne Hurd, as Project Director	)	MUR 2346
	)	
The Best Lists	)	MUR 2361

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 14, 1987, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in the above-captioned matters:

1. Merge MURs 2307 and 2346 with 2361.

2. Find reason to believe The Best Lists violated 2 U.S.C. § 438(a)(4).

3. Find reason to believe American Citizens for Political Action and Robert E. Dolan, as treasurer, violated 2 U.S.C. § 438(a)(4).

4. Find reason to believe Legi-Tech, Inc. violated 2 U.S.C. § 438(a)(4).

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5. Approve the Factual and Legal Analysis attached to the General Counsel's report dated July 1, 1987.

6. Approve the letters, interrogatories and requests for production of documents as recommended in the General Counsel's report dated July 1, 1987.

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

Attest:

7/15/87
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 22, 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David H. Cox, Esquire
Jackson & Campbell, P.C.
1120 - 20th Street, N.W.
Suite 300 South
Washington, D.C. 20036-3437

RE: MUR 2361
The Best Lists

Dear Mr. Cox:

On March 16, 1987, the Federal Election Commission notified your client, The Best Lists, 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.

Upon further review of the allegations contained in the complaint, and information supplied by your client and co-respondents, the Commission, on July 14 , 1987, found that there is reason to believe The Best Lists violated 2 U.S.C. § 438(a)(4), a provision of the Act. Specifically, it appears that the dates of The Best Lists' knowledge about the source of the names on the list which generated the complaint preceeded its notification of the complaint by the Commission. Therefore, the question of The Best Lists' role in distributing the list is not settled.

Under the Act you have an opportunity to demonstrate that no action should be taken against The Best Lists. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed Interrogatories and Request for Production of Documents. Statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against The Best Lists, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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 Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
Interrogatories and Request for
Production of Documents

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2361
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: The Best Lists
2070 Chain Bridge Road
Suite 400
Vienna, Virginia 22180

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that The Best Lists submit answers in writing and under oath to the questions set forth below within 15 days of your receipt of this request. In addition, the Commission hereby requests that the above-named respondents produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, DC 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: The Best Lists

I. In your response to the complaint in MUR 2346, you admit brokering a list of names, the use of which resulted in pseudonyms from the Federal Election Commission's ("the Commission") public record being solicited for contributions. You identified Robert E. Dolan of American Citizens for Political Action ("ACPA") as the source of that list. The following questions are posed in reference to the list so identified.

1. a) Describe the nature of your relationship with ACPA and Mr. Dolan. Identify the number of contacts with ACPA and Mr. Dolan by date, within the past 18 months, and describe the services obtained, shared or provided.

b) If the basis of your relationship with Mr. Dolan and/or ACPA is contractual, provide a copy of the contract. If there is no contract, provide copies of all correspondence which discusses the terms of the relationship. If there is no written documentation, describe the terms of all oral agreements.

2. Provide copies of all lists of names obtained from ACPA and Mr. Dolan. State the name of each such list and the number of names contained on it.

3. a) State the name, address and telephone number of the persons or entities who rented, bought, or otherwise had access to the list of names referenced above.

b) State the terms and dates of all related agreements.

4. State whether at the time you acquired the lists of names from Mr. Dolan an inquiry was made as to the source of the names. If the answer is yes, state the name of the person making the inquiry, the name of the person to whom the inquiry was made, and the answer received to the inquiry.

5. Describe your procedures for acquiring and brokering lists of names. Provide copies of written policies and/or procedures which are applicable.

6. State whether you altered in any manner the list of names obtained from Mr. Dolan prior to renting or selling it. If the answer is yes, describe the manner in which the list of names was altered, the date(s) of the alteration(s), and the purpose(s) of the alteration(s).

7. Provide originals or true copies of all documents, including correspondence, notes, memoranda, contracts, invoices, and pamphlets which support your responses to the above interrogatores.

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8. In your response you state that you learned on February 6, 1987, that the list of names provided by Mr. Dolan had been compiled from the Commission's public record. Identify the source of that information, the date(s) on which it was obtained, and how you obtained it.

II. In a related matter merged with this one you are identified by Mr. Dolan as the broker of a list sold to Mr. Dolan by Washington-On-Line ("WOL") on or about October 20 & 24, 1986 and November 24, 1986. The following questions are propounded in reference to that list(s) identified as "Active Republican Donors" and "Active Republican Donors Multi-Donors."

1. State whether you acted as broker between Mr. Dolan and WOL as described above. If yes, state the date(s) and terms of your relationship with each.

2. Other than transactions involving ACPA, state whether you have conducted any business with WOL. If yes, identify the dates and terms of your relationship.

3. State whether at the time you acquired lists of names from WOL an inquiry was made as to the source of the names. If the answer is yes, state the name of the person making the inquiry, the name of the person to whom the inquiry was made, and the answer received to the inquiry.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

July 22, 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kenneth A. Gross, Esquire
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

Re: MUR 2361
American Citizens for
Political Action and
Robert E. Dolan, as
treasurer

Dear Mr. Gross:

On February 19, 1987, the Federal Election Commission notified your clients, American Citizens for Political Action and Robert E. Dolan, as treasurer, 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 enclosed with that notification.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission on July 14, 1987, found that there is reason to believe your clients violated 2 U.S.C. § 438(a)(4), a provision of the Act. Specifically, it appears that insufficient information has been provided to resolve the question of the true source of the list of names identified in the complaint as containing pseudonyms found on reports filed with the Commission. This matter (formerly MUR 2346) together with MUR 2307, has been merged into MUR 2361 and will henceforth bear the latter designation.

Under the Act, you have an opportunity to demonstrate that no action should be taken against your clients regarding the Commission's determination on July 14, 1987. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials along with responses to the enclosed Interrogatories and

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Request for Production of Documents. All responses must be submitted to the General Counsel's Office within 15 days of your receipt of this letter. Statements should be submitted under oath.

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

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
Interrogatories and Request for
Production of Documents

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2361
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Robert E. Dolan, Treasurer
American Citizens for
Political Action
P. O. Box 96092
Washington, D. C. 20090

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that American Citizens for Political Action and Robert E. Dolan, as treasurer, submit answers in writing and under oath to the questions set forth below within 15 days of your receipt of this request. In addition, the Commission hereby requests that the above-named respondents produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, DC 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: American Citizens for Political Action
and Robert E. Dolan, as treasurer

1. In your response to the complaint in MUR 2346, you admit developing and integrating a list of names, the use of which resulted in pseudonyms from the Federal Election Commission's ("the Commission") public record being solicited for contributions. You identified the Washington-On-Line ("WOL") service as the source of the names found in the Commission's public record. State the address and telephone number of WOL and the name of its principal officer and/or representative.

2. Describe the nature of your relationship with WOL. Identify the number of contacts with WOL by date, within the past 18 months, and describe the services obtained or shared. Identify all parties that acted as broker or intermediary in these transactions.

3. If the basis of your relationship with WOL is contractual, provide a copy of the contract. If there is no contract, provide copies of all correspondence which discusses the terms of the relationship. If there is no written documentation, describe the terms of all oral agreements.

4. Provide a copy of all lists of names obtained from WOL. State the name of all such mailing lists and the number of names contained on each.

5. Other than through a relationship with WOL, describe how American Citizens for Political Action ("ACPA") maintains and supplements its own mailing list.

6. State how ACPA is able to distinguish its own list of names from those obtained from outside sources. Provide copies of written policies and procedures which are applicable.

7. In your response you state that WOL is the "sole source" of the "salted" names on the list in question 1. Describe the method used to make that determination.

8. Provide copies of all mailing lists resulting from an integration of ACPA's mailing list with names obtained from WOL. State the names of all such mailing lists and the number of names contained on each.

9. State whether the mailing list(s) referred to in questions 1 and/or 8 is the same mailing list(s) at issue in the complaint in MUR 2307 and discussed in your responses to that complaint and respective interrogatories. State how it is distinguishable.

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10. a) State the name, address and telephone number of the persons or entities who rented, bought, or otherwise had access to the mailing list(s) referred to in questions 1 and/or 8.

b) State the terms and dates of all rental agreements.

c) Identify all parties that acted as a broker or intermediary in these transactions.

11. State whether at the time you acquired names from WOL an inquiry was made as to the source of the names. If the answer is yes, state the name of the person making the inquiry, the name of the person to whom the inquiry was made, and the answer received to the inquiry.

12. In your responses to interrogatories in MUR 2307 you state that you had concerns about the sources used by WOL to compile lists of names. Describe the information you acquired which raised those concerns.

13. In your response to the complaint in MUR 2346 you admit that you allowed the Afghan Mercy Fund "the use" of a mailing list in your possession. State the name of that list.

14. State the meaning of the code BQAX1 found on the solicitation letters mailed by American Citizens for Political Action. State the date(s) these letters were mailed and the number of mailings.

15. Provide originals or true copies of all documents, including correspondence, notes, memoranda, contracts, invoices, and pamphlets concerning acquisition of the names on the mailing list, and the rental, sale or other use of the mailing list(s) referred to in questions 1 and/or 8.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 22, 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Frank Washington, Vice President
Legi-Tech, Inc.
Washington-On-Line
507 Eighth Street, S.E.
Washington, D. C. 20003

RE: MUR 2361
Legi-Tech, Inc.
(Washington-On-Line)

Dear Mr. Washington:

On July 14, 1987, the Federal Election Commission found that there is reason to believe Legi-Tech, Inc. violated 2 U.S.C. § 438(a)(4), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. On July 14, 1987, the Commission also voted to merge MUR 2094 with MUR 2361. Henceforth, both matters will be referred to as MUR 2361.

Under the Act, you have an opportunity to demonstrate that no action should be taken against Legi-Tech, Inc. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office, along with answers to the enclosed questions, within 15 days of your receipt of this letter. Statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against Legi-Tech, Inc., the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time

so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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

The investigation now being conducted will be confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Interrogatories and Requests for Production of Documents

9704362007

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: **Legi-Tech, Inc.** MUR 2361

I. SUMMARY OF ALLEGATIONS

The Office of the General Counsel received complaints from the Fund for a Conservative Majority and the Republican National Committee charging the American Citizens for Political Action ("ACPA") and Robert E. Dolan, as treasurer, with violating 2 U.S.C. § 438(a)(4). In each complaint it is alleged that ACPA and Mr. Dolan used information copied from the complainants' respective disclosure reports filed with the Federal Election Commission ("the Commission"). Each complainant has been authorized to include pseudonyms with its list of contributors pursuant to 2 U.S.C. § 438(a)(4), and allegedly ACPA and Mr. Dolan solicited contributions from at least two of each complainant's pseudonyms. In separate responses to the complaints and interrogatories, on March 12, 1987 and April 6, 1987, Mr. Dolan, through legal counsel, alleged that he obtained the list of names in question from Washington-On-Line, a computerized information service. Washington-On-Line is a service established and managed by Legi-Tech, Inc.

II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended, requires the Commission to make reports and statements filed with it available for public inspection within 48 hours of such filing. Political committees are permitted to submit up to 10 pseudonyms on each report filed, in order to protect against illegal use of the names and addresses of contributors. Copies

9704384200 8

of the information made available to the public may be provided to any person upon request, at his or her expense. Persons obtaining this information are prohibited from selling or using it for the purpose of soliciting contributions or for commercial purposes. The only exception is that the name and address of any political committee may be used to solicit contributions from such committee. 2 U.S.C. § 438(a)(4).

In the complaint filed by the Fund for a Conservative Majority, ACPA and Mr. Dolan deny copying names from the Commission's public record and identify Washington-On-Line ("WOL") located at 507 Eighth Street, S.E., Washington, D.C., as the source of the names in question. WOL is a computerized information service established and operated by Legi-Tech, Inc. Mr. Dolan alleges that, through his company, International Funding Institute, he contracted with WOL to purchase a list of contributor names on May 22, 1986. The list was brokered to Mr. Dolan through The Best Lists. The name of the list is identified on the invoices and by respondents as "Active Republican Donors" or "Active Republican Donors Multi Donors."

In their response to the complaint filed by the Republican National Committee, ACPA and Mr. Dolan repeat the assertion that the list of names in that matter were obtained from WOL. The May 22nd date is repeated as the contract date.

Therefore, there is reason to believe Legi-Tech, Inc., the company which established and operates the Washington-On-Line information service, violated 2 U.S.C. § 438(a)(4).

9 7 0 4 3 8 4 2 0 0 9

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2361
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: **Frank Washington, Vice President**
Legi-Tech, Inc.
Washington-On-Line
507 Eighth Street, S.E.
Washington, D.C. 20003

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that Legi-Tech, Inc. submit answers in writing and under oath to the questions set forth below within 15 days of your receipt of this request. In addition, the Commission hereby requests that the above-named respondents produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, DC 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

27043042010

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

9/0434342012

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: **Legi-Tech, Inc.**

1. State the full name of your business entity, the address and telephone number of its primary place of business and its local office, if different. State the full name and title of the principal officer and local representative.

2. Describe the service you provide entitled "Washington-On-Line" ("WOL"). State the address and telephone number for this service.

3. State whether you have transacted business through WOL with the American Citizens for Political Action and Robert E. Dolan, as treasurer, in the past 18 months to provide lists of names. If yes, state the dates of each transaction and the name(s) of the list(s). Provide a copy of each list identified.

4. State whether you have transacted business through WOL with Robert E. Dolan and International Funding Institute in the past 18 months to provide lists of names. If yes, state the dates of each transaction and the name(s) of the list(s). Provide a copy of each list identified.

5. State whether you have transacted business with The Best Lists to broker lists of names on your behalf in the past 18 months. If yes, state the dates of each transaction and the name(s) of the list(s). Provide a copy of each list identified.

6. If the basis of your business relationship(s) identified in questions 3, 4, and 5 is contractual, provide a copy of the contract(s). If there is no contract, provide copies of all correspondence which discusses the terms of the relationship(s). If there is no written documentation, describe the terms of all oral agreements.

7. For each list identified in questions 3, 4, and 5, identify the source(s) of the names on the list.

8. Describe policies and procedures for compiling and maintaining lists of names. Provide copies of written policies and procedures which are applicable.

GCC 4018

RECEIVED BY THE FEC
MUR 2361
87 JUL 27 A8:58

Republican
National
Committee

E. Mark Braden
Chief Counsel

87 JUL 27 A10:22

July 22, 1987

Mrs. Sandra Robinson
Staff Attorney
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

RE: Afghan Mercy Fund

Dear Mrs. Robinson:

The attached materials are provided to you pursuant to your recent request.

If you have any further questions, please do not hesitate to contact my office.

Very truly yours,

E. Mark Braden

EMB:jd
Enclosures

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Republican National Committee
310 First Street S.E., Washington, D.C. 20003

MEMORANDUM

September 30, 1986

TO: Patsy Butler

FROM: Kevin Potter

RE: FEC Salt Names

Patsy, the following names must be added to the Third Quarter FEC Report you are now preparing:

Name/Address	Occupation/Employer	Contribution

It is imperative that this information appear on this report, and that it appear exactly as above. George Lynch will be submitting it to the FEC in compliance with election law.

Please call with any questions. Thank you.

cc: Leah Geraghty, Joe McCeney, George Lynch

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GORDON J. HUMPHREY
UNITED STATES SENATOR

[redacted]

Dear Friend,

As a United States Senator, it is my duty to tell you the truth -- no matter how awful. Right now, the Soviet Union is waging the cruelest, most barbaric war in modern history. People are being systematically murdered.

Right now in Afghanistan, children's hands are being blown off by special Soviet bombs that are designed to look like toys.

Right now, women are being forced into small rooms and are blown up by grenades tossed inside by Soviet soldiers asking, "Where is your God now?"

And right now, old men are being forced to lie on the ground so tanks can run over them.

I have seen the reports. I have heard the testimony and what I am about to tell you is terrifying.

The Soviets have even thrown babies into fires and burned them alive. In some villages every man, woman and child has been killed. The entire free people of Afghanistan are the targets of this brutal Soviet effort.

Reports here in Washington tell me that almost every family has lost at least one member to the Soviet war machine. Over one third of the Afghan people have been forced to flee their country.

Nearly one half million women and children have been killed. Thousands of children have lost an arm or a leg. Right now, the Soviet Union is using jets, helicopters, tanks and napalm to destroy the lives of innocent children.

First, Soviet jets destroy every home in the village.

Second, helicopters come and spray the entire area with machine guns.

Third, tanks and troops kill the rest of the innocent civilians they find. And, finally, napalm is used to

Afghan Mercy Fund • Washington, D.C. 20016 • (202) 628-1000

Not Printed or Mailed at Government Expense

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ensure their grizzly work is complete.

This happened yesterday, it's happening today and it will happen tomorrow.

To break their parents' will, the Soviet military has even resorted to murdering children. In addition, over 10,000 children have been taken to the Soviet Union for "re-education."

If you ever saw what napalm does to a child, you would have nightmares. If you saw what the Soviets have done to the children, you would cry. I know. I have seen the children. I have read the reports.

The Soviets drop small bombs disguised as "toys" to terrorize and maim children. When a child picks up that "toy" -- it explodes in her face. The child loses an arm, a leg, is disfigured or may even be blinded.

All this, to teach the child's parents a lesson. My friend, I am horrified that children and babies must be tortured like this. I ask you please help me get these innocent people the medical assistance they so desperately need.

Thankfully, many children do not have to die in agony because they don't have the proper medical help -- thanks to the Afghan Mercy Fund.

I may be a United States Senator, but I humbly ask you to help me save a child's life. The Afghan Mercy Fund needs medicine and other medical supplies to take inside Afghanistan.

I need you to send your check today. You can help save a life. You can help bring urgently needed medical help to children inside Afghanistan.

Can I count on you for $35, $50, or even $100?

Please, my friend, the innocent people of Afghanistan are victims of unspeakable Soviet terror and desperately need your help.

The Afghan Mercy Fund, working with the German Afghanistan Committee, has a network of clinics and medical stations inside Afghanistan to help people who are suffering from this brutal Soviet assault. It is one of the most extensive medical programs inside Afghanistan today. In the name of decency and humanity, please send them your tax-deductible check today.

I'm counting on your maximum donation today. Thank you in advance for your help.

Sincerely,

Gordon Humphrey

Gordon J. Humphrey
United States Senator

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EMERGENCY REPLY TO

SENATOR GORDON HUMPHREY

c/o Afghan Mercy Fund
P.O. Box 5920
Washington, D.C. 20016
(202) 628-1200

Dear Senator Humphrey,

The barbaric war the Soviet Union is waging against innocent men, women and children in Afghanistan is a sin against humanity.

I am outraged and am now making my commitment to you and the Afghan Mercy Fund.

To help you get the medical supplies and relief that is so desperately needed by the Afghan people, I am enclosing my tax-deductible gift of:

( ) $35 ( ) $50 ( ) $100 ( ) $ _____

Please make your check payable to:
THE AFGHAN MERCY FUND

[redacted]

AJ128

Thank you for your compassion and much needed help!

THE AFGHAN MERCY FUND
is a project of
The Mercy Fund

National Board of Advisors

Tony Campagna
President
Afghan Mercy Fund

Gordon Humphrey
Senator New Hampshire
Chairman Senate
Task Force on Afghanistan

Malcolm Wallop
Senator Wyoming

Anne Hunt
Project Director
Afghan Mercy Fund

Paul Simon
Senator Illinois

Habib Mayar
President
Afghan Community of America

Christopher Dodd
Senator Connecticut

Denny Hundeshagen
President
German Afghanistan Committee

Not Printed or Mailed at Government Expense

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FROM

Place Postage Here

Afghan Mercy Fund

Friendship Station
Post Office Box 5920
Washington, D.C. 20016

AJ

SENATOR GORDON J. HUMPHREY
c/o Afghan Mercy Fund
Washington Headquarters
P.O. Box 5920
Washington, D.C. 20016

WASHINGTON WORLD WIRE

URGENT REPLY

OPERATIONS CENTER 334 BASE: WASH. D.C. SECT.48 OPER: VMD

SENDING: DOLAN, ROBERT E. NATIONAL CHAIRMAN RPVF AUTH: JGD
ORIGIN: P.O. BOX 96092 WASHINGTON, DC. 20090

EMERGENCY TRANSMISSION FROM:

[redacted]

BQBX1

CHAIRMAN DOLAN:

SAVE PRESIDENT REAGAN'S PRESIDENCY.

SAVE OUR PRESIDENT FROM VICIOUS LIBERAL ATTACK.

STOP LIBERALS FROM GAINING WHITE HOUSE IN 1988 BY DESTROYING PRESIDENT REAGAN'S ADMINISTRATION.

STOP LIBERALS.

ENCLOSED IS MY MAXIMUM EMERGENCY CONTRIBUTION OF:

(✓) $200

( ) $ _____ OTHER AMOUNT ← PLEASE SPECIFY.

MAKE CHECK PAYABLE TO:

REAGAN POLITICAL VICTORY FUND
P.O. BOX 96092 WASHINGTON, D.C. 20090

HBC $200
Id 28 Life Mem
HBC 1-6-87 $200

FEDERAL ELECTION COMMISSION REQUIRES:

OCCUPATION: Retired

EMPLOYER: none

9704384202 0

EXHIBIT "A"

ROBERT E. DOLAN
Office of the Chairman

February 9, 1987

[redacted]

Dear Friend,

Like you and President Reagan, I've never walked away from a Conservative fight in my life.

And right now, you and I face our toughest battle ever against the liberals.

So I must speak to you bluntly tonight. There's no time for formalities.

I depend on generous contributions such as your last gift of $25 to help the Reagan Political Victory Fund fight to save President Reagan's Agenda from the liberals who now control Capitol Hill.

It's for concerned, Conservative Americans like you, that the Reagan Victory Fund is battling to save America's national security from the defense-slashing liberals.

And tonight I need you to bear with me. Tonight,

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what I must tell you is very painful for me to say.

The special-interest liberals have rallied on Capitol Hill and are putting forth the fight of their lives to destroy the Reagan Agenda for America.

Right now, liberal lobby groups are courting the pro-appeasement, anti-defense vote in Congress to destroy President Reagan's defense plans for America.

Right now, the liberal lobby groups are desperate to discredit Conservatism and bring back the days of a weak, defenseless America.

And right now, the liberals who control both Houses of Congress are mercilessly attacking President Reagan's Administration and our President.

The liberals are determined to destroy the hard won progress of President Reagan's foreign policy, national defense and economic programs.

And I'm outraged, my friend.

The upsurge in liberal control on Capitol Hill and across America means CRISIS for all Conservatives and for our President.

CRISIS for America if the liberals slash our national defenses and cripple our intelligence operations.

CRISIS for you and all your Conservative beliefs.

And because I'm speaking bluntly with you tonight I must tell you if the liberals succeed in destroying the Reagan Agenda, our future is lost.

Because every day on Capitol Hill I see the

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special-interest liberal lobbies grow stronger.

Every day I see the liberal-appeasement lobbies grow strong and go for the kill against Conservatism.

Every day I see the pro-welfare, anti-defense liberal lobbies grow stronger.

Every day I see our Conservative ideals swamped by a flood of liberal rhetoric and drowning in a sea of liberal-controlled media criticism.

Unfortunately, my friend, you and I know the sad truth of what will happen to America, our "shining city on the hill" if the liberals control our Agenda.

If the liberals get their way, all that President Reagan has sacrificed and worked for will be lost.

Our future will be dim. The crisis is close at hand. The next 24 months could spell disaster.

So I plead for your help today. Please hear my plea. Please hear President Reagan's plea.

As your National Chairman I must put all personal considerations aside today and ask you now to help the Reagan Political Victory Fund with one of the most generous contributions you've ever made.

President Reagan now faces the most critical challenge to his Presidency and his Administration.

The liberals are desperate. They'll stop at nothing to destroy all you believe in.

Americas's future is at stake. So also is the future you and all Conservatives deserve.

Please, please help me today to thwart the

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[redacted]

liberal special-interest attack against President Reagan on Capitol Hill and across America. Please send $70 today.

Your maximum support is vital. Your immediate contribution of $70 or more will help me support President Reagan in his hour of greatest challenge.

As I've counted on your generosity and support before, I again ask for your help now. Hear my plea! The hour is dark.

And please let me hear from you today.

Sincerely,

Robert E. Dolan,
National Chairman

Please return this entire page with check payable to:
THE REAGAN POLITICAL VICTORY FUND
P.O. Box 96092, Washington, D.C. 20090

Dear Chairman Dolan,

I want to help you and President Reagan stop the liberal special-interest surge on Capitol Hill and across America. I now enclose my maximum gift of:

( )$70 ( )$50 ( )$ _____

CNCK 210 M 1

[redacted]

BQCA

The Federal Election Commission requires that we ask:

Occupation: _____ Employer: _____

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AFFIDAVIT OF JAMES E. MAHONEY

James E. Mahoney, being first duly sworn, hereby deposes and says:

1. My name is: James E. Mahoney, and I am Director of Direct Mail for the Republican National Committee (RNC).

2. My business office address is: 310 First Street, S.E., Washington, DC 20003.

3. On, or about, February 18, 1987, I was provided with a letter from a contributor to the Republican National Committee, which was enclosed in an RNC return envelope upon which the words, "I can't give any more," or words to that effect, were written.

4. Inside the aforementioned RNC return envelope was a letter addressed to the RNC contributor from a Robert E. Dolan who was further identified in the said letter as the Chairman of the Reagan Political Victory Fund, a project of the American Citizens for Political Action.

5. The said letter contained a representation that the addressee-RNC contributor had made prior contributions to the Reagan Political Victory Fund - American Citizens for Political Action.

6. The addressee-RNC contributor, upon information and belief, had not made prior contributions to either the Reagan Political Victory Fund or the American Citizens for Political Action.

7. The Republican National Committee is in no sense, or by any means, associated with, or an affiliate of, the Reagan Political Victory Fund or the American Citizens for Political Action.

8. I certify, under penalty of perjury, that the above is true and correct according to my information and belief.

James E. Mahoney

James E. Mahoney

3/9/87

Date

Subscribed and sworn to before me on this 4th day of March, 1987.

Philip A. Guarino

Notary Public

My Commission Expires:

My Commission Expires [illegible]

2704384202 5

CCC 4080

LAW OFFICES

JACKSON & CAMPBELL, P.C.

ONE LAFAYETTE CENTRE

SUITE 300 SOUTH

1120 20TH STREET, N.W.

WASHINGTON, D.C. 20036-3437

INT'L TELEX: 64706

TELECOPIER (202) 457-1678

(202) 457-1600

BENJAMIN W. DULANY*
KENNETH WELLS PARKINSON
DANIEL WEBSTER COON*
ARTHUR C. ELGIN, JR.*
JAMES P. SCHALLER*
JO V. MORGAN, JR.*
JOHN A. NEVIUS
PATRICIA D. GURNE
NICHOLAS STILLWELL McCONNELL**
ALAN R. SWENDIMAN*
SIDNEY C. COUSINS, JR.*
JAMES R. MICHAL*
M. ELIZABETH MEDAGLIA*
DAVID H. COX*
MICHAEL J. McMANUS*
JOHN J. BRENNAN, III**
RICHARD W. BRYAN*
CHRISTINE A. NYKIEL*
PAUL S. SCHLEIFMAN*
TIMOTHY R. DINGILIAN*
ANTOINETTE PATTERSON LEBEL
RICHARD J. DeFEO, JR.
MARY LYNN REED*
WARREN LUTZ*

* ALSO ADMITTED IN MARYLAND
* ALSO ADMITTED IN VIRGINIA

THOMAS SEARING JACKSON*
EDMUND D. CAMPBELL*
OF COUNSEL

MARYLAND OFFICE
200 A MONROE STREET
ROCKVILLE, MARYLAND 20850
(301) 340-0450

VIRGINIA OFFICE
1008 NORTH RANDOLPH STREET
SUITE 104
ARLINGTON, VIRGINIA 22201
(703) 522-1330

DIRECT DIAL NUMBER

(202) 457-1646

August 3, 1987

HAND DELIVERED

87 AUG 3 P4:39

RECEIVED
GENERAL COUNSEL

Sandra H. Robinson, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR2361
Best Lists, Inc.

Dear Ms. Robinson:

This firm represents The Best Lists in connection with the above matter. On June 24, 1987, we received a letter from Scott E. Thomas, Chairman, notifying us that there was a reason to believe that Best Lists violated 2 U.S.C. §438(a)(4) and enclosing Interrogatories and Request for Production of Documents.

This is to formally request a ten (10) day extension within which to respond to those interrogatories. The original due date for responses is August 7. The vacation schedules of the principal people needed to prepare the answers render it difficult to meet the original deadline. An extension to August 17 is needed.

Your favorable consideration of this request for an extension will be appreciated.

Sincerely yours,

Alan R. Swendiman

ARS:mpc

9704382026

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 6, 1987

Alan R. Swendiman
Jackson & Campbell, P.C.
One Lafayette Centre, Suite 300 South
1120-20th Street, N.W.
Washington, D.C. 20036-3437

RE: MUR 2361
The Best Lists

Dear Mr. Swendiman:

This is in response to your letter dated August 3, 1987, which we received on August 3, 1987, requesting an extension until August 17, 1987, to respond to the interrogatories and request for production of documents. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on August 17, 1987.

If you have any questions, please contact Sandra Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
Acting General Counsel

By: Lois G. Lerner
Associate General Counsel

27043842027

GCC#4088

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2107
(202) 371-7000

TELEX: 904343
SKARSLAW-WASH
TELECOPIER
(202) 393-5760
DIRECT DIAL
(202) 371-

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 735-3000
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 523-0002
ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 651-3000
300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
(213) 687-5000
333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0700

August 4, 1987

87 AUG 4 P4:38

Sandra Robinson, Esq.
Office General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2361 - American Citizens for Political Action and Robert E. Dolan, as treasurer

Dear Ms. Robinson:

On July 24, 1987, I received interrogatories in the above referenced matter (merged MURs 2307 and 2346). According to my calculation those responses are due on August 10, 1987. On August 11, 1987, I have a brief due in the D.C. Court of Appeals, No. 86-1140. In view of that filing, in addition to a heavy case load, I request a twenty day extension of time (August 31, 1987) to file responses to the outstanding interrogatories and reason to believe finding.

I appreciate your consideration of this request.

Sincerely,

Kenneth A. Gross

7704042028

Plum

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 5, 1987

Mr. Kenneth A. Gross
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

Re: MUR 2361
American Citizens for
Political Action and Robert E.
Dolan, as treasurer

Dear Mr. Gross:

This is in response to your letter dated August 4, 1987, which we received on August 4, 1987, requesting an extension of 20 days to respond to the reason to believe finding and the interrogatories and request for production of documents. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on August 31, 1987.

If you have any questions, please contact Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
Acting General Counsel

By: Lois G. Lerner
Associate General Counsel

9704042029

@CC# 4100

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
1825 Eye Street, N.W.
Washington, D.C. 20006

One Financial Center
Boston, Massachusetts 02111
Telephone: 617/542-6000
Telex: 94-0198
Telecopier: 617/542-2241

Telephone: 202/293-0500
Telecopier: 202/466-5479
Telex: 753689

August 6, 1987

BY HAND

RECEIVED
FEDERAL ELECTION
GENERAL COUNSEL
87 AUG 6 P1:00

Sandra H. Robinson, Esquire
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2361
Legi-Tech, Inc.

Dear Ms. Robinson:

Enclosed please find an executed statement designating the undersigned as counsel for Legi-Tech, Inc. in the above-captioned matter. Legi-Tech hereby requests an extension of time to respond to the Commission's interrogatories and request for production of documents. Since the request was received July 27, 1987, the current due date for Legi-Tech's response is Tuesday, August 11. Because of the absence of several key Legi-Tech personnel due to summer vacations, and the need to coordinate the preparation of a response with Legi-Tech's parent McClatchy Newspapers, an extension of the deadline to August 31, 1987 is requested.

If you have any questions, please do not hesitate to call.

Sincerely,

Terrence J. Leahy

Enclosure
2835m

9704342030

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2361

NAME OF COUNSEL: Tom Casey, Bruce Sokler, Terry Leahy

ADDRESS: Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, PC

1825 Eye Street, NW

Washington, DC 20006

TELEPHONE: 202/293-0500

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.

8/5/87
Date

Signature Ilka Oberst, General Manager
Washington On-Line

RESPONDENT'S NAME: Legi-Tech

ADDRESS: 507 8th Street, S.E.

2nd Floor

Washington, D.C. 20003

HOME PHONE:

BUSINESS PHONE: 202 543-9101

2704384203 1

plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 7, 1987

Terrence J. Leahy, Esquire
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
1825 Eye Street, N.W.
Washington, D. C. 20006

RE: MUR 2361
Legi-Tech, Inc.

Dear Mr. Leahy:

This is in response to your letter dated August 6, 1987, which we received on August 6, 1987, requesting an extension until August 31, 1987 to respond to the reason to believe finding and interrogatories and request for production of documents. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by close of business on August 31, 1987.

If you have any questions, please contact Sandra H. Robinson, the attorney assigned to this matter at (202) 376-8200.

Sincerely,

Lawrence M. Noble
Acting General Counsel

By: Lois G. Lerner
Associate General Counsel

9704384203 2

GCC# 4175

LAW OFFICES

JACKSON & CAMPBELL, P.C.

ONE LAFAYETTE CENTRE
SUITE 300 SOUTH
1120 20TH STREET, N.W.
WASHINGTON, D.C. 20036-3437

INT'L TELEX: 64706
TELECOPIER (202) 457-1678
(202) 457-1600

BENJAMIN W. DULANY*
KENNETH WELLS PARKINSON
DANIEL WEBSTER COON*
ARTHUR C. ELGIN, JR.*
JAMES P. SCHALLER*
JO V. MORGAN, JR.*
JOHN A. NEVIUS
PATRICIA D. GURNE
NICHOLAS STILLWELL McCONNELL**
ALAN R. SWENDIMAN*
SIDNEY C. COUSINS, JR.*
PATRICK L. WOODWARD*
JAMES R. MICHAL*
M. ELIZABETH MEDAGLIA*
DAVID H. COX*
MICHAEL J. McMANUS*
JOHN J. BRENNAN, III**
RICHARD W. BRYAN*
CHRISTINE A. NYKIEL*
PAUL S. SCHLEIFMAN*
TIMOTHY R. DINGILIAN*
ANTOINETTE A. LeBEL
RICHARD J. DeFEO, JR.
MARY LYNN REED*
WARREN LUTZ*

* ALSO ADMITTED IN MARYLAND
* ALSO ADMITTED IN VIRGINIA

THOMAS SEARING JACKSON*
EDMUND D. CAMPBELL*
OF COUNSEL

MARYLAND OFFICE
200 A MONROE STREET
ROCKVILLE, MARYLAND 20850
(301) 340-0450

VIRGINIA OFFICE
1008 NORTH RANDOLPH STREET
SUITE 104
ARLINGTON, VIRGINIA 22201
(703) 522-1330

DIRECT DIAL NUMBER

457-1646

August 17, 1987

HAND-DELIVERY

87 AUG 17 P2:59

9704384203

Sandra H. Robinson, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N. W.
Washington, D. C. 20463

RE: MUR2361
Best Lists, Inc.

Dear Ms. Robinson:

This firm represents Best Lists, Inc. ("Best Lists") in the above-referenced matter. Best Lists respectfully submits this response to the Commission's finding of reason to believe. Attached to this response are the answers to interrogatories which accompanied the reason to believe finding, as well as certain documents. This response demonstrates that the Commission should take no further action and close the file against Best Lists.

As previously stated in our letter of March 31, Best Lists is a national broker of names in the direct response industry. In either September or October, 1986, Best Lists was contacted by Robert E. Dolan, Treasurer of American Citizens for Political Action ("ACPA"). Mr. Dolan stated that ACPA owned a particular list which was maintained at a computer service bureau, and wanted to employ Best Lists' services to rent it. At that time, representatives of Best Lists inquired as to its source and were informed by Mr. Dolan that the list was compiled by people all over the country working for him and contained names of people who had donated at least $100 to political candidates. Mr. Dolan further stated that all names contained on the list and any new ones added thereto were not in any way obtained in violation of

federal election law. Based upon this understanding, Best Lists agreed to broker the list. From November through January, Best Lists rented the list provided by Mr. Dolan to three (3) organizations.

In early February, two clients advised Best Lists that they had received inquiries as to the source of the names on the list. On February 6, 1987, representatives of Best Lists told Mr. Dolan of their clients' inquiries and were informed for the first time that the names had in fact been acquired from a company known as Washington On-Line, which had obtained the names from FEC reports. Upon being informed, Best Lists immediately issued an internal memorandum ordering that the use of the list be discontinued immediately. All activity with respect to the list has been suspended since that date.

The list in question was brokered by Best Lists with the clear understanding from Mr. Dolan that it was legally permissible to do so. Best Lists had no knowledge that the list had come from a prohibited source until early February, whereupon it took immediate action. These facts are confirmed in a letter dated March 12, 1987 to the Commission from Kenneth A. Gross, Esquire, counsel for ACPA and Mr. Dolan, which relates the circumstances under which the list was compiled. According to Mr. Gross' letter, the sole source of the list was Washington On-Line.

No representative of Best Lists ever copied a report or list filed with the Commission. At no time was Best Lists ever involved in the compilation of the list in question. To find a violation under these attenuated circumstances broadly expands the scope of the Act.

The facts in the case demonstrate that there was no violation of federal election law. In so asserting, Best Lists does not waive any constitutional rights it has. Serious questions have been raised as to the constitutionality of 2 U.S.C. § 438(a) (4). The section constitutes a prior restraint upon First Amendment rights of political speech. The compelling governmental interest which is required to justify such prior restraint is absent under these circumstances.

Best Lists respectfully requests that the Commission take no further action, impose no penalty and close the file.

Very truly yours,

Alan R. Swendiman

ARS:sd
Enclosures

9704384206 3 4

Interrogatories and Request for Documents to:
The Best Lists

I. In your response to the complaint in MUR 2346, you admit brokering a list of names, the use of which resulted in pseudonyms from the Federal Election Commission's ("the Commission") public record being solicited for contributions. You identified Robert E. Dolan of American Citizens for Political Action ("ACPA") as the source of that list. The following questions are posed in reference to the list so identified.

1. a) Describe the nature of your relationship with ACPA and Mr. Dolan. Identify the number of contacts with ACPA and Mr. Dolan by date, within the past 18 months, and describe the services obtained, shared or provided.

Answer: American Citizens for Political Action (ACPA), of which Robert E. Dolan is Treasurer, is an ongoing client of The Best Lists, Inc. Over the past 18 months, it is very difficult to ascertain with any degree of accuracy the number of contacts made with ACPA. Representatives of Best Lists have met or discussed with ACPA the progress of existing campaigns as well as future programs on a regular basis.

b) If the basis of your relationship with Mr. Dolan and/or ACPA is contractual, provide a copy of the contract. If there is no contract, provide copies of all correspondence which discusses the terms of the relationship. If there is no written documentation, describe the terms of all oral agreements.

Answer: In September or October of 1986, Mr. Dolan asked Best Lists if it would be interested in brokering (marketing for rental) a list which he compiled and had maintained at a computer service bureau. Since Mr. Dolan stated that the list was put together by people all over the country working for him and that it was legally permissible to use the list, Best Lists agreed to broker the list.

There was no written contract. The terms of the agreement were standard with the list brokerage industry.

1). Best Lists would order the list selection from the computer service bureau which maintained the list, subject to Mr. Dolan's approval.

9704384203 5

2). After Best Lists received documentation that the list selection was produced and shipped by the computer service bureau, Best Lists would then invoice the user of the lists.

3). When Best Lists received payment from the list user, Best Lists would retain a 20% commission and remit the balance to Mr. Dolan or the list owner.

2. Provide copies of all lists of names obtained from ACPA and Mr. Dolan. State the name of each such list and the number of names contained on it.

Answer: Best Lists never obtained any lists from ACPA or Mr. Dolan. The list in question is physically located at the site of the independent computer service bureau where Mr. Dolan maintains it. Best Lists, subject to Mr. Dolan's approval, simply sent purchase orders to the computer service bureau which in turn delivered the list to the list user.

The name of the list was "Active Republican Donors" which contained about 100,000 names.

3. a) State the name, address and telephone number of the persons or entities who rented, bought, or otherwise had access to the list of names referenced above.

Answer: RENTALS OF ACTIVE REPUBLICAN DONORS LISTS

American Citizens for Political Action (ACPA)
2700 Virginia Avenue, N.W. #404
Washington, D.C. 20037
(202) 333-2092

American Defense Institute (ADI)
214 Massachusetts Avenue, N.E.
P.O. Box 2497
Washington, D.C. 20013-2497
(202) 544-4704

David Livingstone Missionary Foundation (DLMF)
Box 232
Tulsa, OK 74102
(918) 494-9902

9704384203 6

The Mercy Fund (AMF, CMF)
2812 Woodland Drive, N.W.
Washington, D.C. 20008
(202) 628-1000

b) State the terms and dates of all related agreements.

Answer: The agreements for rentals and exchanges provide for a one time usage of the list for a dollar fee per thousand names rented. There are no agreements signed for list rentals.

4. State whether at the time you acquired the lists of names from Mr. Dolan an inquiry was made as to the source of the names. If the answer is yes, state the name of the person making the inquiry, the name of the person to whom the inquiry was made, and the answer received to the inquiry.

Answer: Best Lists never acquired lists of names from Mr. Dolan. When a client requests that a list of names be brokered on its behalf, Best Lists requires the source of the names. The source of names always falls into one of three categories: (a) names acquired through previous mailings, (b) names purchased from other parties, and (c) names compiled from public information sources (i.e., state candidate contributors, census data, etc.).

When Mr. Dolan requested that Best Lists broker the Active Republican Donor list, Ronald Kanfer and David Kunko, both officers of Best Lists, asked Mr. Dolan what the source of the list was and how it was acquired. Mr. Dolan stated that Active Republican Donor list was a list, compiled by people all over the country working for him, which contained names of people who had donated at least $100 to political candidates. Mr. Dolan, who is an attorney, stated that all names on the list and all new names that would be added thereto were not in any way obtained in violation of any FEC laws. Based on its understanding that all names were state election donors, Best Lists agreed to broker the list.

5. Describe your procedures for acquiring and brokering lists of names. Provide copies of written policies and/or procedures which are applicable.

9704384203 7

Answer: The Best Lists, Inc. does not own or acquire any lists. Best Lists manages its clients' mailing lists and brokers these lists to other list brokers and organizations on an exchange or rental basis. Best Lists brokers names for its clients' use from other list brokers and organizations who rent or exchange mailing lists. Best Lists does not have any written policies or procedures.

6. State whether you altered in any manner the list of names obtained from Mr. Dolan prior to renting or selling it. If the answer is yes, describe the manner in which the list of names was altered, the date(s) of the alteration(s), and the purpose(s) of the alteration(s).

Best Lists did not obtain the list from Mr. Dolan. The Best Lists, Inc. did not alter in any manner the list of names before renting the names on behalf of Mr. Dolan.

7. Provide originals or true copies of all documents, including correspondence, notes, memoranda, contracts, invoices, and pamphlets which support your responses to the above interrogatories.

Answer: See documents attached as Exhibit A.

8. In your response, you state that you learned on February 6, 1987, that the list of names provided by Mr. Dolan had been compiled from the Commission's public record. Identify the source of that information, the date(s) on which it was obtained, and how you obtained it.

Answer: On February 6, 1987, Mr. David A. Kunko and Mr. Ronald A. Kanfer, owners of Best Lists, had lunch with Mr. Dolan. During the previous week, The Mercy Fund and American Defense Institute had notified Best Lists that they had had inquiries as to the source of seed names included in the list rented. Mr. Kanfer and Mr. Kunko told Mr. Dolan of the clients' inquiries and were informed at the lunch meeting for the first time that the names had in fact been acquired from a company called Washington On-Line which had obtained the names from FEC reports. During lunch, Mr. Kanfer returned to his office and immediately issued a memorandum stating that all rentals of the Active Republican Donors list were to be halted immediately. (Copies of the memoranda are attached as Exhibit B.)

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II. In a related matter merged with this one you are identified by Mr. Dolan as the broker of a list sold to Mr. Dolan by Washington-On-Line ("WOL") on or about October 20 & 24, 1986 and November 24, 1986. The following questions are propounded in reference to that list(s) identified as "Active Republican Donors" and "Active Republican Donors Multi-Donors."

1. State whether you acted as broker between Mr. Dolan and WOL as described above. If yes, state the date(s) and terms of your relationship with each.

Answer: Best Lists did not act as a broker between Mr. Dolan and Washington On-Line ("WOL"), and has never had any contact with WOL. No one at Best Lists ever contacted WOL nor has WOL ever contacted Best Lists.

2. Other than transactions involving ACPA, state whether you have conducted any business with WOL. If yes, identify the dates and terms of your relationship.

Answer: Best Lists has never conducted or transacted any business with Washington On-Line.

3. State whether at the time you acquired lists of names from WOL an inquiry was made as to the source of the names. If the answer is yes, state the name of the person making the inquiry, the name of the person to whom the inquiry was made, and the answer received to the inquiry.

Answer: Best Lists never received names from Washington On-Line. Best Lists inquired into the source of the names from Mr. Dolan, as described in I.4. above.

9704384209

Best Lists, Inc.

2070 Chain Bridge Road, Suite 380, Vienna, Virginia 2218

COMPUTER:

SATURN CORPORATION
4791 LYDELL
CHEVERLY, MD
RICK CHAMBERS

DATE: 10-09-86

BLI ORDER #: 7147

CLIENT ORDER #: VERBAL

☒ This is a full run.

☐ This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a retest or continuation. Please omit names used previously.

(Our number: _____)

USER: AMERICAN CITIZENS FOR POLITICAL ACTION

OFFER: HOUSE MAILING

LIST: ACTIVE REPUBLICAN DONORS MULTI DONORS

QUANTITY: 3177

MAIL DATE: 10-24-86

WANTED BY: 10-15-86

KEY: AQIDX

MATERIAL: 4-UP CHESHIRE LABELS

RENTAL RATE: $150.00

SHIP TO:
[illegible]
[illegible] DRIVE
[illegible] 22031

VIA:

GUARANTEE: These names are for one time use only for the offer specified and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best Lists, Inc. your invoice with all charges, clients name, shipping method and exact quantity of names shipped. We will bill on your behalf and on receipt of payment will remit less the standard brokerage commission. The Best Lists, Inc. places this order as agent for the Client and it is accepted on the express understanding that the Client is solely responsible for the costs therefore. The Best Lists, Inc. will forward payment for the list rental as soon as payment is received by the Client but assumes no responsibility or liability for payment.

PANDERING ACT: ( ) Persons listed on attached sheet should be deleted as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada, Puerto Rico

All names must be in zip sequence.

SPECIAL INSTRUCTIONS:

PLEASE PRINT 4-UP CHESHIRE LABELS FROM THE FOLLOWING SELECT. PLEASE KEY AS INDICATED.

ACTIVE REPUBLICAN DONORS MULTI DONORS
---AQIDX.

FOR QUESTIONS ON THIS ORDER, CALL _____ (703) 442-759[illegible]

BROKER COPY—WHITE BILLING COPY—PINK MASTERFILE COPY—YELLOW CONFIRMATION COPY—GOLDENROD

Best Lists, Inc.

2070 Chain Bridge Road, Suite 380, Vienna, Virgin

USER/OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
Attn: Rick [illegible]

IFI-Incorporated

DATE: [illegible]-29-86

BLI ORDER [illegible] 1986

CLIENT ORDER [illegible] VERBAL

☐ This is a test fun.

☐ This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a retest or continuation. Please omit names used previously.

(Our number: _____)

LIST USER: AMERICAN CITIZENS FOR POLITICAL ACTION

OFFER: HOUSE MAILING

LIST: ACTIVE REPUBLICAN DONORS

QUANTITY: 5000

MAIL DATE: 10-20-86

WANTED BY: 10-06-86

KEY: ADTX2

MATERIAL: MAG TAPE (9TK/1600BPI)

RENTAL RATE: [illegible]

SHIP TO:

VIA:

GUARANTEE: These names are for one time use only for the offer spec and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best Lists your invoice with all charges, clients name, shipping method and exact quantity of names shipped. We will bill on your behalf and on receipt of payment will remit less the standard brokerage commission. The Best Lis Inc. places this order as agent for the Client and it is accepted on the express understanding that the Client is solely responsible for the costs therefore. The Best Lists, Inc. will forward payment for the list rental as so as payment is received by the Client but assumes no responsibility or lia for payment.

PANDERING ACT: ( ) Persons listed on attached sheet should be dele as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada, Puerto

All names must be in zip sequence.

SPECIAL INSTRUCTIONS:

PLEASE PRODUCE MAG TAPE (9TK [illegible]
FOR THE LIST BELOW [illegible] PLEASE INCLUDE
TAPE LAYOUT AND DUE DATE [illegible] SHIPMENT
Please key cart[illegible] [illegible] cated.
ACTIVE REPUBLICAN DONORS [illegible]

EXHIBIT A

FOR QUESTIONS ON THIS ORDER [illegible]

Best Lists, Inc.

2070 Chain Bridge Road, Suite 380, Vienna, Virginia 221

LIST OWNER/COMPUTER:
SATURN CORPORATION
8701 LADELL ROAD
CHEVERLY, MD
RICK CHAMBERS

DATE: 10-24-86

BLU ORDER #: 7257

CLIENT ORDER #: VERBAL

☐ This is a full run.

☐ This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a retest or continuation. Please omit names used in previous order.

(Our number: _____)

LIST USED: AMERICAN CITIZENS FOR POLITICAL ACTION

OFFER: HOUSE MAILING

LIST: ACTIVE REPUBLICAN DONORS (MULTI DNRS)

QUANTITY: 2289

MAIL DATE: 11-7-86

WANTED BY: 10-30-86

KEY: MULT1

MATERIAL: MAG TAPE (9TK/1600BPI)

RENTAL RATE: $150.00/M

SHIP TO: SATURN CORPORATION
TERRY WALKER

2,290 - dropped on 11/7/86

GUARANTEE: These names are for one time use only for the offer specified and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best Lists, Inc. your invoice with all charges, clients name, shipping method and exact quantity of names shipped. We will bill on your behalf and on receipt of payment will remit less the standard brokerage commission. The Best Lists, Inc. places this order as agent for the Client and it is accepted on the express understanding that the Client is solely responsible for the costs therefore. The Best Lists, Inc. will forward payment for the list rental as soon as payment is received by the Client but assumes no responsibility or liability for payment.

PANDERING ACT: ( ) Persons listed on attached sheet should be deleted as per provisions of Title 39 U.S. Postal Code 4008.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada, Puerto Rico. All names must be in zip sequence.

SPECIAL INSTRUCTIONS:

THIS IS A CONTINUATION OF THE MULTI DNRS
MAILING OF THE ACTIVE REPUBLICAN DONORS
LIST. PLEASE OMIT PO #7147, 3177 NAMES
WITH A MAILDATE OF 10-24-86. THANK YOU.
MAG TAPE (9TK/1600BPI). PLEASE INCLUDE
TAPE LAYOUT AND DUMP WITH SHIPMENT.
PLEASE KEY CARTON AQLK1.
BILLING: $150/M
LESS COMMISSION: 20%
FILE MAG TAPE BEFORE [illegible]

FOR QUESTIONS ON THIS ORDER, CALL _____

BROKER COPY—WHITE BILLING COPY—PINK MASTERFILE COPY—YELLOW CONFIRMATION COPY—GOLDENROD

(703) 442-7595

Best Lists, Inc.

2070 Chain Bridge Road, Suite 400, Vienna, Virginia 22180

LIST OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
~~[illegible]~~
Rick Chambers

LIST USER: / AMERICAN CITIZENS FOR POLITICAL ACTION

DATE: 12-09-86

BL ORDER #: 7583

CLIENT ORDER #: VERBAL

☐ This is a full run.

☒ This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a retest or continuation. Please omit names used previously.

(Our number: _____)

GUARANTEE: These names are for one time use only for the offer specified and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best Lists, Inc. your invoice with all charges, clients name, shipping method and exact quantity of names shipped. We will bill on your behalf and on receipt of payment will remit less the standard brokerage commission. The Best Lists, Inc. places this order as agent for the Client and it is accepted on the express understanding that the Client is solely responsible for the costs therefore. The Best Lists, Inc. will forward payment for the list rental as soon as payment is received by the Client but assumes no responsibility or liability for payment.

PANDERING ACT: ( ) Persons listed on attached sheet should be deleted as per provisions of Title 39 U.S. Postal Code 4008.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada, Puerto Rico. All names must be in zip sequence.

OFFER: FUNDRIAISNG

LIST: ✓ ACTIVE REPUBLICAN DONORS (MULTIS)

QUANTITY: ✓ 5000

FINAL DATE: 1-5-87

WANTED BY: 12-19-86

KEY: VL7

MATERIAL: 4-UP CHECHIRE LABELS

RENTAL RATE: $150.00/M

SPECIAL INSTRUCTIONS:

multis

THIS IS A TEST. PLEASE DO AN NTH NAME SELECTION OF THE ENTIRE FILE. PLEASE INCLUDE ALL $100+ DONORS FILE. PLEASE KEY EACH LABEL VL7. THANK YOU.

BILLING: $150/M
LESS COMMISSION: 20%
PLUS KEYCODING: $1.50/M
PLUS $ SELECT: $2.50/M

SHIP TO:

Dom:
ROUTE 2, DALVEAT INDUSTRIAL PARK
[illegible] FREDERICK, MD 21701
[illegible] P.O. BOX

VIA: [illegible]

7311

FOR QUESTIONS ON THIS ORDER, CALL [illegible] (703) 442-7595

BROKER COPY—WHITE BILLING COPY—PINK MASTERFILE COPY—YELLOW CONFIRMATION COPY—GOLDENROD

Best Lists, Inc.

2070 Chain Bridge Road, Suite 400, Vienna, Virginia 2218

DATE: 12-02-86

BLI ORDER #: 7646

CLIENT ORDER #: VERBAL]

LIST OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
ATTN. RICK CHAMBERS

☐ This is a full run.

☒ This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a retest or continuation. Please omit names used previously.

(Our number: _____)

LIST USER: AFGHAN MERCY FUND

GUARANTEE: These names are for one time use only for the offer sp and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best Lis your invoice with all charges, clients name, shipping method and exa quantity of names shipped. We will bill on your behalf and on receipt payment will remit less the standard brokerage commission. The Be Inc. places this order as agent for the Client and it is accepted on th express understanding that the Client is solely responsible for the c therefore. The Best Lists, Inc. will forward payment for the list renta as payment is received by the Client but assumes no responsibility for payment.

PANDERING ACT: ( ) Persons listed on attached sheet should as per provisions of Title 39 U.S. Postal Code 4008.

LIST BROKE.: Address U.S. names only. Omit Foreign, Canada. All names may be in zip sequence.

OFFER: FUNDRAISING

LIST: ACTIVE REPUBLICAN SINGLE DONORS

QUANTITY: 5000

MAIL DATE: 1-19-87

WANTED BY: 12-16-86

KEY: A0129

MATERIAL: MAGNETIC TAPE 9-TRACK. 1600 BPI

RENTAL RATE: ~~[illegible]~~ $80.00/M

SPECIAL INSTRUCTIONS:

THIS IS A TEST. PLEASE DO A[illegible] SELECTION OF THE ENTIRE SINGLE [illegible] FILE. PLEASE [illegible] OUR DJ#[illegible] ON 1-19-87. MAIL TAPE (9-TR. [illegible] PLEASE INCLUDE TAPE LAYOUT AND [illegible] SHIPMENT. PLEASE KEY CARTO[illegible] BILLING: $80.00/M [illegible]

SHIP TO:

VIA:

CONFIRMAT

7392

9704384204 4

Best Lists, Inc.

2070 Chain Bridge Road, Suite 400, Vienna, Virginia 2218

LIST OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
RICK CHAMBERS

DATE: 12-01-86

BLI ORDER #: 7607

CLIENT ORDER #: VERBAL

☐ This is a full run.

☒ This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a retest or continuation. Please omit names used previously.

(Our number: _____)

LIST USER: AMERICAN CITIZENS FOR POLITICAL ACTION

GUARANTEE: These names are for one time use only for the offer specified and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best Lists, Inc. your invoice with all charges, clients name, shipping method and exact quantity of names shipped. We will bill on your behalf and on receipt of payment will remit less the standard brokerage commission. The Best Lists, Inc. places this order as agent for the Client and it is accepted on the express understanding that the Client is solely responsible for the costs therefore. The Best Lists, Inc. will forward payment for the list rental as soon as payment is received by the Client but assumes no responsibility or liability for payment.

PANDERING ACT: ( ) Persons listed on attached sheet should be deleted as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada, Puerto Rico

All names must be in zip sequence.

SPECIAL INSTRUCTIONS:

OFFER: HOUSE MAILING

LIST: ACTIVE REPUBLICAN DONORS (MULTI DNRS)

QUANTITY: 5498

MAIL DATE: 12-29-86

WANTED BY: 12-8-86

KEY: AG/X1

MATERIAL: MAG TAPE (9T- 1600BPI)

RENTAL RATE: $150.00/M

SHIP TO: SATURN CORPORATION --TURN WALKER

PLEASE PROVIDE MAG TAPE (9TK/1600BPI) FROM THE SELECT BELOW. PLEASE KEY AS INDICATED. PLEASE INCLUDE TAPE LAYOUT + DUMP WITH SHIPMENT. THANK YOU.

ACTIVE REPUBLICAN DNRS [illegible]
[illegible]
BILLING [illegible]
[illegible]

Please [illegible] billing [illegible]

7276

970430945

VIA:

FOR QUESTIONS ON THIS ORDER, CALL Mary (703) 442-7595

BROKER COPY—WHITE BILLING COPY—PINK MASTERFILE COPY—YELLOW CONFIRMATION COPY—GOLDENROD

Best Lists, Inc.

2070 Chain Bridge Road, Suite 400, Vienna, Virginia 2218(

LIST OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
ATTN: RICK CHAMBERS

DATE: 11-20-86

BLI ORDER #: 7487

CLIENT ORDER #: VERBAL

☐ This is a full run.

☐ This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a retest or continuation. Please omit names used previously.

(Our number: _____)

LIST USER: AMERICAN CITIZENS FOR POLITICAL ACTION

OFFER: HOUSE MAILING

LIST: ACTIVE REPUBLICAN DONORS(MULTI DONORS)

QUANTITY: ALL AVAI ~~7000 NAMES~~ LEXCEED 10M 10M

MAIL DATE: 12-08-86

QUOTED BY: 11-24-86

KEY: BELOW

MATERIAL: MAG TAPE (9TK/1600BPI)

RENTAL RATE: $150.00/M

7192

SHIP TO: SATURN CORPORATION
TERRY WALKER

VIA:

GUARANTEE: These names are for one time use only for the offer specified and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best Lists, Inc. your invoice with all charges, clients name, shipping method and exact quantity of names shipped. We will bill on your behalf and on receipt of payment will remit less the standard brokerage commission. The Best Lists, Inc. places this order as agent for the Client and it is accepted on the express understanding that the Client is solely responsible for the costs therefore. The Best Lists, Inc. will forward payment for the list rental as soon as payment is received by the Client but assumes no responsibility or liability for payment.

PANDERING ACT: ( ) Persons listed on attached sheet should be omitted as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada, Puerto Rico. All names must be in zip sequence.

SPECIAL INSTRUCTIONS:

PLEASE DO NECESSARY TO PRODUCE MAG TAPE (9TK/1600BPI) FROM THE SELECT LISTED BELOW. PLEASE KEY carton AS INDICATED. THANK YOU.

ACTIVE REPUBLICAN DNRS -AQW/.
(multi donors)

Billing: $150/M
Less commission 50%
Plus shipping:

FOR QUESTIONS ON THIS ORDER, CALL Mike (703) 442-7595

BROKER COPY—WHITE BILLING COPY—PINK MASTERFILE COPY—YELLOW CONFIRMATION COPY—GOLDENROD

Best Lists, Inc.

2070 Chain Bridge Road, Suite 400, Vienna, Virginia 2218

DATE: 11-24-86

LIST OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
RICK CHAMBERS

BLI ORDER #: 7508

CLIENT ORDER #: VERBAL

☐ This is a full run.

☐ X This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a retest or continuation. Please omit names used previously.

(Our number: _____)

LIST USER: American Defense Institute

7158

OFFER: FUNDRAISING

LIST: ACTIVE REPUBLICAN DONORS (SINGLE DNRS)

QUANTITY: 5000

MAIL DATE: 12-10-86

WANTED BY: 12-03-86

KEY: AD236

MATERIAL: 4-UP CHESHIRE LABELS

RENTAL RATE: $80.00 M

SHIP TO:

GUARANTEE: These names are for one time use only for the offer specifie and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best Lists, In your invoice with all charges, clients name, shipping method and exact quantity of names shipped. We will bill on your behalf and on receipt of payment will remit less the standard brokerage commission. The Best List Inc. places this order as agent for the Client and it is accepted on the express understanding that the Client is solely responsible for the costs therefore. The Best Lists, Inc. will forward payment for the list rental as so as payment is received by the Client but assumes no responsibility or liab for payment.

PANDERING ACT: ( ) Persons listed on attached sheet should be del as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada, Puerto

All names must be in zip sequence.

SPECIAL INSTRUCTIONS:

THIS IS A TEST. PLEASE DO AN NTH NAME SELECTION OF THE ENTIRE FILE. PLEASE KEY EACH LABEL AD236. THANK YOU.
BILLING: $80/M
LESS COMMISSION: 20%
PLUS KEYCODING: $1.50/M

Please omit the 7507 (

Please omit all names to state of Alabama.

give to Terry to ship, [illegible]

(703)

CONFIRMATION COPY—GO

9704384204 7

Best Lists, Inc.

2070 Chain Bridge Road, Suite 400, Vienna, Virginia 22180

LIST OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
RICK CHAMBERS

LIST USER: American Defense Institute

DATE: 11-24-86

BLI ORDER #: 7567

CLIENT ORDER #: VERBAL

☐ This is a full run.

☐ This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a retest or continuation. Please omit names used previously.

(Our number: _____)

GUARANTEE: These names are for one time use only for the offer specified and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best Lists, Inc. your invoice with all charges, clients name, shipping method and exact quantity of names shipped. We will bill on your behalf and on receipt of payment will remit less the standard brokerage commission. The Best Lists, Inc. places this order as agent for the Client and it is accepted on the express understanding that the Client is solely responsible for the costs therefore. The Best Lists, Inc. will forward payment for the list rental as soon as payment is received by the Client but assumes no responsibility or liability for payment.

PANDERING ACT: ( ) Persons listed on attached sheet should be deleted as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada, Puerto Rico. All names must be in zip sequence.

OFFER: FUNDRAISING

LIST: ACTIVE REPUBLICAN DONORS (MULTI-DNRS

QUANTITY: 5498

MAIL DATE: 12-10-86

WANTED BY: 12-3-86

KEY: AD235

MATERIAL: 4-UP CHESHIRE LABELS

RENTAL RATE: $:50.00/M

SHIP TO: [illegible]
ROUTE 2, CARNEY INDUSTRIAL [illegible]
[illegible]

SPECIAL INSTRUCTIONS:

THIS IS A FULL RUN OF THE ENTIRE MULTI-DONORS FILE. PLEASE KEY EACH LABEL AD235.

BILLING: $150.00
LESS COMMISSION: 20%
PLUS KEYCODING: [illegible]
PLUS SHIPPING:

Please omit all names from the state of Alabama.

VIA: [illegible] - give to Terry today please
[illegible]

FOR QUESTIONS ON THIS ORDER, CALL [illegible] (703) 442-7595

BROKER COPY—WHITE BILLING COPY—PINK MASTERFILE COPY—YELLOW CONFIRMATION COPY—GOLDENROD

Best Lists, Inc.

2070 Chain Bridge Road, Suite 400, Vienna, Virginia 22180

LIST OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
ATTN. RICK CHAMBERS

DATE: 11-25-86

BLI ORDER #: 7539

CLIENT ORDER #: VERBAL

☐ This is a full run.

☐ This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a retest or continuation. Please omit names used previously.

(Our number: _____)

LIST USER: David Livingstone Missionary Foundation

OFFER: FUNDRAISING

LIST: ACTIVE REPUBLICAN DONORS

QUANTITY: 10000

MAIL DATE: 12-15-86

WANTED BY: 12-4-86 Please Rush

KEY: SPLIT

MATERIAL: 4-UP CHESHIRE LABELS

RENTAL RATE: $80.00

SHIP TO: DIRECT MAIL MANAGEMENT [illegible]

VIA: [illegible]

7251

GUARANTEE: These names are for one time use only for the offer specified and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best Lists, Inc. your invoice with all charges, clients name, shipping method and exact quantity of names shipped. We will bill on your behalf and on receipt of payment will remit less the standard brokerage commission. The Best Lists, Inc. places this order as agent for the Client and it is accepted on the express understanding that the Client is solely responsible for the costs therefore. The Best Lists, Inc. will forward payment for the list rental as soon as payment is received by the Client but assumes no responsibility or liability for payment.

PANDERING ACT: (_ _) Persons listed on attached sheet should be deleted as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada, Puerto Rico. All names must be in zip sequence.

SPECIAL INSTRUCTIONS:

THIS IS A SPLIT TEST, PLEASE DO TWO SEPERATE NTH NAME SELECTIONS OF THE ENTIRE DONORS FILE. PLEASE KEY AS INDICATED:
5000 KEY XP143
5000 KEY X6336
BILLING: $80.00 *
LESS: COMMISSION [illegible]
PLUS: KEYCODING @ 50/M
[illegible]

FOR QUESTIONS ON THIS ORDER, CALL _____ (703) 442-7595

BROKER COPY—WHITE BILLING COPY—PINK MASTERFILE COPY—YELLOW CONFIRMATION COPY—GOLDENROD

9704384209 49

The Best Lists, Inc.

2070 Chain Bridge Road, Suite 380, Vienna, Virginia, 2218

OWNER/CONTACT:

[illegible]TURN CORPORATION
[illegible] LYBELL [illegible]
[illegible]VERLY, [illegible]
[illegible]

DATE: 10-30-86

BLI ORDER #: 7383

CLIENT ORDER #: [illegible]

☐ This is a test. Please select a good cross section. Keep [illegible] AMERICAN CITIZENS FOR POLITICAL [illegible] record of names supplied to avoid duplicates in future [illegible]

☐ This is a retest or continuation. Please omit names used previously.

(Our number: _____)

GUARANTEE: These names are for one time use only for the offer specified and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best Lists, Inc. your invoice with all charges, clients name, shipping method and exact quantity of names shipped. We will bill on your behalf and on receipt of payment will remit less the standard brokerage commission. The Best Lists, Inc. places this order as agent for the Client and it is accepted on the express understanding that the Client is solely responsible for the costs therefore. The Best Lists, Inc. will forward payment for the list rental as soon as payment is received by the Client but assumes no responsibility or liability for payment.

PANDERING ACT: ( ) Persons listed on attached sheet should be deleted as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada, Puerto Rico. All names must be in zip sequence.

SPECIAL INSTRUCTIONS:

PLEASE PRODUCE MAG TAPE (9TK/1600BPI) FROM THE SELECT BELOW. PLEASE KEY CARTON AGVX1. PLEASE INCLUDE TAPE LAYOUT AND DUMP WITH SHIPMENT. THANK YOU.

ACTIVE REPUBLICAN DONORS
(MULTI DONORS) -AGVX1

Billing: $150/M
Less Commission: 20%
Discounted to Hilton
Plus shipping:

OFFER: HOUSE MAILING

LIST: ACTIVE REPUBLICAN DONORS (MULTI DONORS)

QUANTITY: 5466 (5466)

[illegible]: 10-20-86

[illegible]: 10-8-86

KEY: AGVX1

MATERIAL: MAG TAPE (9TK/1600BPI)

RENTAL RATE: $150.00/M

SHIP TO:
SATURN
ATTN: TERRY WALKER

VIA: IN HOUSE

Shipped 10/30 11/24

9704384209

FOR QUESTIONS ON THIS ORDER, CALL [illegible] (703) 442-7595

BROKER COPY—WHITE BILLING COPY—PINK MASTERFILE COPY—YELLOW CONFIRMATION COPY—GOLDENROD

Best Lists, Inc.

2070 Chain Bridge Road, Suite 400, Vienna, Virginia 22180

LIST OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
RICK CHAMBERS

DATE: 12-18-86

BLI ORDER #: 7764

CLIENT ORDER #: VERBAL

☐ This is a full run.

☐ This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a retest or continuation. Please omit names used previously.

(Our number: _____)

LIST USER: AMERICAN CITIZENS FOR POLITICAL ACTION

7376

OFFER: HOUSE MAILING

LIST: ACTIVE REPUBLICAN DONORS (MULTI DONORS)

QUANTITY: 12000

MAIL DATE: 1-12-87

WANTED BY: ASAP

KEY: BQAX1

MATERIAL: MAG TAPE (9TK/1600BPI)

RENTAL RATE: $0.00/M
$150/M

SHIP TO: SATURN -ATTN: TERRY WALKER

VIA:

GUARANTEE: These names are for one time use only for the offer specified and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best Lists, Inc. your invoice with all charges, clients name, shipping method and exact quantity of names shipped. We will bill on your behalf and on receipt of payment will remit less the standard brokerage commission. The Best Lists, Inc. places this order as agent for the Client and it is accepted on the express understanding that the Client is solely responsible for the costs therefore. The Best Lists, Inc. will forward payment for the list rental as soon as payment is received by the Client but assumes no responsibility or liability for payment.

PANDERING ACT: ( ) Persons listed on attached sheet should be deleted as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada, Puerto Rico. All names must be in zip sequence.

SPECIAL INSTRUCTIONS:

PLEASE PRODUCE MAG TAPE (9TK/1600BPI)
AND INCLUDE TAPE LAYOUT AND DUMP WITH
SHIPMENT. PLEASE KEY CARTON BQAX1. THANK
YOU. PLEASE INCLUDE ALL $100+ DONORS
AND ~~OMIT ALL NAMES FROM THE STATES OF~~
~~MARYLAND & FLORIDA~~
(MULTI DONORS)
ACTIVE REPUBLICAN DONORS -BQAX1
BILLING: [illegible]
LESS COMMISSION: [illegible]
[illegible] ALPA
[illegible]

FOR QUESTIONS ON THIS ORDER, CALL _____ (703) 442-7595

BROKER COPY—WHITE BILLING COPY—PINK MASTERFILE COPY—YELLOW CONFIRMATION COPY—GOLDENROD

Best Lists, Inc.

2070 Chain Bridge Road, Suite 400, Vi

LIST OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
ATTN. RICK CHAMBERS

LIST USER: AFGHAN MERCY FUND

OFFER: FUNDRAISING

LIST: ACITVE REPUBLICAN MULTI DONORS

QUANTITY: 5000

MAIL DATE: 1-19-87

WANTED BY: 12-16-87

KEY: AJ128

MATERIAL: MAG TAPE 9-TRACK, 1600 BPI

RENTAL RATE: ~~$6.00/M~~ $125.00/M

SHIP TO:
SATURN CORPORATION
ATTN. TERRY WALKER

VIA:

DATE: 12-02-86

BLI ORDER #: 7666

CLIENT ORDER #: VERBAL

☐ This is a full run.

☐ This is a test. Please select a good cross sectio
X a record of names supplied to avoid duplication
orders.

☐ This is a retest or continuation. Please omit nam
previously.

(Our number: _____

GUARANTEE: These names are for one time use only
and will not be used again for any other.

BILLING/PAYMENT: Upon completion of this order send your invoice with all charges, clients name, shipping me quantity of names shipped. We will bill on your behalf a payment will remit less the standard brokerage commiss Inc. places this order as agent for the Client and it is ac express understanding that the Client is solely responsi therefore. The Best Lists, Inc. will forward payment for th as payment is received by the Client but assumes no re for payment.

PANDERING ACT: ( ) Persons listed on attached sh as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign

All names must be in zip sequence.

SPECIAL INSTRUCTIONS:

THIS IS A TEST, PLEASE
SELECTION OF THE ENTIRE
PLEASE OMIT OUR DONORS
MAG TAPE 9-TR, 16
TAPE LAYOUT AND
PLEASE KEY
BILLING: $125.00/M
LESS: COMMISSION

739

FOR QUESTIONS ON THIS ORDER, CALL _____

BROKER COPY—WHITE BILLING COPY—PINK MASTERFILE COPY—YELLOW CONFIRMATION

9704364205 2

The Best Lists, Inc.

2070 Chain Bridge Road, Suite 400, Vienna, V

LIST OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
TERRY WARNER
Rick Chambers

DATE: 12-09-86

BLI ORDER #: 7584

CLIENT ORDER #: VERBAL

☐ This is a full run.

☒ This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a retest or continuation. Please omit names used previously.

(Our number: _____)

LIST USER: / AMERICAN CITIZENS FOR POLITICAL ACTION

OFFER: FUNDRAISING

LIST: / ACTIVE REPUBLICAN DONORS (SINGLE)

QUANTITY: / 5000

MAIL DATE: 1-5-87

WANTED BY: 12-19-86

KEY: VL8

MATERIAL: 4-UP CHESHIRE LABELS

RENTAL RATE: $80.00 M

SHIP TO:
DKM
ROUTE 2, CALVERT INDUSTRIAL PARK
PRINCE FREDERICK, MD 20678
ATNT: DON BROWN

VIA:

GUARANTEE: These names are for one time use only for the offer sp and will not be used again for any other.

BILLING/PAYMENT: Upon completion of this order send The Best List your invoice with all charges, dikets name, shipping method and exact quantity of names shipped. We will bill on your behalf and on receipt c payment will remit less the standard brokerage commission. The Best L Inc. places this order as agent for the Client and it is accepted on the express understanding that the Client is solely responsible for the costs therefore. The Best Lists, Inc. will forward payment for the list rental as as payment is received by the Client but assumes no responsibility or li for payment.

PANDERING ACT: ( ) Persons listed on attached sheet should be de as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada, Puerto

All names must be in zip sequence.

SPECIAL INSTRUCTIONS:

THIS IS A TEST. PLEASE DO AN NTH NAME SINGLES
SELECTION OF THE ENTIRE FILE. PLEASE
KEY EACH LABEL VL8. PLEASE INCLUDE A
$100+ DONORS.
THANK YOU

BILLING: $80/M
LESS COMMISSION: [illegible]
PLUSKEYCODING: $[illegible]

* [illegible] 7595
([illegible] 1/5/87)

7310

9704384205 3

FOR QUESTIONS ON THIS ORDER, CALL [illegible]

(703) 442-7595

BROKER COPY—WHITE BILLING COPY—PINK MASTERFILE COPY—YELLOW CONFIRMATION COPY—GOLDENROD

Best Lists, Inc.

2070 Chain Bridge Road, Suite 400, Vienn

LIST OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
RICK CHAMBERS

DATE: 01-07-87

BLI ORDER #: 7927

CLIENT ORDER #: VERBAL

☐ This is a full run.

☐ This is a test. Please select a good cross section a record of names supplied to avoid duplication in orders.

☐ This is a retest or continuation. Please omit name previously.

(Our number: _____

LIST USER: AMERICAN CITIZENS FOR POLITICAL ACTION

Cancelled - running charge

OFFER: HOUSE MAILING

LIST: ACTIVE REPUBLICAN DONORS WITH PHONE #'S

QUANTITY: 10000

MAIL DATE: 2-9-87

WANTED BY: 1-19-87

KEY: BOCY:

MATERIAL: MAG TAPE (9TK/1600BPI)

RENTAL RATE: $150.00/M

SHIP TO: SATURN-TERR[illegible]

VIA: [illegible]

GUARANTEE: These names are for one time use only fo and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send your invoice with all charges, clients name, shipping met quantity of names shipped. We will bill on your behalf an payment will remit less the standard brokerage commissi Inc. places this order as agent for the Client and it is acc express understanding that the Client is solely responsib therefore. The Best Lists, Inc. will forward payment for th as payment is received by the Client but assumes no res for payment.

PANDERING ACT: ( ) Persons listed on attached she as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign.

All names must be in zip sequence.

SPECIAL INSTRUCTIONS:

THIS IS A TEST. PLEASE DO AN N[illegible] SELECTION OF THE ENTIRE FILE. [illegible] PROVIDE MAG TAPE (9TK/1600BPI). [illegible] OUT AND DUMP WITH SHIPMENT. PLE[illegible] CLUDE $100+ DONORS. PLEASE [illegible] BOCY1. PLEASE SUPPRESS THE ACT[illegible] HOUSE SELECTS FROM THIS SELECT[illegible] PLEASE OMIT PURCHASE ORDER & T[illegible] →ACTIVE REPUBLICAN DONORS [illegible]

FOR QUESTIONS ON THIS ORDER, CALL Mary [illegible]

BROKER COPY—WHITE BILLING COPY—PINK MASTERFILE COPY—YELLOW CONFIRMATI

9704384205 4

Best Lists, Inc.

2070 Chain Bridge Road, Suite 400, Vienna, Virgi

LIST OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
RICK CHAMBERS

DATE: 01-27-87

BLI ORDER #: 8140

CLIENT ORDER #: VERBAL

☐ This is a full run.

☒ This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a retest or continuation. Please omit names used previously.

(Our number: _____)

LIST USER: AMERICAN CITIZENS FOR POLITICAL ACTION

Cancelled no charge

OFFER: HOUSE MAILING

USE: ACTIVE REPUBLICAN DONORS WITH PHONE #'S

QUANTITY: 10000

MAIL DATE: 2-23-87

WANTED BY: 2-16-87.

KEY: BOD×1

MATERIAL: MAG TAPE (9TK 1600BPI)

RENTAL RATE: $150.00/M

SHIP TO: SATURN CORPORATION WALKER

VIA:

GUARANTEE: These names are for one time use only for the offe and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best your invoice with all charges, clients name, shipping method and quantity of names shipped. We will bill on your behalf and on rec payment will remit less the standard brokerage commission. The Inc. places this order as agent for the Client and it is accepted o express understanding that the Client is solely responsible for th therefore. The Best Lists, Inc. will forward payment for the list rer as payment is received by the Client but assumes no responsibi for payment.

PANDERING ACT: ( ) Persons listed on attached sheet shou as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada

All names must be in zip sequence.

SPECIAL INSTRUCTIONS:

THIS IS A TEST. PLEASE DO AN [illegible]
SELECTION OF THE ENTIRE FILE. [illegible]
PROVIDE MAG TAPE (9TK/1600BPI).
LAYOUT AND DUMP WITH SHIPMENT. [illegible]
INCLUDE $100- DONORS. PLEASE [illegible]
BODX1. PLEASE [illegible] THE [illegible]
HOUSE SELECTS FROM THIS SELF-
OMIT PO# [illegible]

FOR QUESTIONS ON THIS ORDER, CALL Mary

MASTERFILE COPY—YELLOW

CONFIRMATION CO

9704384205 5

Best Lists, Inc.

2070 Chain Bridge Road, Suite 400, Vienna, Virginia 2218(

LIST OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
ATTN: RICK CHAMBERS

DATE: 01-30-87

BL ORDER #: 8174

CLIENT ORDER #: verbal

☐ This is a full run.

☐ This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a reset or continuation. Please omit names used previously.

(Our number: _____)

LIST USER: NATIONAL CONSERVATIVE PRESIDENTIAL COMM

GUARANTEE: These names are for one time use only for the offer specified and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best Lists, Inc. your invoice with all charges, clients name, shipping method and exact quantity of names shipped. We will bill on your behalf and on receipt of payment will remit less the standard brokerage commission. The Best Lists, Inc. places this order as agent for the Client and it is accepted on the express understanding that the Client is solely responsible for the costs therefore. The Best Lists, Inc. will forward payment for the list rental as soon as payment is received by the Client but assumes no responsibility or liability for payment.

PANDERING ACT: ( ) Persons listed on attached sheet should be deleted as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada, Puerto Rico. All names must be in zip sequence.

OFFER: TELEPHONE MARKETING

LIST: ACTIVE REPUBLICAN DONORS WITH PHONE #'S

QUANTITY: ALL

MAIL DATE: N/A

WANTED BY: 2-3-87

KEY: #8174

MATERIAL: ATMG CONTINUOUS FORMS

RENTAL RATE: $250.00/M

SPECIAL INSTRUCTIONS:

THIS IS A TEST. PLEASE DO AN WITH NAME SELECT OF THE ACTIVE REPUBLICAN DONORS WITH PHONE #'S FILE. PLEASE KEY EACH ATMG CONTINUOUS FORM #8174 . PLEASE INCLUDE NAME, ADDRESS, CITY, STATE ZIP, MED AND PHONE NUMBER. PLEASE SORT BY TIME ZONE. PLEASE CALL WITH ANY QUESTIONS THANK YOU.

SHIP TO:

BEST LISTS, INC.
2070 CHAIN BRIDGE ROAD, #400
VIENNA 22182

VIA:

FOR QUESTIONS ON THIS ORDER, CALL _____ (703) 442-7595

BROKER COPY—WHITE | BILLING COPY—PINK | MASTERFILE COPY—YELLOW | CONFIRMATION COPY—GOLDENROD

DATE: February 6, 1987

TO: Susie DeCarlo
Mary Carroll
Robin Crawford

FROM: Ron Kanfer

RE: Active Republican Donors

Effective immediately as of this date, February 6, 1987, please cancel every use of that list now scheduled.

cc: David Kunko
Don Hopper

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EXHIBIT B

Best Lists, Inc.

2070 Chain Bridge Road, Suite 400, Vienna, Virginia 22180

LIST OWNER/COMPUTER:

SATURN CORPORATION
4701 LYDELL ROAD
CHEVERLY, MD 20781
RICK CHAMBERS

DATE: 01-07-87

BLI ORDER #: 7924

CLIENT ORDER #: VERBAL

☐ This is a full run.

☒ This is a test. Please select a good cross section. Keep a record of names supplied to avoid duplication in future orders.

☐ This is a retest or continuation. Please omit names used previously.

(Our number: _____)

LIST USER: AMERICAN CITIZENS FOR POLITICAL ACTION

GUARANTEE: These names are for one time use only for the offer specified and will not be used again for any offer.

BILLING/PAYMENT: Upon completion of this order send The Best Lists, Inc. your invoice with all charges, clients name, shipping method and exact quantity of names shipped. We will bill on your behalf and on receipt of payment will remit less the standard brokerage commission. The Best Lists, Inc. places this order as agent for the Client and it is accepted on the express understanding that the Client is solely responsible for the costs therefore. The Best Lists, Inc. will forward payment for the list rental as soon as payment is received by the Client but assumes no responsibility or liability for payment.

PANDERING ACT: ( ) Persons listed on attached sheet should be deleted as per provisions of Title 39 U.S. Postal Code 4009.

LIST BROKER: Address U.S. names only. Omit Foreign, Canada, Puerto Rico. All names must be in zip sequence.

OFFER: HOUSE MAILING

LIST: ACTIVE REPUBLICAN DONORS W/PHONE #'S

QUANTITY: 10000

MAIL DATE: 1-26-87

WANTED BY: 1-13-87

KEY: BQBX1

MATERIAL: MAG TAPE (9TK/1600BPI)

RENTAL RATE: $150.00/M

SHIP TO: SATURN -TERRY WALKER

VIA: [illegible]

SPECIAL INSTRUCTIONS:

THIS IS A TEST. PLEASE DO AN NTH NAME SELECTION OF THE ENTIRE FILE. PLEASE PROVIDE MAG TAPE (9TK/1600BPI) [redacted] TAPE LAYOUT AND DUMP WITH SHIPMENT. PLEASE INCLUDE $100+ DONORS. PLEASE KEY CARTON BQBX1. PLEASE SUPPRESS THE ALPHA 1-26-87 HOUSE SELECTS FROM THIS SELECT. THANKYOU
→ACTIVE REPUBLICAN DNRS - WITH #'S
-KEY BQBX1
BILLING: $150/M + LESS COMMISSION

7043 2 8

FOR QUESTIONS ON THIS ORDER, CALL Mary (703) 442-7595

BROKER COPY—WHITE BILLING COPY—PINK MASTERFILE COPY—YELLOW CONFIRMATION COPY—GOLDENROD

GCC#4265

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
87 AUG 31 PM 1:36

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
1825 Eye Street, N.W.
Washington, D.C. 20006

One Financial Center
Boston, Massachusetts 02111
Telephone: 617/542-6000
Telex: 94-0198
Telecopier: 617/542-2241

Telephone: 202/293-0500
Telecopier: 202/466-5479
Telex: 753689

August 31, 1987

BY HAND

Lawrence H. Noble, Esquire
Acting General Counsel
Federal Election Commission
999 E Street, N.W., Room 657
Washington, D.C. 20463

Re: MUR 2361
Legi-Tech, Inc.

Dear Mr. Noble:

This letter responds to the Commission's letter to Frank Washington of Legi-Tech, dated July 22, 1987, in which the Commission reported that it has found reason to believe that Legi-Tech had violated 2 U.S.C. § 438(a)(4), and that MUR 2094 was being merged with a new investigation, MUR 2361.

At the outset, Legi-Tech wishes to make clear its position that the Commission has no authority to institute the investigation contemplated in MUR 2361. In MUR 2094, on February 18, 1987, the Commission found probable cause to believe that Legi-Tech has violated the same statutory provision that the Commission has invoked in MUR 2361. By making that finding, the Commission had necessarily terminated its investigation of Legi-Tech's activities. For example, 11 C.F.R. § 111.16 states that "[u]pon completion of the investigation," the General Counsel shall prepare a brief containing its recommendation on whether the Commission should make a finding of probable cause. Such a brief was prepared and submitted to Legi-Tech over a year ago, on May 22, 1986; the investigation of Legi-Tech is therefore complete.

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Since the Commission has already made a probable cause finding against Legi-Tech in MUR 2094, there would appear to be little point in initiating the new investigation. There is no basis in the rules or statute for undertaking repeated investigations of the same alleged violation. Nor is there any statutory authority for "consolidating" MUR 2094 into MUR 2361, with no indication that the Commission plans to take into account the extensive record that was compiled in the earlier proceeding. In any event, Legi-Tech will challenge any attempt by the Commission to use evidence derived from MUR 2361 in any future enforcement proceeding that the Commission may choose to initiate against the company.

At the same time, Legi-Tech has maintained throughout this proceeding that its activities are fully consistent with the Federal Election Campaign Act and the regulations thereunder. For that reason, and without waiving its right to challenge the authority of the Commission to undertake MUR 2361, it will respond to the Commission's requests for information and documents.

The bulk of the information requested by the Commission has already been submitted by Legi-Tech in MUR 2094. Legi-Tech hereby incorporates by reference all of the materials it submitted to the Commission in the earlier proceeding. These include (1) Legi-Tech's Response to Complaint, filed November 15, 1985; (2) Legi-Tech's Submission of Respondent, filed February 6, 1986 in response to the Commission's reason-to-believe finding; (3) the Submission of Respondent in Response to Proposed Recommendation of General Counsel, filed June 23, 1986; and (4) the letters to Charles Steele dated October 22, 1986 and March 17, 1987. There is no need for the company to brief again the facts and issues discussed at length in those submissions.

With these conditions, Legi-Tech responds to the Commission's interrogatories as follows:

1. Legi-Tech, Inc.
   The Senator Hotel
   1121 L Street
   Suite 207
   Sacramento, California 95814

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Washington On-Line
507 Eighth Street, S.E.
Washington, D.C. 20003
Ilka Oberst, General Manager

2. The response to this question is contained in Legi-Tech's previous filings in MUR 2094.

3. No.

4. Washington On-Line does not provide lists of names. As described in Legi-Tech's previous filings, it provides an electronic information data base that includes information obtained from publicly available FEC reports. Washington On-Line had a contract with International Funding Institute to provide its Campaign Contribution Tracking Service from May 22, 1986 to May 21, 1987.

5. No.

6. A copy of the standard Washington On-Line contract executed by International Funding Institute, and a letter from Ilka Oberst to Robert Dolan, are enclosed.

7. Not applicable.

8. Washington On-Line does not compile and maintain lists of names. Its procedures for gathering and disseminating data are set forth in the company's previous filings in MUR 2094.

With respect to conciliation, Legi-Tech's offer of conciliation dated March 17, 1987 remains open.

If you have any questions, please contact the undersigned.

Very truly yours,

Terrence J. Leahy

Terrence J. Leahy

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I, Ilka Oberst, representative of Legi-Tech, Inc., the respondent in MUR 2361, hereby declare under penalty of perjury that the foregoing responses to interrogatories and request for production of documents are true and accurate to the best of my knowledge and belief.

Ilka Oberst
General Manager
Washington On-Line

Enclosures
2846m

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Washington On-Line
Master Service Agreement

Washington On-Line, of Washington, D.C. is pleased to enter into this Master Agreement, Number 286, with ~~Robert Dolan~~ International Funding Institute, Inc. ~~of International Funding Institute~~ (Subscriber) having an Effective Date of May 22, 1986. Robert F. Dolan, EVP

By

To make this contract as straightforward as possible, the words *we, us, our,* and *ours,* mean Washington On-Line; the words *you* and *yours,* mean you, the Subscriber.

Basic Service

We agree to provide you access to our time sharing computer system.

We will provide this service to you at one location only: 1439 Rhode Island Avenue, Wash DC 20005 ~~2700 Virginia Avenue, NW Watergate West Suite 404 Washington, DC~~

You agree to have available at this location a separate business telephone line to be used exclusively for connection with computer time sharing systems or for transmission and reception of computerized information.

You agree to pay all charges associated with the installation and use of this telephone line. You understand that you must have this telephone line for us to provide you access to our system.

Technical Assistance

You can call us at 202/543-9101 during normal working hours for answers to questions on the use of the Washington On-Line system. However, we are not responsible for—and will not provide consulting services on the use of—equipment you own, or any equipment you use.

Maintenance of Equipment

You understand that your equipment must be working properly for you to access our system. Maintaining your equipment—or any equipment you use—is your responsibility. You are free to obtain service contracts from others to maintain your equipment and its communications capabilities.

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Ownership and Credit

Information we transmit to you is for your internal use only. You may not distribute this information to others except to the extent incidental to the conduct of your business. If your use of this information includes its publication in any form, you will credit Washington On-Line as the source.

All computer programs, database files, reports we transmit to you, copyrights, and other rights to and of the Washington On-Line system are our exclusive property.

Improvements

We may from time-to-time improve and modify the programs and procedures associated with the services we provide you. Our services would then be provided in accordance with any such changes.

Fees

You agree to pay us a one-time

Initial Fee of $750.00

which we will invoice to you on the Effective Date of this Master Agreement. You agree also to pay an

Annual Access Fee of $500.00

throughout the life of this Master Agreement. We will invoice this Fee on the Effective Date of this Master Agreement and on each subsequent anniversary (Renewal Date).

We may increase the Annual Fee by notifying you in writing 60 days in advance of the Effective Date of the increase.

Terms of Payment

Our invoices are due and payable within thirty (30) days of issue. If payment becomes fifteen (15) days past due we may suspend your access to our system until we receive payment. Please make your payments to:

Washington On-Line
507 Eighth Street, Southeast
Washington, D.C. 20003

9704384204

Duration of Agreement

This Master Agreement covers a period of one year beginning with the Effective Date and will automatically renew on an annual basis on each successive Renewal Date.

You may cancel this Agreement by notifying us in writing at least 90 days prior to the Renewal Date. You also have the right to cancel this Master Agreement as of the Effective Date of any increase in our fees affecting you, by notifying us in writing thirty (30) days in advance of that date.

Limit of Liability

We will make every reasonable effort to ensure that the information we provide you through the Washington On-Line system is complete and accurate, but we cannot warrant the completeness or accuracy of any information we deliver.

You will not hold us liable in any way for damages arising out of your use of our information. Further, you will hold us harmless from any claim, liability, or damages asserted against us by others because of, or in any way related to, your use of information you receive from us.

Complete Agreement

The above terms and conditions and those contained in any signed attachments or appendices, constitute the full and complete Agreement between you and us regarding access to the Washington On-Line computer time sharing system.

Any change, modification, or waiver of these provisions must be in writing and signed by an officer of Washington On-Line.

SUBSCRIBER IFI Inc	WASHINGTON ON-LINE
By [signature]	By [signature]
Typed Name Robert E. Dolan	Typed Name Kenneth C. Mandler
Title ~~Director~~ E. VP	Title President
Date May 22, 1986	Date May 22, 1986

Subscriber Business Name International Funding Institute, INC.
Billing Address 2700 Virginia Avenue, NW Watergate West Suite 404
City Washington State DC ZIP 20037
Attention Bob Dolan
Regular Business Telephone (202) ~~965~~ 337 - [redacted] 5183
Computer Communications Telephone ( ) -

Effective Date May 22, 1986 Agreement Number 286

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The Campaign Contribution Tracking System℠
Subscription Agreement

Washington On-Line, of Washington, D.C. is pleased to enter into this Subscription Agreement with ~~Robert Dolan~~ International Funding Institute, Inc. ~~International Funding Institute, Inc.~~ (Subscriber) having an Effective Date of May 22, 1986.

To make this contract as straightforward as possible, the words *we*, *us*, *our*, and *ours*, mean Washington On-Line; the words *you* and *yours*, mean you, the Subscriber.

Basic Service and License for Use

We agree to provide you access to our Campaign Contribution Tracking System℠ in accordance with the terms and conditions of Master Agreement Number 286 which must be in effect throughout this Subscription Agreement.

Training

We will conduct a training session on the use of the Campaign Contribution Tracking System. The cost for this training is included within your Annual Subscription Fee. However, you agree to reimburse us for our travel costs associated with your training session.

We will provide one (1) user's manual. You may purchase additional copies from us.

Ownership and Credit

Information we transmit to you is for your internal use only. You may not distribute this information to others except to the extent incidental to the conduct of your business. If your use of this information includes its publication in any form, you will credit Washington On-Line as the source.

All computer programs, database files, reports we transmit to you, copyrights, and other rights to and of the Washington On-Line system are our exclusive property.

Improvements

We may from time-to-time improve and modify the programs and procedures associated with the services we provide you. Our services would then be provided in accordance with any such changes.

Fees

You agree to pay us an

Annual Subscription Fee of $3,500.00

which we will invoice to you on the Effective Date of this Subscription Agreement and on each subsequent anniversary (Renewal Date).

We may increase the Annual Subscription Fee by notifying you in writing 60 days in advance of the Effective Date of the increase.

Terms of Payment

Our invoices are due and payable within thirty (30) days of issue. If payment becomes fifteen (15) days past due we may suspend your access to the Campaign Contribution Tracking System until we receive payment. Please make your payments to:

Washington On-Line
507 Eighth Street, Southeast
Washington, D.C. 20003

Duration of Agreement

This Subscription Agreement covers a period of one year beginning with the Effective Date and will automatically renew on an annual basis on each successive Renewal Date.

You may cancel this Agreement by notifying us in writing at least 90 days prior to the Renewal Date. You also have the right to cancel this Subscription Agreement as of the Effective Date of any increase in our fees affecting you, by notifying us in writing thirty (30) days in advance of that date.

Lawful Use

You understand that information included in the Campaign Contribution Tracking System has been copied by us from reports filed with the Federal Election Commission. It is a violation of federal law to sell or use information copied from such reports for the purpose of soliciting contributions from other than political committees.

Limit of Liability

We will make every reasonable effort to ensure that the information we provide you through the Campaign Contribution Tracking System is complete and accurate, but we cannot warrant the completeness or accuracy of any information we deliver.

You will not hold us liable in any way for damages arising out of your use of our information. Further, you will hold us harmless from any claim, liability, or damages asserted against us by others because of, or in any way related to, your use of information you receive from us.

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Complete Agreement

The above terms and conditions and those contained in any signed attachments or appendices, constitute the full and complete Agreement between you and us regarding access to the Campaign Contribution Tracking System.

Any change, modification, or waiver of these provisions must be in writing and signed by an officer of Washington On-Line to become a part of this Agreement.

SUBSCRIBER	WASHINGTON ON-LINE
By [signature]	By [signature]
Typed Name Robert E. Dolan	Typed Name Kenneth C. Mandler
Title ~~Director~~ Exec VP	Title President
Date May 22, 1986	Date May 22, 1986

Subscriber Business Name International Funding Institute, Inc.
Billing Address 2700 Virginia Avenue, NW Watergate West Suite 404
City Washington State DC ZIP 20037
Attention Bob Dolan
Regular Business Telephone (202) ~~965~~ 333 - ~~3710~~ 5183
Computer Communications Telephone ( ) -

Effective Date May 22, 1986 Agreement Number 556

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WASHINGTON ON-LINE
507 Eighth Street, Southeast, Washington, DC 20003 202/543-9101

February 27, 1987

COPY

Robert Dolan
International Funding Institute, Inc.
2700 Virginia Avenue, NW Suite 404
Washington, DC 20037

Dear Bob:

As per our phone conversation of 2/26/87 I have summarized our discussion.

Washington On-Line will authorize the International Funding Institute to reactivate the remaining three months on your subscription agreement, anytime within six months of the above date, provided we receive the final quarterly installment of $1,135 by March 13, 1987.

In addition, you are authorized the renew your subscription to the Campaign Contribution Tracking System at the rate of $4,000 for an additional year. Please feel free to call me with any questions you may have.

Sincerely,

Ilka Oberst
General Manager

ICO:me

27043842069

GCC#4295
RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
87 SEP -3 AM 9:20

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2107
(202) 371-7000

TELEX 904343
SKARSLAW-WASH
TELECOPIER
(202) 393-5760
DIRECT DIAL
(202) 371-

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 735-3000
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 573-4800
ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 651-3000
300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
(213) 687-5000
333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0700
18 FLOOR, HIBIYA CENTRAL BUILDING
1-2-9 NISHI SHINBASHI,
MINATO-KU, TOKYO 105, JAPAN
011-81-3-595-3850

August 31, 1987

Sandra Robinson, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2361 - American Citizens for Political Action and Robert E. Dolan, as treasurer

Dear Ms. Robinson:

American Citizens for Political Action ("ACPA") and Robert E. Dolan, as treasurer, respectfully submit this response to the Commission's findings of reason to believe in merged MUR 2361. Attached to this response are the answers to the questions which accompanied the reason to believe finding. This response incorporates by reference the previous arguments made in MURs 2307 on 2346 and reasserts, based on those arguments, that the Commission take no further action and close the file with regard to ACPA and Robert E. Dolan, as treasurer.

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
87 SEP -3 AM 10:45

The July 22, 1987 cover letter to the interrogatories states, as a basis for the reason to believe finding, that "it appears that insufficient information has been provided to resolve the question of the true source of the list of names identified in the complaint as containing pseudonyms found on reports filed with the Commission." While the interrogatories go well beyond seeking that information, in the spirit of cooperation ACPA continues to provide information with the hope that this matter may be resolved. In specific response to the question posed, if ACPA solicited a pseudonym as the complainants allege, the name could have only come from WOL because ACPA's source codes indicate that the "salted" names originate from the WOL service.

As previously stated, ACPA has discontinued the use of the WOL service. The gain from all the mailings

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using the WOL names was minimal, totaling a net average gain of $740. These factors, coupled with the significant legal defenses previously argued, both statutory and constitutional, form the basis for ACPA's request that the Commission take no further action and close the file. If I can be of any further help, please let me know.

Sincerely,

Kenneth A. Gross

Attachments

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RESPONSES TO INTERROGATORIES
AND REQUEST FOR PRODUCTION
OF DOCUMENTS

1.Q. In your response to the complaint in MUR 2346, you admit developing and integrating a list of names, the use of which resulted in pseudonyms from the Federal Election Commission's ("the Commission") public record being solicited for contributions. You identified the Washington-On-Line ("WOL") service as the source of the names found in the Commission's public record. State the address and telephone number of WOL and the name of its principal officer and/or representative.

A. Question 1 is premised on an admission that the American Citizens for Political Action ("ACPA") developed and integrated a list of names which resulted in the solicitation of pseudonyms obtained from the Commission. ACPA cannot admit to the assumption underlying such a premise since it can only infer that a pseudonym may have been solicited based on the allegations in this matter. Those allegations have not been substantiated, but in the spirit of resolving this matter without admitting to any violations, ACPA has assumed that the complainants' allegations are true.

The address and telephone number of WOL and its representative are:

Washington On-Line ("WOL")
507 Eighth Street, S.E.
Washington, D.C. 20003
(202) 543-9101
Representative: Ilka Oberst

2.Q. Describe the nature of your relationship with WOL. Identify the number of contacts with WOL by date, within the past 18 months, and describe the services obtained or shared. Identify all parties that acted as broker or intermediary in these transactions.

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A. ACPA has no direct relationship with WOL. However, Robert Dolan, treasurer of ACPA, is a principal of the International Funding Institute ("IFI") which has a contractual relationship with WOL. Neither IFI nor ACPA share services with WOL. The Best Lists, Inc. ("TBL") brokered the WOL names to ACPA. Robert Dolan's contact with WOL was minimal and incidental relating to matters such as payment terms.

3.Q. If the basis of your relationship with WOL is contractual, provide a copy of the contract. If there is no contract, provide copies of all correspondence which discusses the terms of the relationship. If there is no written documentation, describe the terms of all oral agreements.

A. A copy of the contract between IFI and WOL is attached (Attachment I). As stated, ACPA did not have a direct relationship with WOL.

4.Q. Provide a copy of all lists of names obtained from WOL. State the name of all such mailing lists and the number of names contained on each.

A. The names obtained from WOL are not in the form of lists. WOL provides access to names by computer. The names obtained from WOL were eventually put into list form and those lists are called:

1) Active Republican Donors - 100,000 names

2) Active Democratic Donors - 16,000 names (The Active Democratic Donors list was never used.)

5.Q. Other than through a relationship with WOL, describe how American Citizens for Political Action ("ACPA") maintains and supplements its own mailing list.

A. As stated, ACPA did not have a direct relationship with WOL. The names that ACPA obtained from WOL, through TBL, comprise a very small percentage of the total names ACPA uses in its solicitation efforts. ACPA supplements its own mailing list by leasing names from mailing list brokers.

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6.Q. State how ACPA is able to distinguish its own list of names from those obtained from outside sources. Provide copies of written policies and procedures which are applicable.

A. ACPA identifies the names obtained from WOL by source codes assigned to the lists developed from the WOL names. ACPA has no written policies or procedures with regard to the identification of lists.

7.Q. In your response you state that WOL is the "sole source" of the "salted" names on the list in question 1. Describe the method used to make that determination.

A. ACPA determined that WOL was the sole source of the "salted" names through the use of source codes assigned to the lists developed from the names obtained from WOL.

8.Q. Provide copies of all mailing lists resulting from an integration of ACPA's mailing list with names obtained from WOL. State the names of all such mailing lists and the number of names contained on each.

A. ACPA did not integrate the names obtained from WOL with its house file or any other mailing list. (The use of the word "integrate" in the response to MUR 2346 referred to the process of adapting names to the ACPA system, and not the mixing or commingling of the WOL names with non-WOL names.) All mailing lists that ACPA owns or has access to have always been segregated from the names obtained from WOL. The names on ACPA's house file are privileged and are not related to this investigation in any way. For those reasons, ACPA refuses to provide such names. However, as stated previously, the name of the lists that were made from the names obtained from WOL are Active Republican Donors and Active Democratic Donors. The Active Republican Donor list contains approximately 100,000 names. The Active Democratic Donor list contains approximately 16,000 names but the list was never used.

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9.Q. State whether the mailing list(s) referred to in Questions 1 and/or 8 is the same mailing list(s) at issue in the complaint in MUR 2307 and discussed in your response to that complaint and respective interrogatories. State how it is distinguishable.

A. The mailing list referred to in Question 1, i.e., Active Republican Donors is the same mailing list referred to in response to MUR 2307.

10.Q.a) State the name, address and telephone number of the persons or entities who rented, bought, or otherwise had access to the mailing list(s) referred to in Questions 1 and/or 8.

A.a) In addition to ACPA, on information and belief, the following entities used the mailing list referred to in Question 1:

1) The Afghan Mercy Fund
812 Woodland Drive, N.W.
Washington, D.C. 20008
(202) 628-1000

2) American Defense Institute
214 Massachusetts Avenue, N.E.
Box 2497
Washington, D.C. 20013
(202) 544-4704

3) David Livingstone Missionary Foundation
Box 232
Tulsa, Oklahoma 74102
(918) 494-9902

10.Q.b) State the terms and dates of all rental agreements.

A.b) TBL brokered the list in question. Thus, TBL should have the information concerning the terms and dates of the rentals.

10.Q.c) Identify all parties that acted as a broker or intermediary in thes transactions.

A.c) TBL acted as the broker in these transactions.

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11.Q. State whether at the time you acquired names from WOL an inquiry was made as to the source of the names. If the answer is yes, state the name of the person making the inquiry, the name of the person to whom the inquiry was made, and the answer received to the inquiry.

A. Mr. Dolan does not recall making any inquiries.

12.Q. In your responses to interrogatories in MUR 2307 you state that you had concerns about the sources used by WOL to compile lists of names. Describe the information you acquired which raised those concerns.

A. The responses to MUR 2307 did not state that the respondent had concerns about the sources used by WOL to compile the lists of names. As previously stated, Mr. Dolan used the names with the understanding that such use was legally permissible. When the permissibility of the use of the names was called into question by the filing of this complaint, Mr. Dolan ceased the use of the list.

13.Q. In your response to the complaint in MUR 2346 you admit that you allowed the Afghan Mercy Fund "the use" of a mailing list in your possession. State the name of that list.

A. Active Republican Donors

14.Q. State the meaning of the code BQAX1 found on the solicitation letters mailed by American Citizens for Political Action. State the date(s) these letters were mailed and the number of mailings.

A. BQAX1 is a source code representing a mailing which used the Active Republic Donors list. BQAX1 mailing was a one-time mailing of 9,199 letters. The letters were mailed on January 15, 1987 (the last mailing which used the Active Republican Donor list).

15.Q. Provide originals or true copies of all documents, including correspondence, notes, memoranda, contracts, invoices, and pamphlets concerning acquisition of the names on the mailing list, and

9/0438420/6

the rental, sale or other use of the mailing list(s) referred to in Questions 1 and/or 8.

A. To the best knowledge of the respondent, copies of all pertinent documents relating to the mailing list referred to in Question 1 are attached (Attachment II).

9/U4384207/7

ATTACHMENT I

[redacted]

Washington On-Line
Master Service Agreement

Washington On-Line, of Washington, D.C. is pleased to enter into this Master Agreement, Number 286, with ~~Robert Dolan~~ International Funding Institute, Inc ~~of International Funding Institute~~ (Subscriber) having an Effective Date of May 22, 1986. Robert F. Dolan, E.V.P

To make this contract as straightforward as possible, the words *we, us, our,* and *ours,* mean Washington On-Line; the words *you* and *yours,* mean you, the Subscriber.

Basic Service

We agree to provide you access to our time sharing computer system.

We will provide this service to you at one location only: 1139 Rhode Island Avenue, N.W. Washington, D.C. ~~2700 Virginia Avenue, NW Watergate West Suite 404 Washington, DC~~

You agree to have available at this location a separate business telephone line to be used exclusively for connection with computer time sharing systems or for transmission and reception of computerized information.

You agree to pay all charges associated with the installation and use of this telephone line. You understand that you must have this telephone line for us to provide you access to our system.

Technical Assistance

You can call us at 202/543-9101 during normal working hours for answers to questions on the use of the Washington On-Line system. However, we are not responsible for—and will not provide consulting services on the use of—equipment you own, or any equipment you use.

Maintenance of Equipment

You understand that your equipment must be working properly for you to access our system. Maintaining your equipment—or any equipment you use—is your responsibility. You are free to obtain service contracts from others to maintain your equipment and its communications capabilities.

9704384207 8

Ownership and Credit

Information we transmit to you is for your internal use only. You may not distribute this information to others except to the extent incidental to the conduct of your business. If your use of this information includes its publication in any form, you will credit Washington On-Line as the source.

All computer programs, database files, reports we transmit to you, copyrights, and other rights to and of the Washington On-Line system are our exclusive property.

Improvements

We may from time-to-time improve and modify the programs and procedures associated with the services we provide you. Our services would then be provided in accordance with any such changes.

Fees

You agree to pay us a one-time

Initial Fee of $750.00

which we will invoice to you on the Effective Date of this Master Agreement. You agree also to pay an

Annual Access Fee of $500.00

throughout the life of this Master Agreement. We will invoice this Fee on the Effective Date of this Master Agreement and on each subsequent anniversary (Renewal Date).

We may increase the Annual Fee by notifying you in writing 60 days in advance of the Effective Date of the increase.

Terms of Payment

Our invoices are due and payable within thirty (30) days of issue. If payment becomes fifteen (15) days past due we may suspend your access to our system until we receive payment. Please make your payments to:

Washington On-Line
507 Eighth Street, Southeast
Washington, D.C. 20003

9/U4384209/9

Duration of Agreement

This Master Agreement covers a period of one year beginning with the Effective Date and will automatically renew on an annual basis on each successive Renewal Date.

You may cancel this Agreement by notifying us in writing at least 90 days prior to the Renewal Date. You also have the right to cancel this Master Agreement as of the Effective Date of any increase in our fees affecting you, by notifying us in writing thirty (30) days in advance of that date.

Limit of Liability

We will make every reasonable effort to ensure that the information we provide you through the Washington On-Line system is complete and accurate, but we cannot warrant the completeness or accuracy of any information we deliver.

You will not hold us liable in any way for damages arising out of your use of our information. Further, you will hold us harmless from any claim, liability, or damages asserted against us by others because of, or in any way related to, your use of information you receive from us.

Complete Agreement

The above terms and conditions and those contained in any signed attachments or appendices, constitute the full and complete Agreement between you and us regarding access to the Washington On-Line computer time sharing system.

Any change, modification, or waiver of these provisions must be in writing and signed by an officer of Washington On-Line.

SUBSCRIBER IFI Inc	WASHINGTON ON-LINE
By [signature]	By [signature]
Typed Name Robert E. Dolan	Typed Name Kenneth C. Mandler
Title ~~Director~~ E VP	Title President
Date May 22, 1986	Date May 22, 1986

Subscriber Business Name International Funding Institute, Inc.
Billing Address 2700 Virginia Avenue, NW Watergate West Suite 404
City Washington State DC ZIP 20037
Attention Bob Dolan
Regular Business Telephone (202) ~~965~~ 337 - ~~3110~~ 5783
Computer Communications Telephone ( ) -

Effective Date May 22, 1986 Agreement Number 286

9/0438420 80

ATTACHMENT II

507 Eighth Street, Southeast, Washington, DC 20003 202/543-9101

February 27, 1987

Robert Dolan
International Funding Institute, Inc.
2700 Virginia Avenue, NW Suite 404
Washington, DC 20037

Dear Bob:

As per our phone conversation I have summarized our discussion.

Washington On-Line will authorize the International Funding Institute to reactivate the remaining three months on your subscription agreement, anytime within six months of the above date, provided we receive the final quarterly installment of $1,135 by March 13, 1987.

In addition, you are authorized the renew your subscription to the Campaign Contribution Tracking System at the rate of $4,000 for an additional year. Please feel free to call me with any questions you may have.

Sincerely,

Ilka Oberst
General Manager

ICO:me

PAID 3/4/87

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CCC# 4775

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
87 DEC 21 AM 9:23

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2107
(202) 371-7000

TELEX 904343
SKARSLAW-WASH
TELECOPIER
(202) 393-5760

DIRECT DIAL
(202) 371-

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 735-3000

ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 573-4800

ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 651-3000

300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
(213) 687-5000

333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0700

16 FLOOR, HIBIYA CENTRAL BUILDING
1-2-9 NISHI SHINBASHI,
MINATO-KU, TOKYO 105, JAPAN
011-81-3-595-3850

December 18, 1987

Sandra Robinson, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2361
American Citizens for Political Action

Dear Ms. Robinson:

This letter constitutes the request of American Citizens for Political Action (ACPA) for pre-probable cause conciliation pursuant to 11 C.F.R. § 111.18(d). The Commission and the complainants have effectively achieved injunctive relief in this matter in that ACPA discontinued the use of the Washington On-Line (WOL) names after receiving the complaints. In other cases where the respondent voluntarily discontinued the use of the names allegedly copied from the public record, the Commission voted not to pursue the matter. See, e.g., MUR 1673. Since the Commission has not dismissed this case and because ACPA is anxious to resolve this matter, it submits this request.

ACPA continues to deny it has violated the law and incorporates by reference the arguments it previously made in support of its position. ACPA merely used names that it obtained as a result of a bona fide contract with WOL and ceased their use when it became aware of the allegations of illegality. Even assuming that ACPA's use of the names constituted a violation, the names were used on a very limited basis. Moreover, the serious constitutional questions that loom in this case should be taken into consideration in settling this matter. In view of the issues in this case, both ACPA and the FEC would incur substantial litigation costs.

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87 DEC 21 PM 1:10

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Thus, for all these reasons ACPA is willing to settle this matter but believes it should pay either no civil penalty or at most, a nominal civil penalty.

I will look forward to hearing from you.

Sincerely,

Kenneth A. Gross

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88 APR -1 PM 3:46
SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
American Citizens for Political Action and Robert E. Dolan, as treasurer	)	MUR 2361
	)	
The Best Lists, Inc.	)	
	)	
Legi-Tech, Inc.	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On July 14, 1987, the Federal Election Commission ("Commission") found reason to believe the American Citizens for Political Action ("ACPA") and Robert E. Dolan, as treasurer; The Best Lists, Inc. ("Best Lists"); and Legi-Tech, Inc. ("Legi-Tech") violated Section 438(a)(4) of the Federal Election Campaign Act of 1971, as amended ("the Act"), in connection with solicitations for contributions which were mailed to certain pseudonyms found in financial disclosure reports filed with the Commission. On that same date, the Commission merged MURs 2094, 2307 and 2346 with MUR 2361, and approved interrogatories and requests for production of documents with respect to each respondent. Most recent responses to the interrogatories were received on September 3, 1987. See, MUR 2361 - General Counsel's Report, signed September 21, 1987. On December 21, 1987, this Office received a request for pre-probable cause conciliation from counsel for ACPA and Mr. Dolan. Attachment IV.

II. ANALYSIS

Section 438(a)(4) of the Act prohibits the selling of any information copied from reports and statements filed with the

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Commission, and it prohibits any person from using such information for the purpose of soliciting contributions or for commercial purposes, except the name and address of a political committee may be used to solicit contributions from such committee. Section 438(a)(4) also allows political committees to use up to 10 pseudonyms on each report filed in order to protect against the illegal use of names and addresses of contributors. The list of such pseudonyms should be attached to the appropriate report, but it shall be excluded from the public record.

A review of the responses to the interrogatories and request for documents shows that the following events occurred.

On May 22, 1986, the International Funding Institute ("IFI") and Robert E. Dolan, as executive vice-president, entered into a contractual agreement with Legi-Tech's subsidiary, Washington-On-Line ("WOL"), to obtain its computerized information service. See, Attachments I(9)-(11) and II(8)-(10). WOL has advertised to the general public that the information it provides comes directly from the Commission's public record, and its written contract contains a provision which specifically states the source of the information. See, Attachment II(9). Upon obtaining the information from WOL, which included contributors' names and addresses, Mr. Dolan apparently integrated that information with the contributor data already maintained in the IFI computer system. In September or October 1986, Mr. Dolan, on behalf of IFI, contacted The Best Lists, Inc., and asked it to market the combined list, entitled "Active Republican Donors."

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See, Attachment III(3)-(4). Best List rented the Active Republican Donor list to four organizations, including the American Citizens for Political Action and Robert E. Dolan, in his capacity as treasurer of that committee. See, Attachments I(4)-(7), III(4)-(5). The complaints in this matter were filed as a result of the use of this list.

The responses, therefore, demonstrate that the International Funding Institute played a key role in the use of the names obtained from the Commission's public record to solicit contributions and for commercial purposes.

It appears, therefore, that the IFI violated 2 U.S.C. § 438(a)(4) by using names obtained from the Commission's public record for commercial purposes, since Mr. Dolan, as an officer and agent of IFI, knew the source of the information prior to using it. Therefore, this Office recommends that the Commission find reason to believe that the International Funding Institute violated 2 U.S.C. § 438(a)(4).

The facts as presented by Mr. Dolan and ACPA in their written responses to the interrogatories have been confusing with respect to the involvement of the IFI and ACPA. It is, therefore, recommended that the Commission authorize this Office to depose Mr. Dolan to ascertain the facts as they pertain to the allegations against him, the IFI, and ACPA. Because more investigation is needed to clarify what occurred, this Office recommends that the Commission decline to enter into pre-probable cause conciliation with ACPA and Mr. Dolan, as treasurer, at this time.

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III. RECOMMENDATIONS

1. Decline at this time to enter into conciliation prior to a finding of probable cause to believe with the American Citizens for Political Action and Robert E. Dolan, as treasurer.

2. Find reason to believe the International Funding Institute violated 2 U.S.C. § 438(a)(4).

3. Approve the attached Factual and Legal Analysis, Request for Production of Documents and letters.

4. Authorize the attached subpoena and letter for the deposition of Robert E. Dolan.*/

Date 4/1/88

Lawrence M. Noble
General Counsel

Attachments
1. Responses to the interrogatories and request for documents from ACPA and Mr. Dolan, as treasurer
2. Responses to the interrogatories and request for documents from Legi-Tech, Inc.
3. Responses to the interrogatories and request for documents from The Best Lists, Inc.
4. Request for pre-probable cause conciliation from ACPA and Mr. Dolan, as treasurer
5. Letter, Factual and Legal Analysis, and Request for Production of Documents
6. Letter declining pre-probable cause conciliation
7. Letter and Subpoena

Staff Person: Sandra H. Robinson

---

*/ This Office is recommending that a Request for the Production of Documents be sent to Mr. Dolan and the International Funding Institute at this time, and that a deposition of Mr. Dolan should occur after the documents and response to the reason to believe finding are received, and counsel designated. At the present time ACPA is represented by counsel, and it is expected that the IFI will be also. The deposition of Mr. Dolan will include questions about the IFI and ACPA. Thus, it would be more appropriate to postpone serving the subpoena until IFI has had an opportunity to respond.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
American Citizens for Political Action and Robert E. Dolan, as treasurer	)	MUR 2361
	)	
The Best Lists, Inc.	)	
	)	
Legi-Tech, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 6, 1988, the Commission decided by a vote of 6-0 to take the following actions in MUR 2361:

1. Decline at this time to enter into conciliation prior to a finding of probable cause to believe with the American Citizens for Political Action and Robert E. Dolan, as treasurer.

2. Find reason to believe the International Funding Institute violated 2 U.S.C. § 438(a)(4).

3. Approve the Factual and Legal Analysis, Request for Production of Documents and letters, as recommended in the General Counsel's report signed April 1, 1988.

(Continued)

9704384208

4. Authorize the subpoena and letter for the deposition of Robert E. Dolan, as recommended in the General Counsel's report signed April 1, 1988.

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

Attest:

4-6-88
Date

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

Received in the Office of Commission Secretary:	Fri.,	4-1-88,	3:46
Circulated on 48 hour tally basis:	Mon.,	4-4-88,	11:00
Deadline for vote:	Wed.,	4-6-88,	11:00

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plm

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 12, 1988

Kenneth A. Gross, Esq.
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

RE: MUR 2361
American Citizens for
Political Action and
Robert E. Dolan, as
treasurer

Dear Mr. Gross:

On July 22, 1987, you were notified that the Federal Election Commission found reason to believe that your clients, American Citizens for Political Action and Robert E. Dolan, as treasurer, violated 2 U.S.C. § 438(a)(4). On December 21, 1987, you submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has considered your request and determined, because of the need to complete the investigation, to decline at this time to enter into conciliation prior to a finding of probable cause to believe.

At such time when the investigation in this matter has been completed, the Commission will reconsider your request to enter into conciliation prior to a finding of probable cause to believe.

If you have any questions, please contact Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

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plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 12, 1988

Robert E. Dolan
Executive Vice-President
International Funding Institute
2700 Virginia Avenue, N.W., Suite 404
Washington, D.C. 20037

RE: MUR 2361
International Funding
Institute

Dear Mr. Dolan:

On April 6, 1988, the Federal Election Commission found that there is reason to believe the International Funding Institute violated 2 U.S.C. § 438(a)(4), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the International Funding Institute. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office, along with your response to the enclosed request for documents, within 15 days of your receipt of this letter.

In the absence of any additional information demonstrating that no further action should be taken against the International Funding Institute, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission

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either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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

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.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Thomas J. Josefiak
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Request for Production of Documents

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: International Funding Institute MUR 2361

Section 438(a)(4) of the Federal Election Campaign Act of 1971, as amended ("the Act"), provides that any information copied from the Federal Election Commission's ("Commission") public record may not be sold or used for commerical purposes, or for the purpose of soliciting contributions, except that the name and address of a political committee may be used to solicit contributions from that committee. This section further provides that a political committee may submit up to 10 pseudonyms on each report filed in order to protect against the illegal use of names and addresses of contributors and that such list shall be attached to the appropriate report. The list of pseudonyms will not, however, be placed on the public record.

In the instant matter, a list owned by the International Funding Institute ("IFI"), entitled "Active Republican Donors," resulted in pseudonyms from the Commission's public record being solicited for contributions.

As executive vice-president and agent of the IFI, Robert E. Dolan contracted with Washington-On-Line, ("WOL"), a subsidiary of Legi-Tech, Inc., to receive its computerized information service, called the "Campaign Contribution Tracking System," in May 1986. WOL advertises that the source of its information for that service is the Commission's public record, and its written contract contains a provision which specifically states the

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source of the information. The contributor names and addresses obtained from WOL were apparently integrated with contributor information already in the IFI computer system. In September or October 1986, Mr. Dolan, on behalf of IFI, contacted a list broker, The Best Lists, Inc., to market the combined information, entitled the "Active Republican Donors" list, to other organizations. The information on this list included pseudonyms found in disclosure reports on file with the Commission. Therefore, there is reason to believe the International Funding Institute violated 2 U.S.C. § 438(a)(4) by using names derived from the Commission's public record for commercial purposes.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2361
	)	

REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Robert E. Dolan
Executive Vice-President
International Funding Institute
2700 Virginia Avenue, N.W., Suite 404
Washington, D.C. 20037

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, DC 20463, within 15 days of your receipt of this request, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering this request for production of documents, furnish all documents and other information, however obtained, that is in possession of, or otherwise available to you, including documents and information appearing in your records.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by the request for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

The following request for production of documents is continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter

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of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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REQUEST FOR PRODUCTION
OF DOCUMENTS
MUR 2361

You are hereby requested to produce the documents listed below.

1. The articles of incorporation for the International Funding Institute and documents which identify the current members of the board of directors, officers, and the principal stockholders.

2. Any and all written agreements between the International Funding Institute and Washington-On-Line's "Campaign Contribution Tracking System."

3. Any and all correspondence including, but not limited to, letters, memoranda, notes, proposals, or other documents, pertaining to the business transaction(s) between the International Funding Institute and Washington-On-Line's "Campaign Contribution Tracking System."

4. Any and all documents pertaining to fees charged for the services received by the International Funding Institute from Washington-On-Line's "Campaign Contribution Tracking System," including, but not limited to, billing statements, receipts, cancelled checks, and other correspondence.

5. Any and all documents pertaining to business transactions and other activities between the International Funding Institute and the American Citizens for Political Action with respect to sharing contributor names and addresses.

6. Any and all written agreements between the International Funding Institute and The Best Lists, Inc.

7. Any and all correspondence including, but not limited to, letters, memorandum, notes, proposals, receipts, cancelled checks, or other documents, pertaining to the business transaction(s) between the International Funding Institute and The Best Lists, Inc.

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BCC # 913C

RECEIVED
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MAIL ROOM

88 APR 25 AM 10:39

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2107
(202) 371-7000

TELEX 904343
SKARS LAW WASH
TELECOPIER
(202) 393-5760

DIRECT DIAL
(202) 371-7007

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 735-3000

ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 573-4800

ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 651-3000

300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
(213) 687-5000

333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0700

18 FLOOR, HIBIYA CENTRAL BUILDING
1-2-9 NISHI SHINBASHI,
MINATO-KU, TOKYO 105, JAPAN
011-81-3-595-3850

April 21, 1988

Sandra Robinson, Esq
Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2361

Dear Ms. Robinson:

Enclosed is a designation of counsel form of International Funding Institute, Inc.

Thank you for your attention to this matter.

Sincerely,

Kenneth A. Gross

Enclosure

88 APR 25 PM 3:00
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FEDERAL ELECTION COMMISSION

27043842099

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2361

NAME OF COUNSEL: Kenneth A. Gross

ADDRESS: Skadden, Arps, Slate,
Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

TELEPHONE: (202) 371-7000

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.

April 20, 1988
Date

Signature

RESPONDENT'S NAME: Robert E. Dolan

ADDRESS: 2700 Virginia Avenue, N.W.
Suite 404
Washington, D.C. 20037

HOME PHONE:

BUSINESS PHONE: ~~333-1112~~ 333-2092

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GCC # 9154

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
88 APR 26 PM 5:00

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2107
(202) 371-7000

TELEX 904343
SKARSLAW-WASH
TELECOPIER
(202) 393-5760
DIRECT DIAL
(202) 371-

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 735-3000

ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 573-4800

ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 651-3000

300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
(213) 687-5000

333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0700

18 FLOOR, HIBIYA CENTRAL BUILDING
1-2-9 NISHI SHINBASHI,
MINATO-KU, TOKYO 105, JAPAN
011-81-3-595-3850

April 26, 1988

HAND DELIVERY

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

Re: MUR 2361

Dear Mr. Noble:

We have been retained to represent the International Funding Institute ("IFI"). On April 18, 1988, IFI received a reason to believe notice and requests for documents.

IFI requests a ten day extension of time to provide sufficient time to locate the requested documents and to prepare a reply. Since some of the documents are not readily available, this additional time is needed.

Thank you for your consideration of this matter.

Sincerely,

Kenneth A. Gross

9704384210 1

flm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 2, 1988

Mr. Kenneth A. Gross, Esquire
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

Re: MUR 2361
International Funding
Institute

Dear Mr. Gross:

This is in response to your letter dated April 26, 1988, which we received on April 26, 1988, requesting an extension of 10 days to respond to the request for production of documents. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by the close of business on May 13, 1988.

If you have any questions, please contact Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

9704384210 2

CAC # 9274

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2107
(202) 371-7000

TELEX 904343
SKARSLAW-WASH
TELECOPIER
(202) 393-5760
DIRECT DIAL
(202) 371-

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 735-3000
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 573-4800
ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 651-3000
300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
(213) 687-5000
333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0700
18 FLOOR, HIBIYA CENTRAL BUILDING
1-2-9 NISHI SHINBASHI,
MINATO-KU, TOKYO 105, JAPAN
011-81-3-595-3850

May 13, 1988

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
Attn: Sandra Robinson, Esq.

Re: MUR 2361
International Funding Institute, Inc.

Dear Mr. Noble:

This letter is in response to the Federal Election Commission's ("FEC" or the "Commission") finding of reason to believe that the International Funding Institute, Inc. ("IFI") violated 2 U.S.C. § 438(a)(4). Attached to this response are responses to the Commission's request for documents.

IFI, a Virginia corporation, contracted with Washington On-Line ("WOL") for computer services which provided the names and addresses of contributors. IFI denies, however, that the contract it entered into with WOL contained a provision which stated that the source of the information was from the Commission's public record. IFI merely put the names in a form that made it suitable for brokering.

For the same reasons set forth in the responses of American Citizens for Political Action ("ACPA"), IFI believes it did not violate the law. It is inconceivable that IFI is subject to punitive action for using names of individuals which are in the public domain. Particularly when there is little doubt that those contributors were aware that their names would be disclosed, as a matter of law, on the public record. Even if such conduct constitutes a technical violation of the law, there are several mitigating factors that the Commission should take into consideration in assessing this matter.

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RECEIVED
FEDERAL ELECTION COMMISSION
88 MAY 13 PM 4:29

1. IFI ceased the alleged conduct as soon as the use of the names were called into question.

2. IFI made very limited use of the names. (Those mailings were described in ACPA's response.)

3. IFI suffered financial losses as result of the WOL contract.

4. IFI obtained a formal written legal opinion from a major law firm (not the firm presently representing IFI) which assured it of the legality of its conduct. Based on that opinion, IFI undertook the activity in question.

5. IFI has fully cooperated in this investigation.

6. If the Commission decides to pursue this matter further, IFI requests pre-probable cause conciliation.

Since IFI used the WOL names on a limited basis, incurred a substantial loss after expenses, and voluntarily discontinued the use of list, it urges the Commission to take no further action against it. Alternatively, if the Commission intends to pursue this matter further, IFI requests that it enter into pre-probable cause conciliation pursuant to 11 C.F.R. § 111.18(d).

Sincerely,

Kenneth A. Gross

Attachments

9704384210 4

RESPONSE TO REQUEST FOR DOCUMENTS

Attached are responses to the Commission's request for documents. To the best of knowledge of the respondent, the documents provided are all the available documents which relate to the requested information.

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Response to Request 1.

Articles of Incorporation for the International Funding Institute.

Presently, Robert E. Dolan is the sole director, officer and stockholder of the International Funding Institute.

Original incorporation documents attached.

9704384210 6

Commonwealth of Virginia

STATE CORPORATION COMMISSION

Richmond, April 15, 1986

9704384210 7

This is to Certify that the certificate of incorporation of

INTERNATIONAL FUNDING INSTITUTE, INC.

was this day issued and admitted to record in this office and that the said corporation is authorized to transact its business subject to all the laws of the State applicable to the corporation and its business.

STATE CORPORATION COMMISSION VIRGINIA SIC SEMPER TYRANNIS 1903

State Corporation Commission

Clerk of the Commission

ARTICLES OF INCORPORATION

OF

INTERNATIONAL FUNDING INSTITUTE, INC.

I hereby associate to form a stock corporation under the provisions of Chapter 1 of Title 13.1 of the Code of Virginia and to that end set forth the following:

(a) The name of the corporation is INTERNATIONAL FUNDING INSTITUTE, INC.

(b) The purpose or purposes for which the corporation is organized are to acquire, own, operate, manage, engage in and conduct any and all branches and phases of the business of furnishing and performing political and managerial advisory and consulting services, facilities and assistance of all kinds; to engage in and conduct any and all phases of the business of fund raising, by or through advertising, public relations, promotion, marketing, publishing, research and consulting, for the promotion and development of profit and/or expansion opportunities; and to conduct and operate the business and activities of the corporation as principal or agent, on commission or by contract, or in any other capacity or manner, and to undertake such other businesses and activities not specified herein as the corporation may from time to time choose to undertake, by itself and/or with others as partner, joint venturer, or in any combination thereof, for and

9704384210 8

on behalf of the United States Government and its agencies, or any persons, public or private, corporations and other business entities, and the investment and business communities.

(c) The aggregate number of shares which the corporation shall have authority to issue and the par value per share is as follows:

CLASS AND SERIES	NUMBER OF SHARES	PAR VALUE PER SHARE OR NO PAR VALUE
Common	500	No Par Value

(d) The post office address of the initial registered office of the corporation shall be 1413 East Abingdon Street, Suite 3, Alexandria, Virginia 22314. The name of the city in which the registered office is located is City of Alexandria. The name of its registered agent is David Hendry, who is a resident of Virginia and who is a director of the corporation, and whose business office is the same as the registered office of the corporation.

(e) The number of directors constituting the initial board of directors is two and the names and addresses of the persons who are to serve as the initial directors are:

NAMES	ADDRESSES
David Hendry	1413 Abingdon Street, Suite 3 Alexandria, Virginia 22314

9704384219

Robert E. Dolan

140 Little Falls Road, Suite 212-A
Falls Church, Virginia 22046

Dated: April 11, 1986

Anne L. Kreamer
1025 Vermont Avenue, N.W.
Washington, D.C. 20005

Incorporator

9704384211 0

Response to Request 2.

Written agreement between the International Funding Institute and Washington On-Line.

Document Attached

9704384211

Washington On-Line
Master Service Agreement

Washington On-Line, of Washington, D.C. is pleased to enter into this Master Agreement, Number 286, with ~~Robert Dolan~~ [illegible] ~~of International Funding Institute~~ (Subscriber) having an Effective Date of May 22, 1986. Robert F. Dolan, E.V.P.

To make this contract as straightforward as possible, the words *we, us, our,* and *ours,* mean Washington On-Line; the words *you* and *yours,* mean you, the Subscriber.

Basic Service

We agree to provide you access to our time sharing computer system.

We will provide this service to you at one location only: 1119 Thirty Third Street [illegible] ~~2700 Virginia Avenue, NW Watergate West Suite 404 Washington, DC~~

You agree to have available at this location a separate business telephone line to be used exclusively for connection with computer time sharing systems or for transmission and reception of computerized information.

You agree to pay all charges associated with the installation and use of this telephone line. You understand that you must have this telephone line for us to provide you access to our system.

Technical Assistance

You can call us at 202/543-9101 during normal working hours for answers to questions on the use of the Washington On-Line system. However, we are not responsible for—and will not provide consulting services on the use of—equipment you own, or any equipment you use.

Maintenance of Equipment

You understand that your equipment must be working properly for you to access our system. Maintaining your equipment—or any equipment you use—is your responsibility. You are free to obtain service contracts from others to maintain your equipment and its communications capabilities.

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Ownership and Credit

Information we transmit to you is for your internal use only. You may not distribute this information to others except to the extent incidental to the conduct of your business. If your use of this information includes its publication in any form, you will credit Washington On-Line as the source.

All computer programs, database files, reports we transmit to you, copyrights, and other rights to and of the Washington On-Line system are our exclusive property.

Improvements

We may from time-to-time improve and modify the programs and procedures associated with the services we provide you. Our services would then be provided in accordance with any such changes.

Fees

You agree to pay us a one-time

Initial Fee of $750.00

which we will invoice to you on the Effective Date of this Master Agreement. You agree also to pay an

Annual Access Fee of $500.00

throughout the life of this Master Agreement. We will invoice this Fee on the Effective Date of this Master Agreement and on each subsequent anniversary (Renewal Date).

We may increase the Annual Fee by notifying you in writing 60 days in advance of the Effective Date of the increase.

Terms of Payment

Our invoices are due and payable within thirty (30) days of issue. If payment becomes fifteen (15) days past due we may suspend your access to our system until we receive payment. Please make your payments to:

Washington On-Line
507 Eighth Street, Southeast
Washington, D.C. 20003

9704384211 3

Duration of Agreement

This Master Agreement covers a period of one year beginning with the Effective Date and will automatically renew on an annual basis on each successive Renewal Date.

You may cancel this Agreement by notifying us in writing at least 90 days prior to the Renewal Date. You also have the right to cancel this Master Agreement as of the Effective Date of any increase in our fees affecting you, by notifying us in writing thirty (30) days in advance of that date.

Limit of Liability

We will make every reasonable effort to ensure that the information we provide you through the Washington On-Line system is complete and accurate, but we cannot warrant the completeness or accuracy of any information we deliver.

You will not hold us liable in any way for damages arising out of your use of our information. Further, you will hold us harmless from any claim, liability, or damages asserted against us by others because of, or in any way related to, your use of information you receive from us.

Complete Agreement

The above terms and conditions and those contained in any signed attachments or appendices, constitute the full and complete Agreement between you and us regarding access to the Washington On-Line computer time sharing system.

Any change, modification, or waiver of these provisions must be in writing and signed by an officer of Washington On-Line.

SUBSCRIBER	WASHINGTON ON-LINE
By [signature]	By [signature]
Typed Name Robert E. Dolan	Typed Name Kenneth C. Mandler
Title ~~Director~~ E.V.P.	Title President
Date May 22, 1986	Date May 22, 1986

Subscriber Business Name International Funding Institute, Inc.
Billing Address 2700 Virginia Avenue, NW Watergate West Suite 404
City Washington State DC ZIP 20037
Attention Bob Dolan
Regular Business Telephone (202) ~~965~~ 333 - ~~3[illegible]~~ 5[illegible]3
Computer/Communications Telephone ( ) -

Effective Date May 22, 1986 Agreement Number 286

9704384211 4

Response to Request 3.

Correspondence between the International Funding Institute and Washington On-Line.

Documents Attached

9704384215

ATTACHMENT II

507 Eighth Street, Southeast, Washington, DC 20003 202/543-9101

February 27, 1987

Robert Dolan
International Funding Institute, Inc.
2700 Virginia Avenue, NW Suite 404
Washington, DC 20037

Dear Bob:

As per our phone conversation I have summarized our discussion.

Washington On-Line will authorize the International Funding Institute to reactivate the remaining three months on your subscription agreement, anytime within six months of the above date, provided we receive the final quarterly installment of $1,135 by March 13, 1987.

In addition, you are authorized the renew your subscription to the Campaign Contribution Tracking System at the rate of $4,000 for an additional year. Please feel free to call me with any questions you may have.

Sincerely,

Ilka Oberst
General Manager

ICO:me

PAID 3/4/87

97043842116

507 Eighth Street, Southeast, Washington, DC 20003 202/543-9101

December 1, 1986

Robert Dolan
Executive Vice President
International Funding Institute, Inc.
2700 Virginia Avenue, NW
Suite 404
Washington, DC 20037

Dear Bob:

Your account with Washington On-Line is past due as follows:

Over 60 - $1,135.00

Over 90 - $ 585.00

Total Past Due - $1,720.00 PAID 12/12/86

Current - $1,135.00 } DUE 1/15/87 REC'D

Total Due - $2,855.00

I've enclosed copies of the delinquent invoices so they may be processed quickly. In addition I have enclosed the invoice for the third installment of your quarterly payment plan.

We would appreciate payment in full by December 15, 1986. Your prompt payment will ensure your continued accessibility to our service.

Please do not hesitate to contact me with any questions you may have regarding this matter.

Sincerely,

Ilka Oberst
General Manager

ICO:me
enc.

9704384217

507 Eighth Street, Southeast, Washington, D.C. 20003 202/543-9101

December 1, 1986

Robert Dolan
Executive Vice President
International Funding Institute, Inc.
2700 Virginia Avenue, NW
Suite 404
Washington, DC 20037

INVOICE

CAMPAIGN CONTRIBUTION TRACKING SYSTEM SUBSCRIPTION AGREEMENT

QUARTERLY SUBSCRIPTION FEE----------$1,000.00

TAXABLE ITEMS

TO BE APPLIED TO ANNUAL SUBSCRIPTION FEE ONLY - SIX PERCENT (6%)

TOTAL----------$60.00

SERVICE CHARGE

FOR QUARTERLY PAYMENT OPTION - 7.5%

TOTAL----------$75.00

TERMS OF PAYMENT

DUE AND PAYABLE WITHIN FIFTEEN (15) DAYS OF ISSUE

CURRENT

$1,135

7043842118

September 11, 1986

Robert Dolan
Executive Vice President
International Funding Institute Inc.
2700 Virginia Avenue, NW
Suite 404
Washington, DC 20037

9704384211 9

INVOICE

CAMPAIGN CONTRIBUTION TRACKING SYSTEM SUBSCRIPTION AGREEMENT

QUARTERLY SUBSCRIPTION FEE----------$1,000.00

TAXABLE ITEMS

TO BE APPLIED TO ANNUAL SUBSCRIPTION FEE ONLY - 6%

TOTAL----------$60.00

SERVICE CHARGE

FOR QUARTERLY PAYMENT OPTION - 7.5%

TOTAL----------$75.00

TERMS OF PAYMENT

DUE AND PAYABLE WITHIN THIRTY (30) DAYS OF ISSUE

CURRENT	*OVER 60*	TOTAL DUE
$1,135.00	*$585.00*	$1,720.00

June 2, 1986

Robert Dolan
Executive Vice President
International Funding Institute Inc.
2700 Virginia Avenue NW Suite 404
Washington, DC 20037

INVOICE

MASTER SERVICE AGREEMENT

INITIAL FEE----------$750.00

CAMPAIGN CONTRIBUTION TRACKING SYSTEM SUBSCRIPTION AGREEMENT

QUARTERLY SUBSCRIPTION FEE----------$1,000.00

TAXABLE ITEMS

TO BE APPLIED TO ANNUAL SUBSCRIPTION FEE ONLY - SIX PERCENT (6%)

TOTAL----------$60.00

SERVICE CHARGE

FOR QUARTERLY PAYMENT OPTION - 7.5%

TOTAL----------$75.00

TERMS OF PAYMENT

DUE AND PAYABLE WITHIN THIRTY (30) DAYS OF ISSUE

TOTAL DUE

$1,885.00

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WASHINGTON ON•LINE

Subscriber Newsletter

September 1986

Boolean Logic: *The Basis of Keyword Searching*

More than a hundred years ago, an Englishman named George Boole devised a mathematical system in which all variables have a value of either zero or one. Originally designed for the analysis of symbolic logic, Boolean logic is now widely used in computer programming and forms the basis of the keyword search capabilities in our Bill Text Tracking System.

Boolean logic saves you time when conducting searches. You can, for example, produce a broad overview of legislation in which two or more subject areas overlap by simply typing the words and separating them with spaces. For instance, if you wish to study the interrelationship of agriculture and taxes, type "agriculture taxes." You can use up to 80 characters to search all bills introduced in the 99th Congress.

Boolean logic also allows you to conduct numerous searches simultaneously. There's no need to conduct separate searches for all bills mentioning agriculture and all bills mentioning taxes, for example. By typing in both subject areas joined by a plus sign, such as "agriculture + taxes," you have quick access to all bills mentioning either topic.

If you are interested in a heavily legislated subject, you can narrow the amount of information displayed to a more manageable level by directing the system to exclude entire subcategories. Type in the area of interest and the information you wish to exclude, dividing them with a dash. If, for example, you type in "agriculture-taxes," the system will display all bills containing information on agriculture but will automatically winnow out bills which also mention taxes.

A related feature called truncation lets you conduct even more sophisticated searches. When researching a subject area that might be represented by multiple variations of a word, such as the plural, type the root word followed by "@." Typing "tax@" will produce all bills mentioning taxes, taxation, and related words. For very specific search capabilities, combine options. For example, type "agriculture taxes-subsidies" to review all bills mentioning agriculture and taxes but excluding bills which also mention subsidies.

Campaign Contributions: *Where does all this information come from?*

The Federal Election Commission (FEC) is required by law to publicly disclose the campaign finance reports filed by candidate committees and political action committees. Working directly with the FEC, however, exposes the individual to a confusing mass of paperwork. The complexity of campaign finance laws, the multitude of different filing deadlines, and the inexperience of many filers create an erratic flow of inconsistently filed reports. Our Campaign Contribution Tracking System takes the hassle out of gathering contribution information, letting you concentrate on analysis.

Our extensive experience has helped us develop a system for providing reliable and prompt access to contribution information, even during peak periods. Many subscribers have asked how we gather and organize this information. The complex process begins with the campaign finance reports filed with the FEC. The FEC sends these reports to a lab to be converted into microfilm. Washington On-Line receives duplicates of this film on Monday, Tuesday, and Thursday mornings, the same time the microfilm is delivered to the FEC. During a normal week, we receive an average of 7,500 pages; during peak periods, the weekly average surges up to 40,000 pages.

The next step is sorting the reports. Our contributions specialists separate the reports and enter information from the summary page of each into our computer. Entering summary pages first assures that subscribers have the fastest possible access to the essential information contained in each report.

Processing the remaining pages is the next step. Because of the immense volume of information, we hire a professional keypunching firm to process the schedules detailing receipts and disbursements. We use a simple flagging system to communicate effectively with the keypunching staff and help speed their work along. We further streamline the process by combining contributions made by the same individual on the same day and combining payroll deductions from the same individual. To ensure accuracy and completeness, we include all contributors whose aggregate year-to-date total is $200 or more. Receipts and disbursements information is available within 24 to 48 hours of the summary pages entry.

The reports return from keypunching in the form of computer tapes which are loaded into our computer. Internal verification programs automatically ensure accuracy and alert us to any problems. As a final step, the hard copies of reports are filed. Storing hard copies is space-consuming but necessary. We can easily check the accuracy of our data base and immediately resolve any discrepancies. And, having hard copies close at hand lets us quickly answer any questions subscribers may have.

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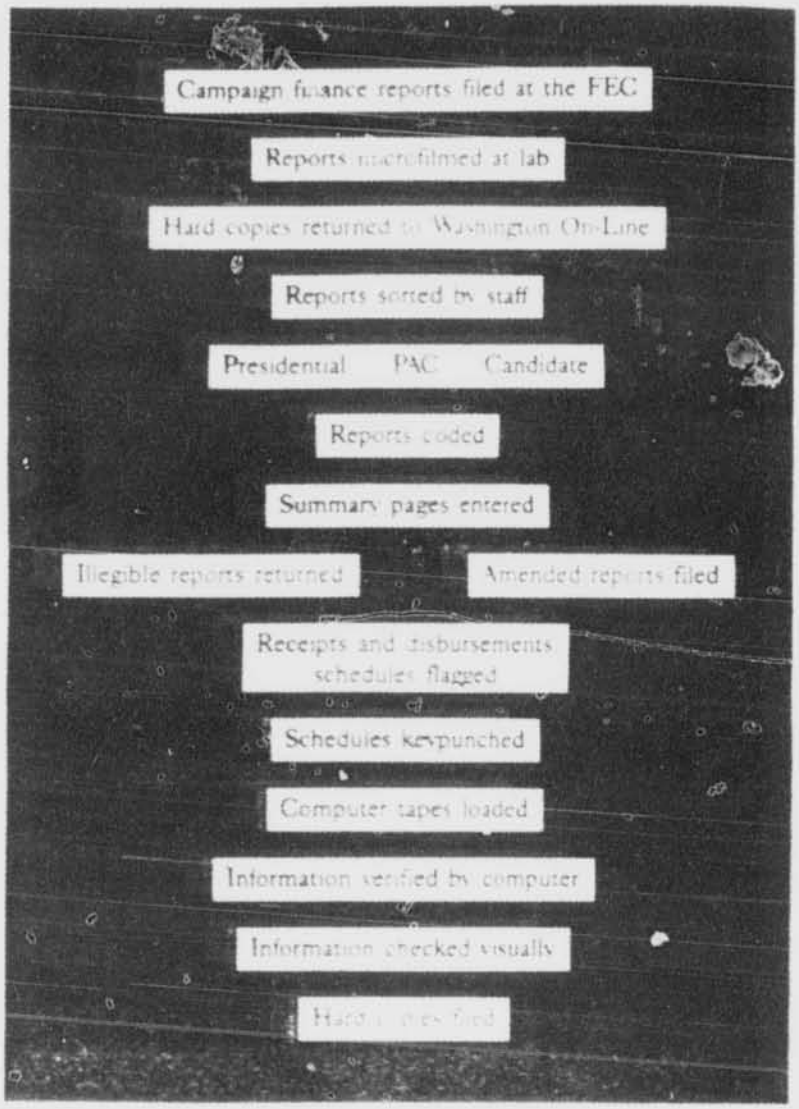
How We Gather and Organize Campaign Contribution Information



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Cosponsors: *Information Available in a Variety of Forms*

Imagine that you are a busy lobbyist trying to get an important bill passed. Because cosponsors can often determine a bill's fate, you urge potential supporters to cosponsor the bill. And because members can join in cosponsorship at nearly any stage of a bill's existence, you continue your efforts. Using our Congressional Bill Tracking System is an easy way to find out how your work has affected the bill's cosponsorship.

During Bill Tracking's development, we learned in a survey that you consider cosponsorship information crucial and that you want the information available in a variety of forms. We therefore devoted an entire option to cosponsorship and designed the program so that you could focus on either bills or members.

Most simply, we list cosponsors alphabetically. Enter any bill number or Bill-File to review all current cosponsors. You can also track cosponsors by the date they were added to or removed from a bill.

Or, concentrate on the individual members. By entering the name of any member, you can examine the member's cosponsorship history during the 99th Congress. The system will use the short titles to list all bills that the member has cosponsored.

Congressional Candidate Primaries and Runoffs

Primaries for Congressional candidates will be held on the following dates:

September 16:	Massachusetts
	Washington
September 20:	Hawaii
September 27:	Louisiana

If necessary, runoffs will be held on the following dates:

September 16:	Oklahoma
November 4:	Louisiana

507 Eighth Street, Southeast, Washington, D.C. 20003 202/543-9101

© 1986 Washington On-Line

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Response to Request 4.

Documents pertaining to fees charged for the services received by the International Funding Institute from Washington On-Line.

Documents Attached
See Response to Request 3.

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1007

INTERNATIONAL FUNDING INSTITUTE
3421 M STREET, NW., SUITE 1010 PH. 237-1110
WASHINGTON, D.C. 20007

5 · 14 19 86 68-738/560 1678

PAY TO THE ORDER OF Washington On Line $ 750.00

Seven Hundred fifty & 00/100 DOLLARS

SOVRAN BANK
Sovran Bank, N.A. Northern Virginia 22203

FOR Services

⑈00001007⑈ ⑆056007387⑆ 2690 4009⑈ ⑈0000075000⑈

1046

INTERNATIONAL FUNDING INSTITUTE
3421 M STREET, NW., SUITE 1010 PH. 237-1110
WASHINGTON, D.C. 20007

8 · 8 19 86 68-738/560 1678

PAY TO THE ORDER OF Washington on Line $ 550.00

Five Hundred fifty & 00/100 DOLLARS

SOVRAN BANK
Sovran Bank, N.A. Northern Virginia 22203

FOR #877

⑈00001046⑈ ⑆056007387⑆ 2690 4009⑈ ⑈0000055000⑈

IF EQUITY LINE CUSTOMERS
PLEASE ORDER CHECKS

INTERNATIONAL FUNDING INSTITUTE, INC
2700 VIRGINIA AVE NW
#404
WASH DC 20037

0101
15-3/540

PAY TO THE ORDER OF WASHINGTON ON LINE 12/12 1986

EIGHT HUNDRED FIFTY AND 00/100 $ 850.00 DOLLARS

CONSUMER DEPOSIT 1512
12-23-86

The RIGGS NATIONAL BANK
of WASHINGTON, D.C.
WATERGATE OFFICE
WATERGATE COMPLEX, VIRGINIA AVE., N.W.

FOR 1481
12899

⑈000101⑈ ⑆054000030⑆ 17⑈0854 5056⑈ ⑈0000085000⑈

9704384217

For Deposit Only to the Account
JAMES BURGESS ASSOCIATES
2009 North 14th Street Suite 8
Arlington Virginia 22201
14-10869-8

0107

INTERNATIONAL FUNDING INSTITUTE, INC.
2700 VIRGINIA AVE., N.W., SUITE 404
WASHINGTON, D.C. 20037

104

CONSUMER DEPOSIT 1512

3/4 19 87 15 3/540

PAY TO THE ORDER OF Washington [illegible] $ 1135.00

One Thousand One Hundred Thirty Five and 00/100 DOLLARS

RIGGS
WATERGATE OFFICE
2600 VIRGINIA AVENUE NW

FOR As per 2/27/87 [illegible]

Robert E [illegible]

⑈000104⑈ ⑆054000030⑆ 17⑈08545056⑈ ⑈0000113500⑈

9704384212 8

Response to Request 5.

Documents pertaining to business transactions between International Funding Institute and American Citizens for Political Action.

There are no such documents.

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Response to Request 6.

Written agreements between International Funding Institute and The Best Lists, Inc.

There are no such agreements.

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Response to Request 7.

Correpsondence, including letters memorandum, notes, proposals, receipts, cancelled checks, pertaining to business transactions between the International Funding Institute and The Best Lists, Inc.

Documents Attached

9704384213 1

THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT (S)

DATE		AMOUNT
	List rental income	

IF INCORRECT PLEASE RETURN NO [illegible] NECESSARY

[illegible] T LISTS, INC.
SPECIAL ACCOUNT
2070 CHAIN BRIDGE RD. SUITE 380
VIENNA, VA 22180

2391

Dec. 8, 1986 — 68-408/560 — 464

PAY TO THE ORDER OF I.F. I. — $ **716.01**

*Seven hundred sixteen and 01/100---------- DOLLARS

[illegible] OF [illegible]

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

[illegible]

⑈00002391⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000071601⑈

9704384212

[illegible] 22 [illegible]
PAY ANY BANK
NO FEES WITH PAYMENT
WASHINGTON, D.C.

P.E.G. BANK OF VA CE10-05705
CE 12-15-86 0032 [illegible]

[illegible]

THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT (S)

DATE		AMOUNT
	List rental	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

THE LIST LISTS, INC.
SPECIAL ACCOUNT
2070 CHAIN BRIDGE RD. SUITE 380
VIENNA, VA 22180

2441

December 22, 1986 — 68-408/560 464

PAY TO THE ORDER OF IFI $ 274.80

Two-Hundred-Seventy-Four Dollars and 80/100 DOLLARS

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

PAID-BANK OF VA.

⑈0000244 1⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000027480⑈

For Deposit Only
Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

JA '87 05
15-3 PROCESSED 15-3
THE RIGGS NATL BANK
WASHINGTON, D.C.

P.E.G. BANK OF VA 0510-05778
DE 01-05-87 0130 201305750

THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT (S)

DATE		AMOUNT
	list rental	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

THE LIST LISTS, INC.
SPECIAL ACCOUNT
2070 CHAIN BRIDGE RD. SUITE 380
VIENNA, VA 22180

2441

December 22, 19 86

68-408/560 484

PAY TO THE ORDER OF IFI $ 274.80

Two-Hundred-Seventy-Four Dollars and 80/100 DOLLARS

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

PAID-BANK OF VA.

⑈0000244⑆ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000027480⑈

9704 384 2133

JA '87 05
15-3 PROCESSED 15-31
THE RIGGS NATL BANK
WASHINGTON, D.C.

P.E.G. BANK OF VA 0510-05778
CE 01-05-87 0100 0013037750

THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT (S)

DATE		AMOUNT
	Lot rental	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

E[illegible]ST LISTS, INC.
S[illegible]IAL ACCOUNT
2070 CHAIN BRIDGE RD SUITE 380
VIENNA, VA 22180

2456

December 31, 19 86 — 88-408/560 — 464

PAY TO THE ORDER OF I.F.I. $ 655.92

Six-HUndred-Fifty-Five and 92/100 DOLLARS

Bank of Virginia
Tyson's Corner Branch
McLean, Virginia 22102

[illegible]

⑈00002456⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000065592⑈

9704384214

[illegible]

THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT (S)

DATE		AMOUNT
	Ind. contrib	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

BEST LISTS, INC.
SPECIAL ACCOUNT
2070 CHAIN BRIDGE RD SUITE 260
VIENNA, VA 22180

2467

January 12, 19 87 68-408/660 464

PAY TO THE ORDER OF I.F.I. $ 1,018.53

ONe-Thousand-Eighteen and 53/100 DOLLARS

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

PAID-BANK OF VA.

⑈0000 2467⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000101853⑈

For Deposit Only
Best Lists, Inc.

JA '87 15
PAY ANY BANK
THE RIGGS NAT'L BANK
WASHINGTON, D.C.

E.G. BANK OF VA 0510-06770
CE 01-16-87 CHEX 20421575

9704384215 5

CONNECTION WITH THE FOLLOWING ACCOUNT (S)

DATE		AMOUNT
	list rental	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

THE BEST LISTS, INC.
SPECIAL ACCOUNT
2070 CHAIN BRIDGE RD. SUITE 380
VIENNA, VA 22180

2488

January 27, 19 87 — 68-408/560 — 464

PAY TO THE ORDER OF I.F.I. $ 1368.12

One-Thousand-Three-HUndred-Sixty-Eight and 12/100 DOLLARS

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

FIRST BANK OF VA.

"00002488" ⑆056004089⑆ 651"7366206" "0000136812"

FEB '87 02

PAY ANY BANK
THE RIGGS NAT'L BANK
WASHINGTON, D.C.

FIRST BANK OF VA CENP-CENTS
02 02-03-87 0138 10129-979

For Deposit Only

THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT (S)

DATE		AMOUNT

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

BEST LISTS, INC.
SPECIAL ACCOUNT
2070 CHAIN BRIDGE RD. SUITE 380
VIENNA, VA 22180

2492

January 30, 1987

68-408/680 464

PAY TO THE ORDER OF I.F.I. $ 680.00

Six-Hundred-Eighty and 00/100 DOLLARS

Bank of Virginia
Tysons's Corner Branch
McLean, Virginia 22102

PAID BANK OF VA.

20323110

⑈00002492⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000068000⑈

For Legal Fees

FB '87 04

PAY ANY BANK
THE RIGGS NAT'L BANK
WASHINGTON, D.C.

PAID BANK OF VA 0510-06776
02-05-87 0323 20323810

9704356421137

THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT (S)

DATE		AMOUNT
	Lost received	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

E [illegible]ST LISTS, INC.
S[illegible]AL ACCOUNT
2070 CHAIN BRIDGE RD SUITE 380
VIENNA, VA 22180

2499

February 5, 19 87

68-408/560 464

PAY TO THE ORDER OF I.F.I. $ 1670.92

ONe-Thousand-Six-Hundred-Seventy and 92/100 DOLLARS

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

[illegible]

⑈00002499⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000167092⑈

For Deposit Only

PAY ANY BANK P.T.O.
RIGGS
NATIONAL BANK
WASHINGTON, D.C.

FEB 0 9 87

FB '87 09

PAY ANY BANK
RIGGS NATIONAL BANK
WASHINGTON, D.C.

F.E.D. BANK OF VA 0510-06778
CE 02-10/97 0132 201312353

9704384218 8

2508

INSURANCE DEDUCTION
CONNECTION WITH THE FOLLOWING ACCOUNT (S)

DATE		AMOUNT
	Net rental	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

HE EST LISTS, INC.
CIAL ACCOUNT
2070 CHAIN BRIDGE RD. SUITE 380
VIENNA, VA 22180

February 12, 1987

68-408/560 464

PAY TO THE ORDER OF I.F.I. $ 1108.80

One-Thousand-One-Hundred-Eight and 80/100 DOLLARS

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

"0000 2508" ⑆056004089⑆ 651"7366206" "0000110880"

FEB 18 '87
PAY ANY BANK
THE RIGGS NAT'L BANK
WASHINGTON, D.C.

P.E.O. BANK OF VA 0510-08778 2033 1965
CE 02-19-87 0321

For Deposit Only
PAY ANY BANK, P.E.O.
RIGGS
NATIONAL BANK
WASHINGTON, D.C.
FEB 18 '87

9704384213 9

THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT (S)

DATE		AMOUNT

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

HI[illegible]ST LISTS, INC.
SPECIAL ACCOUNT
2070 CHAIN BRIDGE RD, SUITE 360
VIENNA, VA 22180

2523

February 20, 1987

68-408/500 404

PAY TO THE ORDER OF I.F.I. $ 1200.00

One-Thousand-Two-Hundred and 00/100 DOLLARS

Bank of Virginia
Tysons Corner Branch
P.O.B. - McLean, Virginia 22102

⑈00002523⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000120000⑈

9704384214 0

FB '87 25

PAY ANY BANK
RIGGS NATL BANK
WASHINGTON, D.C.

P.S.G. BANK OF VA 0810-0870
B 03-25-87 0322 203225010

THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT (S)

DATE		AMOUNT
	list rental	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

HE ST LISTS, INC.
SPECIAL ACCOUNT
2070 CHAIN BRIDGE RD. SUITE 380
VIENNA, VA 22180

2540

March 2, 19 87

68-408/560 464

PAY TO THE ORDER OF I.F.I. $ 820.00

Eight-Hundred-Twenty and 00/100 DOLLARS

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

⑈00002540⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000008200⑈

MR '87 09

AY ANY BANK
ROSS NAT'L BANK
WASHINGTON, D.C.

R.E.S. BANK OF VA 0510-06776
05 03-10-87 0125

9704384214 1

Flm

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

May 20, 1988

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kenneth A. Gross, Esq.
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

RE: MUR 2361

Dear Mr. Gross:

On July 22, 1987, you were notified that the Federal Election Commission ("Commission") found reason to believe that your clients, American Citizens for Political Action and Robert E. Dolan, as treasurer, violated 2 U.S.C. § 438(a)(4), a provision of the Federal Election Campaign Act of 1971, as amended. On April 12, 1988, your client, the International Funding Institute, Inc., was notified that the Commission had found reason to believe the International Funding Institute, Inc., violated 2 U.S.C. § 438(a)(4).

Pursuant to its investigation of this matter, the Commission has issued the attached subpoena requiring your client, Robert E. Dolan, to appear and give sworn testimony on the above referenced matter, which will assist the Commission in carrying out its statutory duty of supervising compliance with the Federal Election Campaign Act of 1971, as amended.

Pursuant to 11 C.F.R. § 111.14, a witness summoned by the Commission shall be paid $30.00 plus mileage at the rate of 21 cents per mile. Your client will be given a check for the witness fee and mileage at the time of the deposition.

Please confirm the scheduled appearance with Sandra H. Robinson within two days of your receipt of this notification.

9704384021

If you have any questions, please direct them to Sandra H. Robinson, the attorney handling this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Subpoena

9/04/84 21 43

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2361
)

SUBPOENA

To: Robert E. Dolan

Pursuant to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to appear for deposition with regard to MUR 2361. Notice is hereby given that the deposition is to be taken on June 15, 1988, in Room 657 at 999 E Street, N.W., Washington, D.C., beginning at 10:00 a.m. and continuing each day thereafter as necessary.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand at Washington, D.C., this Eighth day of April, 1988.

Thomas J. Josefiak, Chairman
Federal Election Commission

ATTEST:

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

9704384214

FEDERAL ELECTION COMMISSION
RECEIVED
88 JUN -1 PM 12:23

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
American Citizens for Political Action and Robert E. Dolan, as treasurer	)	
	)	
The Best Lists, Inc.	)	MUR 2361
	)	
Legi-Tech, Inc.	)	
	)	
International Funding Institute, Inc.	)	

GENERAL COUNSEL'S REPORT

9704384215

I. BACKGROUND

On April 6, 1988, the Federal Election Commission ("Commission") found reason to believe the International Funding Institute ("IFI") violated 2 U.S.C. § 438(a)(4) in connection with solicitations for contributions which were mailed to certain pseudonyms found in financial disclosure reports on file with the Commission. It appeared that the IFI used names obtained from the Commission's public record for commercial purposes. To further the investigation of this matter, on that same date the Commission authorized a subpoena for the deposition of Robert E. Dolan, a principal at the IFI.[1] The deposition was to follow the receipt of the IFI's reply to the reason to believe finding and the request for production of documents, which were also approved by the Commission on April 6, 1988.

---

1. On that same date the Commission declined at this time to enter into pre-probable cause conciliation with American Citizens for Political Action and Robert E. Dolan, as treasurer.

The IFI designated counsel and requested an extension of time to respond to the notification and request for documents. A response was submitted on May 13, 1988. Respondent provided copies of requested documents and also requested pre-probable cause conciliation, if the Commission determined to pursue this matter.

II. ANALYSIS

As noted, Robert E. Dolan is a respondent in this matter in his capacity as treasurer of American Citizens for Political Action ("ACPA"). Responses from the IFI, Mr. Dolan and ACPA have been confusing as to the facts surrounding the use of the pseudonyms found on the Commission's public record. The IFI was asked to submit documents and not to respond to interrogatories, as it was deemed appropriate to reserve any questions for the deposition. There remains some discrepancy in the information presented by the IFI and the information presented by Legi-Tech, Inc., another respondent in this matter. Staff is reviewing the evidence presented by all of the respondents in this matter to establish the sequence of events which resulted in the alleged use of the pseudonyms for solicitation and commercial purposes. It appears that Mr. Dolan, the IFI, and ACPA are central participants in these events. The previously approved deposition of Mr. Dolan will be instrumental in establishing the facts in this matter. Notification of this deposition was mailed to Mr. Dolan's attorney on May 20, 1988. Therefore, this Office recommends that the Commission decline to enter into conciliation prior to a finding probable cause to believe with the IFI at this time. Following the deposition of Mr. Dolan, a reconsideration of the request for pre-probable cause conciliation may be appropriate.

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III. RECOMMENDATIONS

1. Decline at this time to enter into conciliation prior to a finding of probable cause to believe with the International Funding Institute.
2. Approve the attached letter.

Date 6/1/88

Lawrence M. Noble
General Counsel

Attachments
1. Response and request for conciliation
2. Letter

9704384217

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
American Citizens for Political Action and Robert E. Dolan, as treasurer	)	
	)	
The Best Lists, Inc.	)	MUR 2361
	)	
Legi-Tech, Inc.	)	
	)	
International Funding Institute, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 6, 1988, the Commission decided by a vote of 5-0 to take the following actions in MUR 2361:

1. Decline at this time to enter into conciliation prior to a finding of probable cause to believe with the International Funding Institute.

2. Approve the letter as recommended in the General Counsel's Report signed June 1, 1988.

Commissioners Aikens, Elliott, Josefiak, McDonald, and Thomas voted affirmatively for the decision; Commissioner McGarry did not cast a vote.

Attest:

6-6-88
Date

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

Received in the Office of the Commission Secretary: Wed., 5-1-88, 12:23
Circulated on 48 hour tally basis: Thurs., 5-2-88, 11:00
Deadline for vote: Mon., 6-6-88, 11:00

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plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 10, 1988

Robert E. Dolan, Esquire
2700 Virginia Avenue, N.W., Suite 404
Washington, D.C. 20037

RE: MUR 2361
International Funding
Institute, Inc.

Dear Mr. Dolan:

On April 12, 1988, your counsel was notified that the Federal Election Commission found reason to believe that the International Funding Institute, violated 2 U.S.C. § 438(a)(4). On May 13, 1988, your counsel submitted a request to enter into conciliation negotiations prior to a finding of probable cause to believe.

The Commission has considered the request and determined, because of the need to complete the investigation, to decline at this time to enter into conciliation prior to a finding of probable cause to believe.

At such time when the investigation in this matter has been completed, the Commission will reconsider the request to enter into conciliation prior to a finding of probable cause to believe.

If you have any questions please contact Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

cc: Robert E. Dolan, Esq.
1612 K Street, N.W., Suite 206
Washington, D.C. 20006

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GCC#9463

RECEIVED
FEDERAL ELECTION COMMISSION
88 JUN -7 PM 4:53

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2107
(202) 371-7000

TELEX 904343
SKARSLAW WASH
TELECOPIER
(202) 393-5760
DIRECT DIAL
(202) 371-

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
(212) 735-3000
ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 573-4800
ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 651-3000
300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
(213) 687-5000
333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0700
18 FLOOR, HIBIYA CENTRAL BUILDING
1-2-9 NISHI SHINBASHI,
MINATO-KU, TOKYO 105, JAPAN
011-81-3-595-3850

June 7, 1988

BY HAND

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

Attn: Sandra Robinson, Esq.

Re: MUR #2361

Dear Mr. Noble:

This is to formally advise you that I have withdrawn from representation of American Citizens for Political Action, Robert E. Dolan, as treasurer, and the International Funding Institute, in the above referenced matter. Robert E. Dolan, Esq. should be substituted as counsel for these respondents and all communications should be addressed to Mr. Dolan, 2700 Virginia Avenue, N.W., Suite 404, Washington, D.C. 20037

Thank you for your cooperation in this matter.

Sincerely,

Kenneth A. Gross

cc: Robert E. Dolan, Esq.

9704382160

TRANSCRIPT OF PROCEEDINGS

ORIGINAL

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ELECTION COMMISSION

In the Matter of:	
AMERICAN CITIZENS FOR POLITICAL ACTION and ROBERT E. DOLAN, as Treasurer,	MUR 2361
THE BEST LISTS, INC.	
LEGI-TECH, INC.	
INTERNATIONAL FUNDING INSTITUTE, INC.	

DEPOSITION OF ROBERT E. DOLAN

Washington, D. C.

Wednesday, June 15, 1988

ACE-FEDERAL REPORTERS, INC.
Stenotype Reporters
444 North Capitol Street
Washington, D.C. 20001
(202) 347-3700
Nationwide Coverage
800-336-6646

9704382151

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ELECTION COMMISSION

- -x

In the Matter of:

AMERICAN CITIZENS FOR POLITICAL ACTION and ROBERT E. DOLAN, as Treasurer,
THE BEST LISTS, INC.,
LEGI-TECH, INC.
INTERNATIONAL FUNDING INSTITUTE, INC.

MUR 2361

- -x

DEPOSITION OF ROBERT E. DOLAN

Washington, D. C.

Wednesday, June 15, 1988

Deposition of ROBERT E. DOLAN, called for examination pursuant to notice of deposition, at the Federal Election Commission, 999 E Street, N.W., Suite 657, at 9:55 a.m. before MARLENE KNOWLES, a Notary Public within and for the District of Columbia, when were present on behalf of the respective parties:

SANDRA H. ROBINSON, ESQ.
JONATHAN M. LEVIN, ESQ.
Federal Election Commission
999 E Street, N.W.
Washington, D. C. 20436
On behalf of Federal
Election Commission.

ALSO PRESENT: ELIZABETH CAMPBELL

9704382152

1 CONTENTS

WITNESS	EXAMINATION
Robert E. Dolan by Ms. Robinson	3

EXHIBITS

FEC EXHIBITS	IDENTIFIED
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Exhibit 3	10
Exhibit 4	36
Exhibit 5	41
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Exhibit 7	62
Exhibit 8	83

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1 P R O C E E D I N G S

2 Whereupon,

3 ROBERT E. DOLAN

4 was called as a witness and, having first been duly sworn,

5 was examined and testified as follows:

6 EXAMINATION

7 BY MS. ROBINSON:

8 Q Mr. Dolan, my name is Sandra Robinson, attorney

9 with the Federal Election Commission, and we're having this

10 deposition pursuant to the Federal Election Campaign Act,

11 section 437(d).

12 I am going to ask you a series of questions and

13 the court reporter will be taking everything down so you will

14 have to respond verbally and not through gestures. If you

15 don't understand a question let me know and I'll repeat it

16 and try to say it in another form. If you don't hear a

17 question I can repeat it. If you need to take a break, let

18 me know. I'd like you to treat this as a court of law so

19 that perjury applies. I'd also like to state for the record

20 that you are appearing at your own choice without counsel; is

21 that correct?

22 A That's correct. In that connection, upon review

9704382154

1 of the letter to your office by Kenneth Gross it's possible
2 to infer that I'm appearing here representing the subjects,
3 the International Funding Institute or the American Citizens
4 for Political Action Committee as its lawyer. That is not
5 the case. I'm here as a witness as opposed to appearing as
6 an attorney for the people, entities that are being
7 investigated.
8 Q Are the instructions clear then?
9 A Yes, thank you.
10 Q Would you state for the record your full name.
11 A Robert E. Dolan.
12 Q And your current address?
13 A
14 Q Telephone number, please?
15 A
16 Q Would you state your connection with the American
17 Citizens for Political Action
18 A I'm the chairman and treasurer.
19 Q You have authority to speak on their behalf?
20 A Yes.
21 Q Would you state your connection with the
22 International Funding Institute?

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A I'm its president and sole shareholder.

Q And you are authorized to speak on its behalf?

A Yes. The case really has not come up much. I do have the authority, yes.

Q Do you understand that International Funding Institute is the respondent here?

A I do.

Q And your current position with the International Funding Institute is?

A President.

Q Have you held any other positions with the institute?

A Yes.

Q What were those positions?

A Executive vice president.

Q When was that?

A Within the first few days of its incorporation.

Q Were there any other shareholders or officers?

A There was an officer for a very short period of time, David Hendry. I think that is reflected in the articles of incorporation.

Q You referred to the articles of incorporation.

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1 I'm going to --

2 A The articles of incorporation for the

3 International Funding Institute.

4 Q I understand.

5 MS. ROBINSON: I'm going to hand the court

6 reporter a copy of FEC Exhibit Number 1, which I'd like to

7 have marked as such, and I'm giving a copy to the respondent.

8 (FEC Exhibit 1 identified.)

9 BY MS. ROBINSON:

10 Q Have you seen these documents before, Mr. Dolan?

11 A Yes, I have.

12 Q Would you identify them, please, for the record.

13 A They are copies of the, I think they call it in

14 Virginia the corporation charter for the International

15 Funding Institute, and a copy of the articles of

16 incorporation for the International Funding Institute.

17 Q And the International Funding Institute was

18 incorporated on what date?

19 A The charter was issued on April 15, 1986.

20 Q And at that time Mr. Hendry I believe you

21 indicated was an officer at that time?

22 A Yes.

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Q How long did he hold a position?

A A number of days.

Q And following his termination who else has been involved?

A Nobody, just myself. In point of fact, if I can recall, he served in that capacity to assist during the incorporation process. I was under the impression that two people were required under Virginia law, but that was a mistaken impression.

Q Can you describe the type of business -- first of all, can you give the current address for the International Funding Institute?

A 2700 Virginia Avenue, Northwest.

Q Would you describe the type of business that it engages in?

A I trade under that name in the capacity as a fund-raising consultant. I generally describe it in the nature of consulting. It doesn't own any equipment or lease any equipment or anything in this nature. Its sole asset is Bob Dolan and -- actually I should say we've handled -- it's done some security work in terms of consulting on security matters for a bank in West Germany I believe. That was a

9704382 1 0 8

1 year and a half ago.

2 Q In terms of political activity, what types of --

3 A It doesn't have any political activity.

4 Q Has the International Funding Institute contracted

5 with the Legi-Tech, Incorporated?

6 A It did.

7 Q When was this contract?

8 A When was the contract?

9 Q Yes.

10 A I believe it was May of '86, about May of 1986.

11 Q What was the nature of the business that was

12 transacted?

13 A Legi-Tech was trading under the name Washington

14 On-Line and the International Funding Institute was

15 interested in its services. They made available over -- they

16 made available data to the public; that data was of interest

17 to International Funding Institute to use and accordingly we

18 entered into a contract with them.

19 MS. ROBINSON: I'm going to hand the reporter what

20 I would like marked as the Federal Election Commission

21 Exhibit 2, and a copy to the respondent.

22 (FEC Exhibit 2 identified.)

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BY MS. ROBINSON:

Q Have you seen this document before?

A Yes.

Q Would you identify it for the record, please.

A It's a copy of a contract between Washington On-Line and the International Funding Institute.

Q Would you describe in more detail the type of service or information that was received from Washington On-Line?

A The service that was contracted for was to make -- to provide us access to their data base. Essentially it enabled us to, via a remote PC, to access their computer via a modem. That's about as much as the technical --

Q Does that mean you have a computer system available to you?

A At the time we did. It was a PC, there was a modem, there was an access code, and then the data base was made available to the remote user. That's what this contract gave the International Funding Institute the right to do as I understood the contract. And the data that was being marketed by the Washington On-Line, as I understood it, was data compiled from FEC public records.

Q When did you understand that?

A I'm not sure when I understood that for the first time. But I had been tracking the industry's legal issues and various court cases and disputes. I don't know exactly when the first thought in my mind came in as to what Washington On-Line was marketing, but in fact it was in my mind at the time I signed that contract.

MS. ROBINSON: I have as FEC Exhibit 3 a contract with the campaign -- a contract that I'm handing a copy to the reporter and a copy to the respondent. I would like that marked as Exhibit 3.

(FEC Exhibit 3 identified.)

BY MS. ROBINSON:

Q Have you seen this document before, Mr. Dolan?

A Not in a long time. Yes, I have seen it before.

Q Would you state what it is for the record, please.

A This is a contract -- no, this is a subscription agreement, one that I have not seen in a very long period of time. It has my signature on it.

Q Would you state for the record the effective date of the agreement?

A The effective date looks like May 22, 1986.

9704382161

1 Q And going back to Exhibit 2, the contract with
2 Washington On-Line, the master service agreement.
3 A Right.
4 Q And the effective date of that contract?
5 A The same date, May 22, 1986.
6 Q That is your signature on that contract as well?
7 A Yes, it is.
8 Q So we can assume that you signed both agreements
9 on the same date?
10 A That's a fair assumption. I truly don't recall
11 executing two agreements at the time. There were papers
12 being handed back and forth. Obviously I did. It was sort
13 of a -- not all that dissimilar to a real estate closing when
14 papers were being put in my face by the salesperson; and I
15 think it is a safe assumption that they were executed
16 contemporaneously, but I have not seen this in a long time.
17 Q I will refer you to page 2 of Exhibit 3. And
18 there is a provision that says "Lawful Use."
19 A Right.
20 Q Within that provision it indicates that the
21 information is from the Federal Election Commission.
22 A Right.

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1 Q Were you aware of that provision when you signed
2 the contract?
3 A Not specifically, although I was aware of what
4 information was being marketed by them. I did not make use
5 of the information on the date of the contract signing. So I
6 was taking steps independent of this to insure that what I
7 was doing was in good faith compliance with the law. But in
8 terms of marketing or signing the contract and getting an
9 understanding of what services were being made to the public,
10 I was taking those steps.
11 Washington On-Line's sales representatives, like
12 any good sales rep, were somewhat -- somewhat closed-mouthed,
13 but certainly made the potential client aware of the fact
14 that greater services and more information would be made
15 available to them once you signed the contract. I did sign
16 the contract. It was very much of interest to me what they
17 were marketing to the public. I was taking steps as a
18 businessman to ascertain what was out there in the
19 marketplace.
20 Q What other steps- -- you indicated some other
21 steps. What other steps were you taking when you were
22 contracting with the Washington On-Line?

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A It was essentially contemporaneous with this process of becoming made aware of what was available in the public and because this type of transactions and occurrences involved regulated activity, I sought legal opinions as to its legality. We got those legal opinions and they said what we were contemplating was certainly constitutional, and that the regulations were unenforceable and words of that effect. And prior to ever using any of this information that was gotten through and pursuant to this contract, we had received in writing those legal opinions.

Q You were aware then, based on what you said, of the statutory provision that prohibited the use of Federal Election Commission public information?

A I had a generalized understanding of the law. I'm a lawyer; although I'm not an expert in FEC law, I do know that there is a prohibition -- I don't know if I've ever read it -- I don't know if I've read the provision.

Q What is your understanding of it?

A That if you go down to the FEC, copy their records, and you use it for any purpose, that it's a problem. That's about my understanding of what the law is. I know -- but in any event, I brought a copy of an opinion

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1 that we received and -- but we'll get into that if it's
2 relevant.
3 Q So that at the time you contracted with WOL for
4 the Campaign Contribution Tracking System, you were aware of
5 the provision in the statute?
6 A Yes, I had a generalized knowledge of the
7 prohibition against people going down to the FEC and using
8 that information. But that's not what I was doing in that
9 instance.
10 Q You were aware then of the provision -- you were
11 aware that the Campaign Contribution Tracking System
12 information was derived from the Federal Election Commission
13 public record?
14 A I would not have been contracting with them had I
15 not thought they had information that was relevant. I can't
16 recall what my knowledge was of the statute at the time of
17 contracting. I have become more aware of the statute since
18 that time, and it's hard to remember what my knowledge of
19 that statute was at that time. I was operating as a
20 businessman, not as a lawyer. In point of fact, I had -- on
21 a separate track was talking to a law firm and saying this is
22 my idea; can I go ahead and do this.

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1 So I -- you asked a good question about my
2 knowledge about the statute on May 22 -- the regulation. And
3 I had a generalized understanding of the prohibition against
4 the use of FEC data upon -- you know, when you go down and
5 copy it at the FEC. But this was a new thing -- this was a
6 new fact pattern which I had not ever contemplated prior to
7 knowing of Washington On-Line.
8 Q And you did not make use of the information
9 immediately?
10 A No, that's right.
11 Q And you did not make use of that information
12 because you had reservations about the legalities of using
13 it?
14 A Yes, reservations and concerns, and also it was a
15 regulated industry; "it" being what I wanted to do.
16 Q Specifically what information did you receive from
17 the Campaign Contribution Tracking System?
18 A Names and addresses essentially. And I believe
19 they would have dollar amounts coming over the data base
20 also.
21 Q And were there telephone numbers provided with
22 this information?

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A As I recall it, in some instances. That was a rare exception.

Q Were these individual names, political action committee names?

A Yes, individual names of Americans with their address, and as the data came over the wire there would be amounts. It would say -- the data would say coming over the wire -- for example, John Jones for Congress. It would come over quickly, and following it would be a list of 500 names. I don't know if it was alphabetical or what; I can't recall. Then when that was exhausted it would go Tommy Smith for Congress.

Q So it identified individual contributors by the candidates they contributed to?

A As I recall it, yes.

Q And you understood at that time that this information was -- these were federal candidates?

A Sure.

Q Did the Washington On-Line or Legi-Tech, Incorporated have any knowledge of why you wanted this information?

A If they did it was probably conjecture on their

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1 part. I didn't feel it was any of their business what I was
2 going to use this data for, because again, operating as a
3 businessman, I was seeking a competitive advantage over other
4 people in the fund-raising arena. But I do know that I said
5 these words to people, that I intended to use the data
6 consistent with my rights under the law as I found them out
7 to be. Those were the kind of words I would say. But they
8 were interested in knowing how the information was to be used
9 under the reasoning at the time that it would help them in
10 marketing their product.
11 Q They being Washington On-Line?
12 A Yes, they wanted to know how their customers were
13 to use their product, and the explanation they gave as to why
14 they wanted that knowledge was to help them in their
15 marketing. It didn't convince me to tell them what I was
16 going to do with the data at all, but that's what the line
17 was at the time. I said, well --
18 Q What did you respond?
19 A I said sure, I'm going to use the data consistent
20 with the law, basically, generally.
21 Q What was your understanding?
22 A I didn't have an understanding at the time. I

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1 felt the product they were making avaiable was very
2 inexpensive. I also knew that there was some action between
3 them and the FEC. What the exact nature of it was I don't
4 know or them and the Republican Congressional Committee that
5 was in court somewhere, but what was going on was still being
6 made public. And my sense of it was, as I recall, when they
7 won the case, or assuming they won the case, that the price
8 of their product would go up tenfold, and I wanted to get a
9 contract with them in advance of that decision and have a --
10 as I understood the product that they were making available,
11 it was a good price.
12 Q When you responded to WOL's questions regarding
13 your use of the information --
14 A Yes.
15 Q -- and that it would be used consistent with the
16 law, did they ask for any further explanation? What was
17 their response to that?
18 A I don't think they had a response. They must have
19 repeated their question no more than twice. There were two
20 people from Washington On-Line who I physically put my eyes
21 on. One was a male and one was a female.
22 Q Do you remember their names?

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A No, I can't. One of them might have been -- no it's not Ilka; I don't think I ever met her. I can't recall; I'm sorry. But they were technically oriented and I'm not technically oriented, and within a matter of a few words our ability to communicate was lost. So I don't recall any comment by them -- I would shrug that question off essentially.

Q After that initial conversation did you have any conversation with them throughout your use of the service as to how it was being used; were there any surveys done?

A Not that I recall right now. I don't think so. I truly don't think so.

Q Was there ever any other opportunity to discuss with them for what purpose you were using the information?

A No, the use of the information I don't think was ever discussed with them. How to get the information out of their system was discussed with them. Because there were times when I called them and I said hey, we accessed the data base and the information wasn't coming over the wire; what's your problem, you know, and I'm paying for the service and where is the product. Those are the kind of words I said to them. They would say gee, the guy got called away or forgot

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1 to put a button on or switch or the button broke, along those
2 lines. That's as I recall my conversation with them.
3 And they also were calling me up and saying
4 where's the money. It was very standard type of
5 conversations you had in business. You know, where is the
6 product? Where is the money? That kind of stuff.
7 Q Was The Best Lists, Incorporated involved at this
8 stage with the International Funding Institute?
9 A No.
10 Q Acquiring the names?
11 A Not at all.
12 Q The information?
13 A Not at all.
14 Q Once you obtained the information through the
15 computer service --
16 A Right.
17 Q -- from the Campaign Contribution Tracking System,
18 what did you do with it?
19 A Well, it had to be -- it was manipulated to put
20 into a mailing list format. Upon that manipulation process
21 being completed, it was put into a tape form, I mean it
22 resulted in a tape form and the tape was shipped to a

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1 computer service bureau.

2 Q When you say manipulating, can you explain that?

3 A I really can't too much; I'm not a computer

4 person, but as I understood it, the information came over in

5 a certain form that could not be readily put on to a tape.

6 So there had to be some program written to accomplish that.

7 Q What specific information did you take from the

8 Campaign Contribution Tracking System?

9 A Well, the names, all the data that came over. All

10 the --

11 Q You made use of all the data?

12 A Yes.

13 Q And this tape, can it then be characterized as a

14 contributor list?

15 A Yes, I think that's a fair characterization, sure.

16 Q And were there employees for the International

17 Funding Institute --

18 A No.

19 Q -- during this manipulation or this processing?

20 A No.

21 Q How was it done?

22 A It was done by a series of steps. I mean it was

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1 not simple, at least that's what my people told me. They
2 told me it would cost me more money to manipulate it. They
3 kept saying it was not simple. There was a series of outside
4 computer organizations, I think two or three of them, maybe
5 just two, who were retained by the International Funding
6 Institute to provide software consulting services
7 essentially.
8 Q When you say my people, are these people -- do you
9 have any interest in any of these computer services?
10 A No. Did I say my people?
11 Q Yes, you did.
12 A That's my New York-isms coming out.
13 Q "My people" then is referring to?
14 A Nobody. I'll -- there were computer service --
15 there were software specialists who -- one was in Florida,
16 one was in Washington. They worked together on the project.
17 Why they ended up doing that, because they had competitive
18 prices and they had the same type of equipment needed to make
19 the data from looking like this to looking like that. When
20 it ended up at the final end of the product it was shipped to
21 the computer service bureau. Saturn is its name.
22 Q What is your connection with the -- your or the

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1 International Funding Institute's connection or interest with
2 any of these software companies? Was it a --
3 A Nothing. Totally a vendor-vendee relationship.
4 Q It was shipped to Saturn Corporation. What is
5 that again?
6 A The final tape and/or tapes ended up at Saturn
7 Computer Service Bureau. I believe they are in Cheverly,
8 Maryland. That's where the lists in question here still
9 remain to this day.
10 Q Does the International Funding Institute or do you
11 have any interest or other connection with Saturn
12 Corporation?
13 A No.
14 Q So what service did they provide for the
15 International Funding Institute specifically?
16 A The service they provided for the International
17 Funding Institute was to -- I'm going to use the word house
18 the list. So that if an order came in to use that list or a
19 portion thereof, they would process that order.
20 Q What is the usual method for the International
21 Funding Institute to develop lists?
22 A It doesn't. It doesn't develop lists usually.

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1 The International Funding Institute was making use of a
2 product line that was out there, and because of -- I'm trying
3 to get -- because of the value of the asset that was being
4 made available, in my mind, took advantage of it. Nothing
5 more. It's not in the business of doing that.
6 Q In response to earlier interrogatories in this
7 matter it was -- you stated that the information received
8 from Washington On-Line was integrated with information
9 already available to the International Funding Institute.
10 Could you explain that.
11 A Okay. I believe in just reviewing some of the
12 papers there has been some use of the word integration, using
13 the same word and meaning different things at different
14 times. I'm not sure I can recall the question.
15 Q Well --
16 A If you could restate the question.
17 Q Would you repeat the question, please.
18 (The reporter read the record as requested.)
19 THE WITNESS: I'm not sure what you mean,
20 counselor, by "other information available to the
21 International Funding Institute." But as regards American
22 Citizens for Political Action, it had other information

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1 available to it. The International Funding Institute I guess
2 had other information available to it, but it --
3 Q But --
4 A I'm not --
5 Q By other information I mean other names and
6 addresses of contributors.
7 A It's possible that -- I can't recollect right now
8 any other deals that the International Funding Institute has
9 made with people to get lists to own lists and then we -- you
10 know, if I bought a list -- if I or the International Funding
11 Institute bought a list and it was a valuable list I would
12 take it to a list broker and say, broker, send me the checks
13 upon receipt of payment from the user. That's an ongoing
14 interest that I have in just my generalized knowledge of the
15 list business. If there is a list to be acquired I might
16 acquire it in my individual capacity or corporate capacity
17 for, you know, a lot of different reasons.
18 But in the previous communications with your
19 agency, the word integration was used, I believe by
20 Mr. Gross, and I'm not sure what meaning he had at the time.
21 But the --
22 Q As I understood it, the International Funding

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1 Institute maintained or has the Saturn Corporation maintained
2 contributor information --
3 A Yes.
4 Q -- other than the information that was received
5 from the Washington On-Line service?
6 A Okay, there was some other names -- I think the
7 International Funding Institute owns other names at Saturn,
8 yes. I think those names are very limited in number. They
9 have not been used in a long time. So I guess one could say
10 they were integrated into the preexisting group of names that
11 was at Saturn, but they were also -- could easily be
12 segregated because every good computer service bureau that I
13 use flags all these names and you could always trace them.
14 Q How do they flag?
15 A They put codes. They code the data. How they do
16 that I don't know, but they tell me they can. So that for
17 example, you know, it's -- you can pull out people who have
18 the last name beginning with A from a data base. I'm not
19 sure how the computer software program is written to get the
20 data base to end up with printouts beginning with Adams and
21 Angel and Atkinson.
22 Q I'm more concerned with how it distinguishes or

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1 how you can distinguish between the names that you already
2 have in that data base and the names that you received from
3 the campaign tracking system?
4 A Okay. I don't know how. All I know is it does
5 distinguish. I don't know how it does it.
6 Q You are informed by whom that that happens?
7 A The account rep at Saturn.
8 Q About how many names other than the Campaign
9 Contribution Tracking System names does the International
10 Funding Institute own?
11 A I don't remember.
12 Q Can you approximate or estimate?
13 A This of course is not to be confused with the
14 names owned by American Citizens for Political Action.
15 Q I understand that.
16 20,000 other names maybe.
17 Q And how did the International Funding Institute
18 acquire those names?
19 A I gave them to it.
20 Q Where did you get them from?
21 A Where did I get them from? Where the ~~hell~~ heck did I
22 get them from? I don't know. Probably various places.

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1 Various places. I can't recall right now. I believe they
2 were a direct copy at the time of the preexisting -- okay, I
3 recall.
4 When the International Funding Institute opened up
5 its account with Saturn, I told Saturn to create a new tape
6 of the then existing ACPA house file, ACPA house file. They
7 made a copy of it, put it on the rack, and boom.
8 Q What is the ACPA house file; what is that?
9 A That would be the list of people who have
10 contributed to the political action committee, American
11 Citizens for Political Action.
12 Q Is that the only source for these other names?
13 A Yes. They are dormant. They have not been used.
14 As my memory allows me today, that was done at that time to
15 simply get the -- to be a physical manifestation of the
16 relationship between International Funding Institute and
17 Saturn. It was done for no other reason than that.
18 Q So that neither you nor anyone on behalf of the
19 International Funding Institute has gone out to acquire list
20 names, contributor names?
21 A No.
22 Q For the International Funding Institute?

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A No, no.

Q And other than the Saturn -- than the in-house ACPA file and the names from the Campaign Contribution Tracking System, are there any other sources?

A No.

Q And it's accurate to say then that the names acquired from the Campaign Contribution Tracking System were incorporated, integrated, became a part of the names already existing in the file?

A I know you have -- yes, that's one way of saying it. And you know, I understand what you are trying to say. And I'm not sure I understand exactly how all this data base management operation --

Q What did you direct Saturn to do?

A Take the tape and hold it.

Q Did you direct them to integrate it, to include it?

A Yes. Well, it was included in the overall data base in their mind that was owned by the International Funding Institute. But often times in the direct mail arena, we use the word merge, purge, and use the house file as a kill tape. When we say those words, at least I would use

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1 that as an integration concept within the direct mail arena.
2 Q Merge?
3 A A merge/purge. That was not done in these
4 instances. It was just, you know, put one on top of the
5 other.
6 Q Alphabetized?
7 A No, I don't know how it was done. It was just put
8 in the -- given to Saturn and they took care of those
9 technical things.
10 Q What was the name of this resulted list?
11 A Which resulted list?
12 Q The list that included the WOL names, Washington
13 On-Line names?
14 A Active Republican donors.
15 Q And that list included the names from the Campaign
16 Contribution Tracking System and names from the International
17 Funding Institute, right?
18 A No, the active Republican donors were only names
19 received via the contract with Washington On-Line. That was
20 a trade name given to it, it being that group of names. The
21 other names I don't even know if they were ever used.
22 Q Other than the active Republican donors list, were

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1 there any other lists?

2 A There is an active Democrat donor list.

3 Q What is the source of names?

4 A Same as the active Republican donors.

5 Q The Campaign Contribution Tracking System?

6 A Yes.

7 Q And none of those names included the International

8 Funding Institute names?

9 A They were International Funding Institute names.

10 I mean they -- but no, I mean, the active Republican donor

11 names and the active Democrat donor names stood by

12 themselves. The names that were given to the International

13 Funding Institute to open up its relationship with Saturn had

14 no name as far as I can remember. It was just a tape in a

15 drawer so that there was a physical thing there. And there

16 was never any integration between the names that were used at

17 the beginning of the relationship between the International

18 Funding Institute and Saturn and the active Republican donors

19 or the active Democrat donors.

20 Q There was never any integration there?

21 A No, not that I know of. Not as I use the term

22 integration. No, there was none. I can't conceive of any.

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A Counsel, if you can refer me to that portion of the previous communication with your agency in which the term integration was used, then perhaps I might be able to expound upon it, to clear up any issues that may exist.

Q In the meantime other than these two lists that you have named, were there any other lists that were developed --

A No.

Q -- by Saturn for the international -- by any computer service for the International Funding Institute?

A No, no. I take it by that question you mean any other Washington On-Line type services.

Q I'm referring to your earlier response that the International Funding Institute contracted with more than one computer service --

A Oh, yes, but that was --

Q -- to maintain it's information or to --

A To manipulate -- no, at no time did they store information or provide any new information. They manipulated data.

MS. ROBINSON: Can we take a break for a moment.

(Recess.)

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1 BY MS. ROBINSON:

2 Q In regards to your request for reference to the
3 response concerning integration, I'm going to hand you a copy
4 of a letter from your then attorney Ken Gross in response to
5 the complaint, to refresh your recollection. I'll refer you
6 to the bottom paragraph, last paragraph.

7 A Okay.

8 Q So perhaps you can explain now what that means?

9 A Yes, this was dealing with ACPA. Again, as I
10 indicated, when you used the word integrated it was with
11 respect to IFI's system and that was what was confusing me,
12 because the word integration, my recollection was it was in
13 conjunction with ACPA's fund-raising system, which in fact is
14 the case.

15 Q And you would not technically use the term
16 integrated is what you are saying to me?

17 A Right. I think there are other words to use in
18 the fund-raising arena which would have been more readily
19 understood by people in that industry than the word
20 integrate, because of its possible different number of
21 definitions.

22 Q And the list at issue in this matter is the active

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1 Republican donors list, correct?

2 A As far as I know, yes.

3 Q And again, that list only contained names received

4 from the Campaign Contribution Tracking System?

5 A Absolutely.

6 Q None of the names available in the IFI bank or in

7 the American Citizens for Political Action bank?

8 A Right, absolutely.

9 Q Did the International Funding Institute solicit

10 any contributions from the list of names?

11 A No.

12 Q So what did the International Funding Institute

13 then do with the list called the active Republican donors

14 list?

15 A It then told a brokering house called The Best

16 Lists or TBL that there were names available to be available.

17 Q What does that mean, available to be available?

18 A Actually I should step back for a second. I think

19 your question was what did IFI then do in this whole stream

20 of things. IFI then went out and completed its

21 investigation, if you want to call it that, in terms of

22 getting legal opinions from counsel as to the use of this

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1 information.

2 Q Can you elaborate on that?

3 A Sure. We went to a law firm, LeBoeuf, Lamb, Leiby

4 & MacRae, told them what we wanted to do. Said can you give

5 us a legal opinion to this effect. Can we do it or can't we

6 do it. They gave us an opinion, eight- or nine-page letter.

7 We paid money for it and it said, sure.

8 Q What specifically did you tell them you intended

9 to do?

10 A I brought a copy of the opinion. I'll be happy to

11 waive privilege in this connection. And it speaks for

12 itself. And this was -- if I might, this opinion was

13 received by us after the date of the contract and prior to

14 the -- prior to the day I ever mentioned any of this data

15 base to The Best Lists company.

16 Q We'll take a break at this time so that I can look

17 this over.

18 A Sure.

19 Q And make copies.

20 THE WITNESS: On the record, if I might -- I lost

21 my thought. Will that be marked as an exhibit by me? Do I

22 introduce it as an exhibit? A matter of procedure. Would

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1 you like to introduce it as an exhibit?

2 MR. LEVIN: We will introduce it as an exhibit and

3 the record will reflect that you have given it to us.

4 (Recess.)

5 MS. ROBINSON: For the record, Mr. Dolan has

6 presented a copy of a letter he received from counsel which

7 he has mentioned before in this deposition and we would like

8 to have it marked as Federal Election Commission Exhibit 4.

9 (FEC Exhibit 4 identified.)

10 MS. ROBINSON: Would you repeat the last question

11 prior to the break, please.

12 (The reporter read the record as requested.)

13 (Discussion off the record.)

14 BY MS. ROBINSON:

15 Q The FEC Exhibit Number 4, you have seen this

16 document, since you gave it to me.

17 A Yes, I have.

18 Q Would you state for the record what it is?

19 A It is the opinion letter of LeBoeuf, Lamb, Leiby &

20 MacRae for the International Funding Institute relative to

21 the International Funding Institute's contemplated use of

22 data it received from Washington On-Line.

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Q What date did you receive that letter?

A August 11, 1986.

Q And the letter is addressed to?

A David Hendry.

Q Who at that time held what position with the International Funding Institute?

A I don't think he had a position other than as a consultant, helper for me. That address there is a PO box that he uses. Why it was sent there, I don't know, but that's --

Q Did Mr. Hendry ever talk with the law firm on behalf of the International Funding Institute?

A Yes.

Q So did Mr. Hendry make this inquiry or did you make this inquiry?

A I made the initial contact with the law firm and I worked on it with David Hendry. It was instance, my in investigation. In point of fact, the reason why I went to the law firm is I went to law school with one of the people in the law firm. It is a very large firm and I approached them to ask if they issue legal opinions. They said yes, they have an understanding of FEC work; they told me that

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1 their partners and associates and counsel have worked for the
2 FEC in related matters. I say great, can you give me a legal
3 opinion, and I told them what I was contemplating, and this
4 is what resulted.
5 Q What role did Mr. Hendry play?
6 A A conduit, a person to speak to in terms of
7 payment terms and things of this nature.
8 Q If he was not an officer of the International
9 Funding Institute, what connection did he have?
10 A At that time he was a consultant.
11 Q On a contractual basis?
12 A Probably was paid some money, not on a contractual
13 basis -- maybe on a contractual basis.
14 Q But he was not an employee?
15 A No, he was not an employee.
16 Q Let's go back to the active Republican donors
17 list --
18 A Okay.
19 Q -- that is owned by the International Funding
20 Institute.
21 A Yes.
22 Q What did the International Funding Institute then

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1 do with the list?

2 A At what time, counselor?

3 Q After it requested, ordered, directed Saturn

4 Corporation to --

5 A Hold the list.

6 Q Hold the list.

7 A Contact was eventually made by me with The Best

8 Lists company.

9 Q When was that contact --

10 A I've had regular contact with them, but in this

11 conjunction -- I mean I've known them in business for a long

12 period of time, but I never made them aware of this data base

13 that was now in existence until sometime maybe in September.

14 Q What did you ask them to do, what was the matter

15 of the --

16 A Broker the list to ACPA. That is what I asked

17 them to do.

18 Q Did you ask them to broker it to anyone else?

19 A No.

20 Q Not to their general clientele?

21 A No.

22 Q The Best Lists, did they in fact broker it to

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1 other agencies, organizations?

2 A Yes.

3 Q How many such organizations?

4 A I think about four or five.

5 Q Other than ACPA?

6 A Other than ACPA, yes.

7 Q What kind of financial arrangement did you have --

8 first of all, can you identify those other agencies.

9 A Well, I've seen it in the pleadings or the

10 paperwork in connection with the Afghan Mercy Fund, David

11 Livingston, maybe the American Defense Institute.

12 Q Other than those organizations, you're not aware

13 of any others?

14 A Right, not aware of any others, no.

15 Q What was your financial arrangement the Best Lists

16 for brokering this list?

17 A In my individual capacity, I didn't have any

18 financial relationship. The International Funding Institute

19 stood as any other list owner in the industry. Upon the

20 broker receiving payment from the list user, the broker would

21 take its commission and then remit the remainder to the list

22 owner.

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1 MS. ROBINSON: I have as Exhibit 4 -- I would like
2 to have it marked as -- 5, as Federal Election Commission 5.
3 I'm giving a copy to the respondent.
4 (FEC Exhibit 5 identified.)
5 BY MS. ROBINSON:
6 Q Have you seen these documents before?
7 A Yes.
8 Q Would you state for the record what they are.
9 A They are checks from The Best Lists company to the
10 International Funding Institute.
11 Q Would you state what they are for.
12 A For list rental, income.
13 Q Income.
14 A Yes.
15 Q So that approximately how much did the
16 International Funding Institute earn for allowing The Best
17 Lists to broker this list?
18 A Within the whole context it was a losing
19 proposition for the International Funding Institute. The
20 expenses far exceeded the revenue generated in the limited
21 number of checks that the International Funding Institute
22 received. So there was no net income as a result of this

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1 project. I haven't added up the checks IFI received from
2 Best Lists. If you would like me to add them up I will
3 arithmetically do that for you right now, but the whole
4 project, as we've been discussing it, was a net loss for the
5 International Funding Institute.
6 Q Let's make it clear for the record. Are all of
7 these checks for income generated by the use of the active
8 Republican donors list?
9 A Yes, that's what it would be from yes.
10 Q At this time did the Washington On-Line or
11 Legi-Tech know that you were brokering this list of names
12 that you acquired from them?
13 A I don't know if they knew or not. If they knew it
14 certainly wasn't from any words that they heard from me.
15 Q You never discussed with them your use of the
16 names?
17 A No. Now, I mean, what their knowledge was I have
18 no idea. But it is not uncommon in the list business to have
19 -- they could have salted the data they sent over the wire to
20 people such as me to then see how that data was going to be
21 utilized, and perhaps data they sent over was salted -- this
22 is purely conjecture on my part -- and maybe they too

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1 received salted names, as does the FEC salt names. I don't
2 know, maybe they do that, I don't know.
3 Q In the industry is it normal practice to take a
4 list of names that you have acquired from someplace else and
5 then to broker it as your own to other entities?
6 A Sure. It's common. I'm not as such in the
7 business of the list brokering business. You know, it's not
8 my ongoing -- list brokerage or list owning business. It's
9 just that I've come to understand the industry from being
10 involved in the political arena for a number of years. What
11 is common practice or custom in the industry I don't know. I
12 know what is customary for me. But in the list business
13 there are all sorts of ways that lists are accumulated and
14 built up, and various -- I've heard hundreds of different
15 stories.
16 Q So that by the time the active Republican donors
17 list came to the International Funding Institute through
18 Washington On-Line, it then became the International Funding
19 Institute's property?
20 A I don't know. That calls for me to make a
21 conclusion.
22 Q You assumed a proprietary interest in that you

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1 then took it as IFI's product to The Best Lists to broker?

2 A Right. At least I felt -- at the very least I

3 felt I had the right to do that. Again, I felt I had the

4 right to do that not only because of the nature of my

5 relationship with Washington On-Line, but because of the --

6 within the context of legal rights the opinion of counsel,

7 and I did a comment on this when I brought this to your

8 attention, but as I understood, again in a generalized way,

9 the FECA, I had a generalized understanding of good faith,

10 attemp to comply with the law using one's best efforts, I

11 felt that what was being done by me and the International

12 Funding Institute and ACPA in going out and paying for an

13 opinion for advance of the use of the names. But in terms of

14 the ownership of the names itself, I felt I had an interest

15 to broker that data upon it being manipulated and put into a

16 usable form. Yes.

17 Q Did The Best Lists inquire as to the source of the

18 information?

19 A Not that I can recall. I've seen -- I told people

20 that as I understood it the list was legally obtained and

21 could be legally used. I affirmatively said those words.

22 But in terms of there being inquiry by The Best Lists, if

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1 they conducted one I don't recall. If they asked me
2 specifically I don't remember.
3 Q What specifically did you say to The Best Lists as
4 to how -- I mean, other than the fact that you thought that
5 they could be used, that they were your property?
6 A What else did I say to them?
7 Q As to the source.
8 A It didn't come up.
9 Q Did you tell them at any time where the names came
10 from? Did you ever tell them that the names were derived
11 from Washington On-Line?
12 A No, I told them I -- again, it wasn't their
13 concern. It wasn't their concern because it wasn't their --
14 you know, I didn't think it was any of their business, to be
15 honest with you, where the list came from. Among other
16 reasons why I wouldn't tell them where the list was is that I
17 felt at that time there was a competitive advantage I had in
18 the industry. That's their business. They are much bigger
19 than I am. They would then go around me and get the
20 information and hire the software consultants that are out
21 there and do what I did. So for no other reason I kept it
22 quiet. I didn't tell them where this information was coming

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1 from. Again I felt so secure that what I was doing was legal
2 and ethical, constitutional, both statutorily and otherwise.
3 Q To your knowledge do The Best Lists know now where
4 the information came from?
5 A Sure.
6 Q How do you --
7 A I told them that.
8 Q When did you tell them where the information came
9 from?
10 A I told them at a lunch sometime in '87.
11 Q You told them that the names came from Washington
12 On-Line?
13 A Right.
14 Q And at that point what was their response?
15 A No particular response.
16 Q After you told them where the names came from do
17 you know if they continued to broker the list on behalf of
18 the International Funding Institute?
19 A No, we agreed that -- I told them for a reason; I
20 told them it came from Washington On-Line and the names
21 should be discontinued.
22 Q And so as of that meeting --

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A That's correct.

Q -- it was not used anymore.

A That's correct.

Q As of that meeting you had no other business dealings with regard to the active Republican donor list with The Best Lists?

A Right, that's correct.

Q Have you used the active Republican donor list with any other list brokering agency since that meeting?

A No.

Q I'd like to repeat for the record that you are the treasurer of the American Citizens for Political Action Committee, correct?

A Yes, ma'am.

Q Have you held any other positions with that group?

A Well, I'm also chairman. There have been other treasurers of it in years past. And while they were treasurer I might have been just a generalized board member.

Q And the American Citizens for Political Action is registered with the Commission?

A Yes.

Q Are there other members of the group?

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A No.

Q You are the sole member of the group?

A I don't know if it has members. I don't think it has members under the articles of incorporation. There are contributors to it that I'm sure consider themselves to be members.

Q So that it is also an incorporated entity?

A Yes.

Q What is the current address for the American Citizens for Political Action?

A 1612 K Street Northwest, suite 206.

Q And the telephone number?

A 331-1122.

Q And what generally does the organization do?

A Engages in activities consistent with the Federal Election Campaign Act.

Q Does the American Citizens for Political Action Committee own list names?

A Yes, it does.

Q How many lists does it own?

A One.

Q And that list is the one that we referred to

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1 earlier?

2 A No.

3 Q There is another list?

4 A I don't know what you mean by other list,

5 counselor, but the list that American Citizens for Political

6 Action Committee owns is called the house file.

7 Q Isn't that the same list that we referred to

8 earlier that you had given to Saturn Corporation to hold?

9 A Yes, however, because now -- however, I must tell

10 you that this is an area where perhaps additional words would

11 be helpful. A house list changes over time, although -- on

12 June 1, 1986 the house list may not be the same as on June 1,

13 1987 because people have been removed from that house list.

14 They die or they no longer contribute or they moved and we

15 delete them. And so the concept of house list is a -- should

16 be understood in the context that it changes. I mean it's

17 not the same group of names in perpetuity.

18 Q So that your earlier statement about this house

19 list, that it is dormant, is not completely accurate, in

20 that --

21 A No, it is accurate.

22 Q -- it is Updated?

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A The International Funding Institute received a list from American Citizens for Political Action. It was never used as far as I can recall. The International Funding Institute is not as such in this business. American Citizens for Political Action Committee is in the fund-raising arena and forever going through the process of prospecting, adding new names and deleting old names.

Q So they are maintained separately?

A Of course they are maintained separately.

Q Where is the American Citizens for Political Actionl list?

A At Saturn Computer Corporation. Probably in a different shelf.

Q Two different accounts?

A Two different everything.

Q Generally how does the American Citizens for Political Action solicit contributions?

A Quite well.

Q The method used, Mr. Dolan, please?

A Direct response fund-raising. Both telemarketing and direct mail.

Q In this particular circumstance what methods were

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1 used?

2 A Direct mail.

3 Q Were there any telephone solicitations?

4 A They are done on a regular ongoing basis. So I

5 don't -- yes and no. I mean done on an ongoing basis,

6 telemarketing, it is a very elaborate, you know, fund-raising

7 process. And there is a lot of things occurring

8 simultaneously.

9 Q So then you were back to the International Funding

10 Institute asking The Best Lists to broker the active

11 Republican donor's list to American Citizens for Political

12 Action?

13 A Yes, and the reason I did that because I wanted to

14 avoid a backing into problems under the law of there being --

15 I wanted a middleman -- I wanted the transaction be done

16 consistent with commercially acceptable standards. There is

17 no reason under the sun why I had to go to a list broker to

18 broker a list that I owned to an organization I had, but

19 because of the nature of the American Citizens for Political

20 Action committee being a political action committee and

21 International Funding being a corporation I concluded that to

22 keep the paperwork proper and the whole commercial

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1 transaction deal appropriate. I went to them and said broker
2 it to this. I was brokering it back to organizations I
3 controlled. It is not needed, I did it because as I
4 understood the law that is what was needed to do to insure
5 the -- against having problems with corporate contribution to
6 American Citizens for Political Action Committee. I was
7 paying 20 percent commission just to comply with the law on
8 the brokering arrangements.
9 Q In the dealings between The Best Lists and
10 American Citizens for Political Action were those full fair
11 market charges between those two organizations?
12 A Yes, absolutely.
13 Q So that the arrangement you had with The Best
14 Lists on behalf of the International Funding Institute was
15 direct with the understanding that they would then do it with
16 the full market, fair market charging?
17 A Sure absolutely, yes.
18 Q And what was the purpose for ACPA, the American
19 Citizens for Political Action, to obtain this active
20 Republican donors list, for what purpose were they intending
21 to use it?
22 A ACPA obtaining the list from The Best Lists to use

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1 in its fund-raising system. Use in its fund-raising plan.
2 In fund-raising, counselor, getting names is very important.
3 Some people may say it's what it is all about. And ACPA paid
4 TBL fair market value for the mailing usage of the names that
5 was -- that were owned by the International Funding
6 Institute. And TBL took their percentage for that brokering
7 arrangement.
8 Q How many times did ACPA acquire the list from The
9 Best Lists?
10 A Well, it never acquired the list as such. It
11 would rent portions of the list. We never got into a phase
12 in the fund-raising arena where we were rolling out great
13 amounts on these lists. We were testing it. No one knows if
14 an idea in the fund-raising arena is a good idea until you
15 test it nor one knows if the list is a good vehicle for
16 fund-raising until you test it. So we were just testing.
17 ACPA tested five times.
18 Q How many names were on the list originally?
19 A I believe 100,000 names.
20 Q How many names were used in each test
21 approximately?
22 A No more than 5000.

Q What was the amount received in contributions as a result of use of the list?

A I don't have that number handy.

Q Estimate? Was it profitable endeavor?

A Again, no, it was not a profitable endeavor, because there were a lot of up-front charges attendant to tests as you test any new product or idea. Because those costs were not able to be amortized over the life of a project or the sales of an item and we cut the testing short, it was not a profitable endeavor, no. Money was generated from the use of those names, though. My sense of it is probably broke even and probably lost some money. On that aspect alone, if you add into the analysis other expenses attendant to the project there was a financial lost.

Q When did the American Citizens for Political Action stop using the list -- had they stop using the list?

A Well, I know for a fact it had stopped using the list after my meeting with Kunko & Kanfur. I told them to stop brokering the list. And ACPA then did not go directly to Saturn and say we want to use the names in any event. Might have stopped before that. And if it did, it was simply because it was just not, might not have been inventory

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1 available or other reasons why those names were not used,
2 certainly stopped as of that day.
3 Q Why did they stop using the list?
4 A No longer had the authority to broker it.
5 MR. LEVIN: Let's go off the record.
6 (Discussion off the record.).
7 BY MS. ROBINSON:
8 Q You mentioned Kanfur & Kunko, and they are
9 associated with The Best Lists?
10 A Yes, they are the owners.
11 Q And when was your meeting with them?
12 A I don't have the date in my head. It was early
13 '87.
14 Q It's my understanding that The Best Lists -- and
15 this goes back to the source of the list -- it's my
16 understanding that they may have thought that the information
17 on the list came from different state lists or voter lists
18 and that they possibly got that information from you or
19 someone associated with the International Funding Institute.
20 Do you have any recollection of telling them that or do you
21 know where that information came from?
22 A No, I have no recollection of saying that. I

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1 don't think I ever said that. That's not the kind of thing I
2 would have said. It wasn't true. But those two guys have so
3 many deals going, they are very successful, it's possible
4 they confused in their minds this list from other lists.
5 Those guys have a lot of very good, credible deals being made
6 regularly.
7 Q When you made a statement that there was no longer
8 authority to use the list, you mean that you no longer gave
9 them the authority to broker the list?
10 A Right.
11 Q So in that sense ACPA was no longer authorized to
12 use it?
13 A Well, ACPA would no longer get that. They are
14 businessmen, they obviously don't want to be involved with
15 difficulties or troubles with the government. They, although
16 in my opinion work outside of the loop in terms of knowledge,
17 they didn't know the nature of the list. I had decided on my
18 side that the list, for reasons unrelated to legal
19 considerations, essentially political considerations, I
20 decided the list was not going to be used by ACPA anymore.
21 Q What were those political --
22 A Senators calling up and said Bob, I like you,

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1 don't do it. I said you are right. The position in my mind
2 was I was going to stand on the legality of this business
3 system to the highest court in the United States of America.
4 However, the sobering realization was that it ws going to be
5 an expensive lesson for me and others. I concluded I didn't
6 want to be involved in that whole loop. But political
7 considerations are also real considerations, I never
8 considered them as being a consideration prior to the day of
9 the legal opinion and they became very profound.
10 Q But you were receiving advice from others about
11 the use of the list?
12 A The answer is no. No advice, just political
13 pressure. Friendly political pressure, which I responded
14 to. And I responded to it quickly. And the fact that I was
15 -- never thought about that being a relevant consideration up
16 until the time of the first phone call.
17 Q This first phone call being from one of these?
18 A From somebody on behalf of a senator.
19 Q About when did you receive that call?
20 A Around the same time as my meeting with Kanfur &
21 Kunko.
22 Q Has the International Funding Institute stopped

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1 brokering the list?

2 A It never did broker the list.

3 Q Well, allowing it to be brokered?

4 A Yes, as of that date. And from that date it has

5 been sitting in a holding pen at Saturn. From time to time

6 somebody from Saturn calls up and says what do you want to do

7 with these names and I say nothing.

8 Q So the active Republican donor list and the active

9 Democrat donor list --

10 A Are dormant.

11 Q But they still exist?

12 A Yes, they still exist and you can have them any

13 time you want them.

14 MS. ROBINSON: I would like to introduce as

15 Federal Election Commission Exhibit 6, I believe, a copy

16 which I'm giving to the respondent.

17 (FEC Exhibit 6 identified.)

18 BY MS. ROBINSON:

19 Q Have you ever seen this letter before, Mr. Dolan?

20 A Yes.

21 Q Would you identify it for the record, please?

22 A It is a letter to me from Ilka Oberst dealing with

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1 some business between the International Funding Institute and
2 Washington On-Line relative to paying money.
3 Q Ilka Oberst is the?
4 A General manager.
5 Q At Washington On-Line?
6 A Yes.
7 Q Now the letter seems to indicate that the service
8 was incomplete at the time that it was issued. The date of
9 the letter is February 27, 1987; correct?
10 A Right.
11 Q Did the International Funding Institute resume --
12 A No.
13 Q -- the service with Washington On-Line?
14 A No, no.
15 Q Tape?
16 A No, we did resume the service. Yes, we paid the
17 money, simply because the money had to be paid under the
18 preexisting contract. But in terms of reactivating, I don't
19 believe we ever did. I don't think we did. There was no
20 reason to. Other decisions had been made that the
21 information that was going to be received pursuant to this
22 thing was not going to result anything in the back end so

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1 we're not going to use anything in the front end.

2 However, I might say I was also at another level

3 interested in the right to review what I thought was a good

4 price. So I incorporated that desire in my negotiations with

5 her. I was hopeful that the court in this other matter that

6 Legi-Tech is involved with was going to rule that this

7 information, you know, was okay and could be used and could

8 be sold and could be -- because people's First Amendment

9 rights were involved, and come out with a broad standing,

10 sweeping opinion. It was a hope that I had.

11 In my opinion when that opinion comes down,

12 assuming it comes down, the price of the service will go up.

13 Q What's the current status of the agreement between

14 the International Funding Institute and Washington On-Line?

15 A I don't know, I haven't given it much thought

16 recently. I would have to ask my lawyer to tell me what my

17 status was, whether or not I had an option contract to renew

18 at $4000, I don't know what my status is right now. I take

19 it though under the contracts that I signed back in 1986 they

20 have run out. Whether or not I have an option to renew at

21 this price was, I'm sure, subject to discussion between them

22 and I, if I was ever going to try and do that.

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Q So you made your payments on the contract?

A Yes.

Q But you never completed receiving the service?

A Right. That's my recollection. I think that recollection is correct.

Q And there have been no new contracts negotiated between Washington On-Line and the International Funding Institute?

A That's correct.

Q Are there any existing contracts between Washington On-Line and the American Citizens for Political Action?

A There are no contracts.

Q Have there ever been any contracts?

A There have never been any contracts.

Q Had there been any other arrangements between Washington On-Line and the International Funding Institute?

A No.

Q Have there been any other arrangements between Washington On-Line and American Citizens for Political Action?

A There have never been any arrangements between the

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1 two organizations.

2 MS. ROBINSON: I'd like to have marked as FEC

3 Exhibit Number 7. And I'm handing a copy to the witness.

4 (FEC Exhibit 7 identified.)

5 BY MS. ROBINSON:

6 Q Would you identify this document for the record,

7 Mr. Dolan?

8 A It's a report of receipts and disbursements of

9 American Citizens for Political Action for the April 15th

10 quarterly period of 1988.

11 Q I would note for the record that it actually

12 consists of the summary page, the detailed summary page, and

13 several pages of itemized disbursements and itemized

14 independent expenditures and debts and obligations. It does

15 not include an itemized list of receipts. I would refer you

16 to page 4, I think, or 5 and then again on page 8 I note, and

17 9, that the American Citizens for Political Action is

18 continuing to work with The Best Lists, Incorporated?

19 A Yes.

20 Q Does that contact have anything to do with the

21 active Republican donors list or the active Democratic donors

22 list?

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A No.

Q Can you tell me what these business transactions were concerning?

A Sure. ACPA has an ongoing fund-raising program and it relies upon TBL to acquire names for it in the direct mail community. And it goes out and acquires those names pursuant to the use of its business judgment, et cetera, and ACPA pays a fee for those services.

Q To your knowledge is any of the information -- are any of the names obtained from the Federal Election Commission?

A To my knowledge?

Q Public record?

A No.

Q Are any of the names derived from information received from Washington On-Line or Campaign Contribution Tracking System?

A Other than what we were talking about earlier, counselor?

Q Just in terms of this document.

A No, well, I don't -- it's hard for me -- it is possible. Now that I look at the dates -- is this 1988? No,

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1 this is 1988. No, I would find it highly improbable that any
2 of these disbursements to The Best Lists during this time
3 period related to the mailing program which is the subject of
4 your inquiry that occurred towards the end of 1986 and into a
5 little bit of 1987. So I don't think that these numbers on
6 -- in this report relate in any way, shape or form to that.
7 Q Yes. Has the International Funding Institute
8 through Saturn Corporation or any other corporation developed
9 another list or lists from the information already available
10 to it from the Campaign Contribution Tracking System?
11 A No.
12 Q Were any of the names obtained from the Campaign
13 Contribution Tracking System, Washington On-Line used on any
14 list or in any of the transactions evidenced in this Exhibit
15 Number 7?
16 A No, no.
17 Q How can you know that, Mr. Dolan?
18 A Because the active Republican donor file that is
19 maintained by Saturn has been dormant and not utilized.
20 Q And the active Democrat --
21 A File which directly relates to the Washington
22 On-Line contract have not -- Democrat file has never been

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1 used. The active Democrat donor file has never been used
2 since the date of my meeting with Kanfur & Kunko at the lunch
3 date.
4 Q Neither of the lists have been managed or
5 manipulated, merged, purged to develop another list?
6 A Nothing, nothing done, they've been dormant, no
7 instructions given to Saturn bu me, I don't believe Saturn
8 would ever -- it's a highly professional organization doing
9 anything inconsistent with the owner's interest. Therefore,
10 with that knowledge being utilized, I would conclude that
11 none of the numbers on this piece of paper relate to what
12 we're talking about in terms of this inquiry.
13 Q And no other lists were developed from the
14 information --
15 A That's correct.
16 Q -- received from the Campaign Contribution
17 Tracking System?
18 A That is correct, no other lists were developed.
19 Q I'd like to go back briefly to your response
20 regarding the number of tests that were done.
21 A Okay.
22 Q The mailings that were done by ACPA from the

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1 active Republican donor list, you said there were
2 approximately five?
3 A I said that, yes.
4 Q And each test contained about 5000 names?
5 A Right, that's standard for the industry to do it.
6 It's called a random select of about 5000 names from the list
7 to see how the list performs. Maybe there were more in some
8 instances, that's my understanding. Maybe there were six
9 tests. And the testing phase, counselor, is the most
10 expensive phase for an organization in the fund-raising
11 mode. Because the information acquired through the testing
12 then is extrapolated by the executive and then we incorporate
13 that information for future roll outs is what we call it.
14 Q What kind of information are you seeking in these
15 tests?
16 A Comment mail, you know, how the people respond to
17 the mail, how does it get back. What is the amount of money
18 get back. That's information too. How many of the letters
19 come back saying undeliverable, moved or dead. If a lot come
20 back then it's not valuable as if none come back. Those are
21 simply the kinds of things an executive would look to.
22 If he knows what he's doing to ascertain the value

of the list that's being offered to him for use by this list broker or the list owner.

Q Now the executive in this instance was you?

A To a certain extent, Response Dynamics Corporation, which has a fund-raising contract with American Citizens for Political Action, does that. Although I do, you know, ask my fair share of questions about the nature of various types of information to augment their analysis, to supplement their thoughts and to assist in strategic planning and assist in this nature.

Q Once they acquired all the information what then is done?

A What generally is done is decisions are made about the relative value of these lists available in the marketplace. Some lists are more valuable than others. Some lists are overly used, not have been cleaned in a while. If you find a list that has quality mail dates available to it, you have to book that list far in advance.

Q So are these tests being done for the benefit of ACPA or for the benefit of the International Funding Institute?

A In certain regards both organizations benefit from

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1 the transaction. But the list owner, you know, is interested
2 in knowing what rate to charge for the list because if the
3 list is more valuable pursuant to a lot of variables in the
4 industry the price would increase. If the list is not that
5 valuable, you would decrease the price of the list. And by
6 no means did ACPA or IFI or Bob Dolan ever get enough handle
7 of the information that was possible in this testing phase
8 because we cut it short.
9 Q What is the benefit gained by ACPA by these tests?
10 A Nothing at this -- I mean by these tests in this
11 instance benefit ACPA gained arguably is nothing insofar as
12 money was paid on a test. Time was spent without the
13 available use of that data base for subsequent roll outs.
14 Q What is a roll out?
15 A A term used in the direct mail arena to describe
16 the use by an organization of the remaining portion of the
17 list after the test phase is concluded. You test, you test,
18 you test, there may be a data base of 100,000 or a million
19 names that this list owner has. And you maybe test 30-, 35-,
20 40-, or 50,000 with different types of mailing packages to
21 - that universal names. Let's say you mail five different
22 types of letters to this ~~universal~~ universe of million names with a

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1 random select of 5000. You mail out 25,000 letters to --
2 using five letters to 5000 people per letter. Two of those
3 letters may work well. Three of them may work poorly. Then
4 you would roll out to the remaining data base to those two
5 letters that worked well. We say hey, we want as much as
6 that data base we can get.
7 Q The two letters meaning the names and addresses,
8 not the --
9 A No, the content, the graphics.
10 Q Who has the contract then with Response Dynamics,
11 the International Funding Institute or the American Citizens
12 for Political Action?
13 A Response Dynamics has a fund-raising contract with
14 the American Citizens for Political Action.
15 Q Do they have a contract with the International
16 Funding Institute?
17 A I don't think so.
18 (Discussion off the record.)
19 (Recess.)
20 MS. ROBINSON: Could you repeat the last question,
21 please.
22 (The reporter read the record as requested.)

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1 BY MS. ROBINSON:

2 Q Were the tests that were being done, were they
3 being done through Response Dynamics?

4 A Yes.

5 Q Was one purpose of the test to determine whether
6 or not the International Funding Institute would profit from
7 allowing the list to be brokered?

8 A Profit was the motive of the International Funding
9 Institute. So in a matter of speaking -- no, I mean, I don't
10 know how to answer that question. The whole entry into this
11 arena by the International Funding Institute was designed,
12 you know, as a business venture which is by definition
13 entered into for profit and there was no independent decision
14 that this test was being -- testing phase was being entered
15 into for profit because the whole overall rationale for the
16 whole thing was to make money.

17 Q And has the International Funding Institute
18 entered into this kind of business transaction before other
19 than with the active Republican donor list?

20 A No, oh, this type of -- meaning this type of
21 activity with the Washington On-Line?

22 Q That and with brokering list or --

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A Yes, no, the International Funding Institute -- you have to give me a question, counselor.

Q Did the International Funding Institute --

A Ever?

Q -- own other lists at any other time during its existence?

A Not other than the list I've talked about.

Q Which is?

A The active Republican donors, the active Democrat donors and the list that was donated to it by me which was the house file of ACPA at that time.

Q And it has sought to gain a profit from which list, only the active Republican donors list and only the active Democrat list?

A It never used the active Democrat donor list.

Q Does Response Dynamics handle all of the American Citizens for Political Action fund-raising activities?

A Not all of it, no.

Q Who else or what other organization has --

A Maybe you can help me in terms of time, counselor.

Q During the time of these proceedings that --

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A During the subject of the inquiry here, yes, Response Dynamics at that time handled all of the fund-raising for ACPA.

Q What kind of services did they provide?

A It was in the nature of direct response fund-raising which was direct mail and telemarketing.

Q Does it own its own list or obtain lists from other sources other than what's been indicated as The Best Lists' that it may have used in fund-raising activities for ACPA?

A I don't know what RDI owns or doesn't own. I think the lists that ACPA makes use of is owned by The Best Lists company or they go out and get lists for ACPA. Perhaps Response Dynamics owns the list, I don't know. I've never had that conversation with Kanfurd Kunko. It's either Response Dynamics that owns the list or TBL that owns the list. I take that much for granted; I don't know for sure.

Q Is Response Dynamics using other lists other than the active Republican donor list to solicit contributions on behalf of ACPA?

A Sure, we do that all the time, counselor.

Q Do you know if those lists of names are derived

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1 from Washington On-Line or Federal Election public record?

2 A Do I know if they are?

3 Q Yes.

4 A No, I don't know if they are. My assumption is

5 that they are not. My assumption is, and I think I'm correct

6 on this assumption, that they merely do what list brokers do

7 and get lists that are made available to like organizations.

8 ACPA does nothing different in that arena than the Republican

9 National Committee, the Democratic National Committee, the

10 senatorial committee, the congressional committee, the

11 campaign committees.

12 Q And these five or six tests that were done by

13 Response Dynamics were done specifically on behalf of ACPA to

14 solicit contributions?

15 A Yes, counselor. Of course it was done

16 specifically for ACPA.

17 Q Other than the tests were there other types of

18 solicitations for ACPA?

19 A Yes.

20 Q When were they done?

21 A They were done yesterday, a week ago, a month ago,

22 they have been done --

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Q This is an ongoing process?

A As on ongoing process.

Q Did any of those other solicitations make use of the active Republican donor list?

A No. Again, if I need to repeat this, the active Republican donor list was not used following that luncheon that I had with Ron Kanfur and David Kunko, it's been dormant. Up until that time all the information that is on this planet in terms of this use has been provided to you. It was used by ACPA and other organizations and that was the extent of its use.

Q But prior to that conversation with the principals at The Best Lists were there other types of activities going on with Response Dynamics to raise funds for ACPA other than these tests?

A Yes, most definitely. None of those names came from FEC data as far as I know. If they did that would be news to me.

Q Prior to your conversation with The Best Lists about terminating use of the active Republican donor list, could any of those other activities by Response Dynamics have used, other than these tests, have used the active Republican

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1 donor list?

2 A Cold they have? In fact, I think they did. I

3 think there were a number of organization that were clients

4 TBL who used the list.

5 Q Other than those you already named?

6 A No, not other than those I've already named.

7 Q So that these organization that you have named are

8 also clients of Response Dynamics?

9 A That's what I understand, yes.

10 Q Did Response Dynamics ever make an inquiry to you

11 or Best Lists to your knowledge as to where the names came

12 from?

13 A No, I mean, in my mind, The Best Lists and

14 Response Dynamics are the same two guys. They sold, both of

15 them or they own both companies. Kanfur & Kunko own both

16 companies. So whatever notice or notices I gave came to RDI

17 and TBL. I didn't give them notice of where the information,

18 didn't give Kanfur or Kunko notice as to where this

19 information came from. I didn't give it to TBL or RDI. Why

20 didn't I give it to them, bacause I said I felt I stumbled

21 across a competitive advantage in the marketplace. I

22 stumbled on more than that. I wasn't going to share that

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1 information with them because they would use it in their own
2 for profit-making operation.
3 Q Mr. Dolan, the test used the active Republican
4 donor list?
5 A Yes.
6 Q During that same time and prior to your meeting
7 with The Best Lists principals to terminate the use of the
8 list, Response Dynamics made additional solicitations on
9 behalf of ACPA?
10 A Yes.
11 Q Other than the tests?
12 A Yes, sure.
13 Q Those other solicitations, did they use any of the
14 names obtained from Washington On-Line Campaign Contribution
15 Tracking System?
16 A No.
17 Q How can you be sure of that?
18 A As sure as I'm sitting here.
19 Q Based on what information?
20 A It's difficult to prove in the negative that --
21 which is what I think you are asking me to do. However,
22 source codes are used by Response Dynamics, those source

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1 codes are put on each individual address by Saturn. Those
2 source codes came from RDI -- either it was a house -- those
3 source codes came from lists made available to ACPA by The
4 Best Lists and The Best Lists probably have a book of source
5 codes and where those names came from in their getting the
6 lists out in the world at large.
7 Q Are these source codes different from the mailing
8 identification codes?
9 A They are one and the same.
10 Q They are one and the same?
11 A Yes.
12 Q Are you aware of the particular source code for
13 the active Republican donor list?
14 A Not off the top of my head, no.
15 Q Would that be indicated on any of the receipts
16 from The Best Lists?
17 A It would be indicated on the carry envelope to be
18 sure and what's the basis of the complaint is the RNC got a
19 letter and FCM got a letter and those --
20 Q And those codes are on those letters?
21 A And those codes on those letters could be observed
22 and go back to the book and say where did this name come

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1 from. Look at the book, I presume, and I've not done this,
2 you can look back at the book and say that code relates to
3 active Republican donors.
4 Q And every name on the active Republican donors
5 came from Campaign Contribution Tracking System?
6 A Yes.
7 Q How were you able to explain the procedure in --
8 that you have just described? Have you talked with Response
9 Dynamics personnel about this, The Best Lists personnel about
10 this, what's the source of your information?
11 A Well, yes, of course I've spoke to both employees
12 of TBL and RDI, I am a fund-raising consultant also. And in
13 this arena the intelligent fund-raiser keeps track of this
14 kind of information.
15 Q Did you speak with Response Dynamics or The Best
16 Lists in regards to this matter?
17 A In regards to this matter?
18 Q Before us, yes.
19 A Yes, I've spoken to them about it.
20 Q And during that conversation did they explain the
21 process that you just described?
22 A No, I've been in this business for 10 years, 12

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1 years, I know as much about it as they do. I don't need them
2 to tell me what I know. But I do know that they are very
3 good credible businessmen who know how to track information
4 so that they can make subsequent decisions to implement the
5 fund-raising strategy. And you really cannot make those
6 educated decisions without this kind of data base management
7 systems in place.
8 Q You said that you did speak with The Best Lists
9 personnel and Response Dynamics personnel in regards to this
10 matter that we are discussing today?
11 A Right, I did say that, yes.
12 Q And what was the content of that discussion?
13 A Boy, oh boy, you know, we're in trouble this
14 time. How do we get out of this one? How did I do this?
15 Why did I screw up? Whatever possessed me to think that this
16 was not going to be more problem than it was worth? Words
17 like that.
18 Q At any time during those conversations did either
19 representative from either group indicate their knowledge
20 prior to your telling them about the source of the names that
21 they had obtained from ITI?
22 A I don't know if they did or didn't. I know from

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1 me the state of their knowledge was that they didn't know
2 whether it came from Washington On-Line. But I know Ron and
3 David very well, so Ron is a very emotional guy, he is a nice
4 man, and he probably stated a thousand times that he didn't
5 know they were FEC data names. I said, I know you didn't
6 know.
7 Q In this industry is it easy to detect by observing
8 what the source of some names of some lists?
9 A That's a good question. You can learn a great
10 deal about a whole variety of underlying business decisions
11 and business systems by observing an envelope. A great
12 amount can be learned by an educated observer about what were
13 some of the decisions made by people months in advance.
14 Q Was the information the active Republican donors
15 list distinguishable such that an informed person in the
16 industry would know that perhaps it belonged to the
17 Republican National Committee?
18 A No.
19 Q That the information had come from the federal
20 record?
21 A No, no, no, absolutely not.
22 Q Or from the Federal Election Commission record?

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1 A No, the mailing in question that you are talking
2 about was a standardized letter; there was nothing unique
3 about it to -- the mailings in question as far as I can
4 remember were just exactly like the mailings that ACPA was
5 doing pursuant to its use of other lists. The sole
6 difference was the source code and a person who got the
7 letter wouldn't know what that source code meant.
8 Q What I'm asking is The Best Lists or Response
9 Dynamics have received a chunk of names from the active
10 Republican donors list or --
11 A Haven't received names.
12 Q What have they received?
13 A Nothing other than the fact that a computer
14 service bureau is ready to process orders.
15 Q What would the computer service bureau do? Do
16 they label letters and send them out?
17 A Yes, among other things, that's what the computer
18 service bureau does.
19 Q Did the Response Dynamics or The Best Lists ever
20 see a compiled list in any form?
21 A I don't think so.
22 Q Not in the form of a bunch of letters or mailing

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1 label or?

2 A I don't think so.

3 (Recess.)

4 BY MS. ROBINSON:

5 Q To clarify the process, Mr. Dolan, the order would

6 go out to -- why don't you explain to me what the process is

7 in terms of what ACPA?

8 A Okay, my pleasure. Would you like me to explain

9 the process in general? Or the process under the -- with

10 respect to the active Republican donors? I'll be happy to do

11 both.

12 Q With respect to the active Republican donors.

13 A Some of this calls on me to speak to some of the

14 business systems as I understand it and between Response

15 Dynamics and TBL. With that being understood I'll proceed.

16 Once The Best Lists company knew that it was now brokering

17 this new group of names, an order would be sent via mail from

18 TBL to Saturn and the order would say words like 5000 random

19 select or Nth select to be shipped via label to a letter shop

20 by date X. And it might even have the price on the order, I

21 don't know for sure.

22 Saturn would take that order, go to the computer

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1 data base. Take the tape, put it in the machine and read the
2 information and produce the required labels. They would take
3 the labels, ship them to the letter shop. The letter shop
4 would apply the labels to the envelope. And out it would
5 go. That same process could be occurring at the same time
6 for 10 different lists that ACPA was mailing on that date.
7 10 different lists that was owned by 10 different companies
8 or people. Assuming that 10 different people had stored
9 their data with Saturn. If they didn't store with Saturn
10 could be the computer service bureau in Cleveland, the order
11 would go from TBL to computer service in Cleveland, would
12 have instruction to where they send the label and the --
13 Q So that Response Dynamics and The Best Lists never
14 saw the compiled list -- never saw the mailing labels, never
15 saw the addressed envelopes?
16 A Right. It would not be consistent with the
17 business systems for them to see that. It would not be
18 consistent as I understand the business systems to have seen
19 that. Done totally out of the house.
20 MS. ROBINSON: I would like to introduce as FEC
21 Exhibit 8. And I'm handing a copy to the witness.
22 (FEC Exhibit 8 identified.)

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1 BY MS. ROBINSON:

2 Q Have you seen these before, Mr. Dolan?

3 A Yes, I presume I did.

4 Q Could you state for the record what they are,

5 please?

6 A They are invoices from The Best Lists to ACPA.

7 It's a bill to ACPA from The Best Lists.

8 Q Are these related to the mailings that resulted

9 from use of the active Republican donors list?

10 A Yes.

11 Q And there are three such invoices?

12 A Yes.

13 Q And these are related to the test that you

14 referred to?

15 A Yes.

16 Q Or to other general solicitations?

17 A These were bills that resulted from the test

18 mailings that we were doing.

19 Q And there were only three such, does that mean

20 there were two or three other tests which we don't have

21 invoices?

22 A No. I don't know what it means, to be honest with

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1 you.

2 Q On each document there is a key code indicated.

3 A Okay.

4 Q Could you explain what that key code is?

5 A I will try. I think that this key code would be

6 on every envelope or label, the label that would be affixed

7 to the envelope, resulting from these 5000 names from the

8 larger data base.

9 Q What does the key code tell us, what would it tell

10 someone?

11 A It would tell you, if there was a pile of these

12 names with the key codes, you could go to the book and say

13 where did this group of envelopes come from. You would go

14 back to the recordkeeping and say ah, active Republican

15 donors, they were -- this, by the way is not the order from

16 TBL to Saturn; this is just a bill from TBL to ACPA. I would

17 say the key code reflects the code of -- affixed on the label

18 that would be generated by Saturn onto the label.

19 Q Which would then identify the source of the name?

20 A Yes.

21 Q You made reference to this book but it indicated

22 that you never seen the book, how then are you aware of

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1 what's in the book?

2 A Well, you're calling on me to speculate. And I'm

3 attempting to answer your questions. And I've never seen the

4 book -- but this material is put somewhere, I bet you, in

5 Response Dynamics, maybe it is put in a book, maybe in a

6 carton. But eventually I see the bill for whatever Response

7 Dynamics does on behalf of -- I mean whatever work RDI does

8 on behalf of ACPA.

9 Q Do you maintain a book for your purposes to

10 identify the source of the names in the mailings that you

11 order?

12 A No, I don't.

13 Q So that you couldn't keep a record of this key

14 code with anything that IFI or ACPA maintains so that when

15 letters come back or mailings go out or the invoices come in

16 that you can identify?

17 A No, IFI was only -- the International Funding

18 Institute was only getting into this business because it saw

19 a service that was made available to the public. It had not

20 built all the business systems required to do all of these

21 things. In due course it might have gotten as bureaucratic

22 as all organizations get, but it was not to that stage.

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1 American Citizens for Political Action committee contracts
2 with Response Dynamics to manage its fund-raising program and
3 within that context Response Dynamics maintains these types
4 of records from which the information is taken by the
5 executives involved, in this instance Kanfur or Kunko or
6 Dolan.
7 Q Do you have access to the records that Response
8 Dynamics keeps on behalf of American Citizens for Political
9 Action?
10 A Yes.
11 Q Do you review those books and records
12 periodically?
13 A Yes. Point of fact, some of them are sent to me.
14 Q Does some of that information contain the
15 information you have described to me as to how the records
16 are kept?
17 A Yes and this type of information is standard in
18 the industry for the fund-raising consultants to maintain.
19 Q So what kind of information does Response Dynamics
20 send you? Do they send it periodically, monthly, how?
21 A At my desire. I mean they have been working out
22 the kinks in their data base system. They've been making a

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1 lot of mistakes and it's been wrong, they suspended it for a
2 while while consultants were working manipulating the data.
3 I don't know what they were doing. There was a period of
4 time I wasn't getting it. It was not correct, I send it back
5 if this is true we all should go to Hawaii.
6 Q Generally on a quarterly basis or monthly basis?
7 A I don't know how often they do it. It is
8 intermittent at best in terms of the information I receive
9 from them now. But I have a philosophy they are being paid
10 money to use their judgment and they're the fund-raisers I
11 was not operating as a fund-raiser in that capacity, I was
12 coming up with public policy and to speak to colleges and
13 high school students.
14 Q And in the information they send you, do they
15 identify the source of names they use?
16 A Yes.
17 Q Would that information include for instance that
18 -- I mean do they specify that these names for these
19 solicitation came from the active Republican donors list?
20 A Yes, at times it does.
21 Q And prior to your meeting with The Best Lists
22 principals to terminate use of that list, the information you

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1 received from them would have been said that these tests we
2 have done included names from the active Republican donor
3 list?
4 A Right.
5 Q And any other solicitation that they have done
6 outside of these tests would have indicated that the names
7 were derived from -- and it would identify the list?
8 A Right. I think, yes, if you are still talking
9 about ACPA, the answer is yes. How are the other guys --
10 Q No, I'm still referring to ACPA.
11 A Yes, then the answer is yes.
12 Q Can you recall that they mentioned the active
13 Republican donors list with any of the other solicitations
14 other than the test identified?
15 A No, no other use of it.
16 MS. ROBINSON: We will be concluding the
17 deposition at this time, Mr. Dolan. You will be receiving a
18 witness fee check through the mail. This is a continuing
19 deposition. We may need to question you again.
20 THE WITNESS: Do I get paid again?
21 MR. LEVIN: Yes.
22 MS. ROBINSON: Do you want to waive signature

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1 or --

2 THE WITNESS: No, I do not want to waive

3 signature.

4 MR. LEVIN: I'm addressing this to the reporter as

5 to what the arrangements would be for the signature.

6 THE REPORTER: We will send the original to you

7 for signature with an errata sheet. If any corrections are

8 to be made, you send the original back with the errata

9 sheet. We will send it back to you.

10 THE WITNESS: Do you have my address?

11 MR. LEVIN: You are aware of the confidentiality,

12 everybody in the room should be aware of the confidentially

13 provisions of the act, F 37 G, and this deposition is not

14 terminated; it is adjourned.

15 THE WITNESS: Can you explain to me what the

16 confidentiality provision of it means what -- not --

17 MS. ROBINSON: Same confidentiality provision

18 applies to the complaint itself.

19 MR. LEVIN: In other words the investigation not

20 made public until its conclusion.

21 THE WITNESS: Other than obviously speaking to

22 counsel.

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MS. ROBINSON: Sure, yes.

MR. LEVIN: So we are adjourned.

(Whereupon, at 12:40 p.m., the deposition was adjourned.)

_____

ROBERT E. DOLAN

Subscribed and sworn to before me
this_____day of_____, 19____.

_____
Notary Public

My Commission Expires _____

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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, MARLENE KNOWLES, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Marlene Knowles
Notary Public in and for the
District of Columbia

My Commission Expires FEBRUARY 29, 1992

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Commonwealth of Virginia

STATE CORPORATION COMMISSION

Richmond, April 15, 1986

This is to Certify that the certificate of incorporation of

INTERNATIONAL FUNDING INSTITUTE, INC.

was this day issued and admitted to record in this office and that the said corporation is authorized to transact its business subject to all the laws of the State applicable to the corporation and its business.

DEPOSITION EXHIBIT
MK 6-15-88

STATE CORPORATION COMMISSION VIRGINIA 1903

State Corporation Commission

Clerk of the Commission

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ARTICLES OF INCORPORATION

OF

INTERNATIONAL FUNDING INSTITUTE, INC.

I hereby associate to form a stock corporation under the provisions of Chapter 1 of Title 13.1 of the Code of Virginia and to that end set forth the following:

(a) The name of the corporation is INTERNATIONAL FUNDING INSTITUTE, INC.

(b) The purpose or purposes for which the corporation is organized are to acquire, own, operate, manage, engage in and conduct any and all branches and phases of the business of furnishing and performing political and managerial advisory and consulting services, facilities and assistance of all kinds; to engage in and conduct any and all phases of the business of fund raising, by or through advertising, public relations, promotion, marketing, publishing, research and consulting, for the promotion and development of profit and/or expansion opportunities; and to conduct and operate the business and activities of the corporation as principal or agent, on commission or by contract, or in any other capacity or manner, and to undertake such other businesses and activities not specified herein as the corporation may from time to time choose to undertake, by itself and/or with others as partner, joint venturer, or in any combination thereof, for and

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on behalf of the United States Government and its agencies, or any persons, public or private, corporations and other business entities, and the investment and business communities.

(c) The aggregate number of shares which the corporation shall have authority to issue and the par value per share is as follows:

CLASS AND SERIES	NUMBER OF SHARES	PAR VALUE PER SHARE OR NO PAR VALUE
Common	500	No Par Value

(d) The post office address of the initial registered office of the corporation shall be 1413 East Abingdon Street, Suite 3, Alexandria, Virginia 22314. The name of the city in which the registered office is located is City of Alexandria. The name of its registered agent is David Hendry, who is a resident of Virginia and who is a director of the corporation, and whose business office is the same as the registered office of the corporation.

(e) The number of directors constituting the initial board of directors is two and the names and addresses of the persons who are to serve as the initial directors are:

NAMES	ADDRESSES
David Hendry	1413 Abingdon Street, Suite 3 Alexandria, Virginia 22314

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Robert E. Dolan

140 Little Falls Road, Suite 212-A
Falls Church, Virginia 22046

Dated: April 11, 1986

Anne L. Kreamer
1025 Vermont Avenue, N.W.
Washington, D.C. 20005

Incorporator

9704380247

ATTACHMENT I

WASHINGTON ON-LINE

Washington On-Line
Master Service Agreement

Washington On-Line, of Washington, D.C. is pleased to enter into this Master Agreement, Number 286, with ~~Robert Dolan~~ International Funding Institute, Inc ~~of International Funding Institute~~ (Subscriber) having an Effective Date of May 22, 1986. Robert F. Dolan, E.VP

To make this contract as straightforward as possible, the words *we, us, our,* and *ours,* mean Washington On-Line; the words *you* and *yours,* mean you, the Subscriber.

Basic Service

We agree to provide you access to our time sharing computer system.

We will provide this service to you at one location only: 1139 Rhode Island Avenue, N.W. Washington, D.C. ~~2700 Virginia Avenue, NW Watergate West Suite 404 Washington, DC~~

You agree to have available at this location a separate business telephone line to be used exclusively for connection with computer time sharing systems or for transmission and reception of computerized information.

You agree to pay all charges associated with the installation and use of this telephone line. You understand that you must have this telephone line for us to provide you access to our system.

Technical Assistance

You can call us at 202/543-9101 during normal working hours for answers to questions on the use of the Washington On-Line system. However, we are not responsible for—and will not provide consulting services on the use of—equipment you own, or any equipment you use.

Maintenance of Equipment

You understand that your equipment must be working properly for you to access our system. Maintaining your equipment—or any equipment you use—is your responsibility. You are free to obtain service contracts from others to maintain your equipment and its communications capabilities.

DEPOSITION EXHIBIT 2 MK 6-15-88

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Ownership and Credit

Information we transmit to you is for your internal use only. You may not distribute this information to others except to the extent incidental to the conduct of your business. If your use of this information includes its publication in any form, you will credit Washington On-Line as the source.

All computer programs, database files, reports we transmit to you, copyrights, and other rights to and of the Washington On-Line system are our exclusive property.

Improvements

We may from time-to-time improve and modify the programs and procedures associated with the services we provide you. Our services would then be provided in accordance with any such changes.

Fees

You agree to pay us a one-time

Initial Fee of $750.00

which we will invoice to you on the Effective Date of this Master Agreement. You agree also to pay an

Annual Access Fee of $500.00

throughout the life of this Master Agreement. We will invoice this Fee on the Effective Date of this Master Agreement and on each subsequent anniversary (Renewal Date).

We may increase the Annual Fee by notifying you in writing 60 days in advance of the Effective Date of the increase.

Terms of Payment

Our invoices are due and payable within thirty (30) days of issue. If payment becomes fifteen (15) days past due we may suspend your access to our system until we receive payment. Please make your payments to:

Washington On-Line
507 Eighth Street, Southeast
Washington, D.C. 20003

5704 384 2245

Duration of Agreement

This Master Agreement covers a period of one year beginning with the Effective Date and will automatically renew on an annual basis on each successive Renewal Date.

You may cancel this Agreement by notifying us in writing at least 90 days prior to the Renewal Date. You also have the right to cancel this Master Agreement as of the Effective Date of any increase in our fees affecting you, by notifying us in writing thirty (30) days in advance of that date.

Limit of Liability

We will make every reasonable effort to ensure that the information we provide you through the Washington On-Line system is complete and accurate, but we cannot warrant the completeness or accuracy of any information we deliver.

You will not hold us liable in any way for damages arising out of your use of our information. Further, you will hold us harmless from any claim, liability, or damages asserted against us by others because of, or in any way related to, your use of information you receive from us.

Complete Agreement

The above terms and conditions and those contained in any signed attachments or appendices, constitute the full and complete Agreement between you and us regarding access to the Washington On-Line computer time sharing system.

Any change, modification, or waiver of these provisions must be in writing and signed by an officer of Washington On-Line.

SUBSCRIBER IFI Inc	WASHINGTON ON-LINE
By [signature]	By [signature]
Typed Name Robert E. Dolan	Typed Name Kenneth C. Mandler
Title ~~Director~~ E VP	Title President
Date May 22, 1986	Date May 22, 1986

Subscriber Business Name International Funding Institute, Inc.
Billing Address 2700 Virginia Avenue, NW Watergate West Suite 404
City Washington State DC ZIP 20037
Attention Bob Dolan
Regular Business Telephone (202) ~~[illegible]~~ 337 - [redacted] 5763
Computer Communications Telephone ( ) -

Effective Date May 22, 1986 Agreement Number 286

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WASHINGTON ON-LINE

The Campaign Contribution Tracking System℠ Subscription Agreement

Washington On-Line, of Washington, D.C., is pleased to enter into this Subscription Agreement with ~~Robert Dolan~~ International Funding Institute Inc. ~~International Funding Institute Inc.~~ Robert E. Dolan, Esq. (Subscriber) having an Effective Date of May 22, 1986.

To make this contract as straightforward as possible, the words *we, us, our,* and *ours,* mean Washington On-Line; the words *you* and *yours,* mean you, the Subscriber.

Basic Service and License for Use

We agree to provide you access to our Campaign Contribution Tracking System℠ in accordance with the terms and conditions of Master Agreement Number 286 which must be in effect throughout this Subscription Agreement.

Training

We will conduct a training session on the use of the Campaign Contribution Tracking System. The cost for this training is included within your Annual Subscription Fee. However, you agree to reimburse us for our travel costs associated with your training session.

We will provide one (1) user's manual. You may purchase additional copies from us.

Ownership and Credit

Information we transmit to you is for your internal use only. You may not distribute this information to others except to the extent incidental to the conduct of your business. If your use of this information includes its publication in any form, you will credit Washington On-Line as the source.

All computer programs, database files, reports we transmit to you, copyrights, and other rights to and of the Washington On-Line system are our exclusive property.

Improvements

We may from time-to-time improve and modify the programs and procedures associated with the services we provide you. Our services would then be provided in accordance with any such changes.

DEPOSITION EXHIBIT 3 6-15-88 MK

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Fees

You agree to pay us an

Annual Subscription Fee of $3,500.00

which we will invoice to you on the Effective Date of this Subscription Agreement and on each subsequent anniversary (Renewal Date).

We may increase the Annual Subscription Fee by notifying you in writing 60 days in advance of the Effective Date of the increase.

Terms of Payment

Our invoices are due and payable within thirty (30) days of issue. If payment becomes fifteen (15) days past due we may suspend your access to the Campaign Contribution Tracking System until we receive payment. Please make your payments to:

Washington On-Line
507 Eighth Street, Southeast
Washington, D.C. 20003

Duration of Agreement

This Subscription Agreement covers a period of one year beginning with the Effective Date and will automatically renew on an annual basis on each successive Renewal Date.

You may cancel this Agreement by notifying us in writing at least 90 days prior to the Renewal Date. You also have the right to cancel this Subscription Agreement as of the Effective Date of any increase in our fees affecting you, by notifying us in writing thirty (30) days in advance of that date.

Lawful Use

You understand that information included in the Campaign Contribution Tracking System has been copied by us from reports filed with the Federal Election Commission. It is a violation of federal law to sell or use information copied from such reports for the purpose of soliciting contributions from other than political committees.

Limit of Liability

We will make every reasonable effort to ensure that the information we provide you through the Campaign Contribution Tracking System is complete and accurate, but we cannot warrant the completeness or accuracy of any information we deliver.

You will not hold us liable in any way for damages arising out of your use of our information. Further, you will hold us harmless from any claim, liability, or damages asserted against us by others because of, or in any way related to, your use of information you receive from us.

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Complete Agreement

The above terms and conditions and those contained in any signed attachments or appendices, constitute the full and complete Agreement between you and us regarding access to the Campaign Contribution Tracking System.

Any change, modification, or waiver of these provisions must be in writing and signed by an officer of Washington On-Line to become a part of this Agreement.

SUBSCRIBER	WASHINGTON ON-LINE
By [signature]	By [signature]
Typed Name Robert E. Dolan	Typed Name Kenneth C. Mandler
Title ~~Director~~ Exec VP	Title President
Date May 22, 1986	Date May 22, 1986

Subscribe: Business Name International Funding Institute, Inc.
Billing Address 2700 Virginia Avenue, NW Watergate West Suite 404
City Washington State DC ZIP 20037
Attention Bob Dolan
Regular Business Telephone (202) ~~965~~ 333 - ~~3710~~ 5183
Computer Communications Telephone ( ) -

Effective Date May 22, 1986 Agreement Number 556

9704380225 3

LEBOEUF, LAMB, LEIBY & MACRAE
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1333 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20036
(202) 457-7500
TELEX 440274 FACSIMILE 202-457-7511

NEW YORK, NY
SALT LAKE CITY, UT
RALEIGH, NC
SAN FRANCISCO, CA
LEBOEUF, LAMB, LEIBY & MACRAE (UK)
LONDON, ENGLAND

BOSTON, MA
SOUTHPORT, CT
ALBANY, NY
NEWARK, NJ
EDISON, NJ

August 11, 1986

Mr. David Hendry
International Funding Institute
3421 M Street, N.W.
Suite 1010
Washington, D.C. 20007

Re: Constitutionality of the Provisions of the Federal Election Campaign Act of 1971, Proscribing the Use of Donor Information for Commercial Purposes or Solicitation

Dear Mr. Hendry:

You have asked for our opinion on whether the proscription on commercial use of the names of campaign contributors supplied to the Federal Election Commission ("FEC") pursuant to disclosure requirements of the Federal Election Campaign Act of 1971 ("FECA"), 2 U.S.C. § 438(a)(4), as amended,[1/] is constitutionally infirm.

1/ Section 438(a)(4) of the FECA provides in pertinent part:

> The Commission shall -- . . . (4) within 48 hours after the time of the receipt by the Commission of reports and statements filed with it, make them available for public inspection, and copying, at the expense of the person requesting such copying, except that any information copied from such reports or statements may not be sold

(Footnote continued on following page)

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DEPOSITION EXHIBIT
4
MK 6-15-88

Specifically, you have asked 1) whether, in light of the opinion in Ryan v. Kirkpatrick, 669 S.W.2d 215 (Mo. 1984) you may supply your clients with the names of contributors who appear on the disclosure statements filed with the FEC pursuant to § 102 of the FECA, 2 U.S.C. § 432, for the purpose of soliciting contributions from them, and 2) whether receipt of the information from an intermediary would have any effect on the analysis.

The question presented has not been addressed by any federal or state court. Moreover, although the Act was amended three times and included the subject provision in each version, the legislative history of the FECA lends little insight as to the purpose for the commercial use restriction. There is no discussion in the committee reports or the floor debates on the merits of circumscribing the use of donor information for solicitation purposes. This lack of interpretative case law and legislative history forces us to make certain assumptions upon which our opinion is based. Specifically, we shall assume that the government would assert as a justification for the solicitation restriction protection of the contributors' right to privacy in the home, and prevention of any chilling effect commercial uses of the disclosed information may have on donations. In addition, we will assume that the International Funding Institute ("IFI") will be using the contributor lists to solicit funds in connection with supporting specific political candidates, positions or parties and that the solicitation of funds will be intertwined with furthering such political objectives.

Based on the assumptions stated above, and in recognition of the analysis provided below, it is our opinion that the proscription on the use of contributor lists for the solicitation of funds contained in Section 438(a)(4) of the FECA is inconsistent with the First Amendment's protection of free speech. The solicitation of funds for political purposes is recognized as an important form of political speech. Accordingly, any restrictions imposed on the exercise of this right will be considered unconstitutional unless the government can demonstrate a compelling interest requiring the restriction, a burden the government will not be able to meet in this instance.

(Footnote continued from previous page)

or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

The question whether the First Amendment has been impermissibly restricted by Section 438(a)(4) depends on: 1) whether the dissemination of lists of names falls into the category of speech, either political or commercial; 2) whether that speech is inhibited by the statute; and 3) if free speech is inhibited, whether the government has a compelling justification for infringing upon that constitutional right.

Although the constitutionality of the disclosure proscription has not been addressed specifically by any federal court,[2] the solicitation of political contributions has long been considered a form of political speech and the protection afforded political speech by the First Amendment is well established.

As recognized by the Supreme Court in Buckley v. Valeo, 424 U.S. 1, 15 (1976), the First Amendment provides its broadest protection to political speech "in order to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." Id. at 15 (quoting Roth v. United States, 354 U.S. 476 (1957)). The Court also recognized that the First Amendment guarantees of free speech "'has its fullest and most urgent application precisely to the conduct of campaigns for political office.'" Id. at 16 (quoting Monitor Patriot Co. v. Roy, 401 U.S. 265, 272 (1971)). It has also been said that "the public's right to be informed is nowhere stronger than in the area of elections. And, no speech is more protected than political speech." CBS, Inc. v. FCC, 629 F.2d 1, 24 (D.C. Cir. 1980), aff'd 453 U.S. 367 (1981).

It is clear that the constitutional protections afforded "political speech" are not limited to the written and spoken word. The solicitation of funds is one means of communicating political messages and is protected by the First Amendment guarantees of free speech. Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 633 (1980); FEC v. Weinsten, 462 F. Supp. 243, 249 (S.D.N.Y. 1978). As noted by the Buckley Court:

2/ Study of other state elections laws also provides little assistance in determining the constitutionality of the provision. Of twenty-five states surveyed only two -- Hawaii and Iowa -- included in their disclosure requirements a proscription similar to the one in the FECA. 2 Hawaii Rev. Stat. § 11-194(4) (1976); Iowa Code Ann. § 56.8.3.a (West Supp. 1986). And those state courts have never considered the constitutionality of the provision.

> Some forms of communication made possible by the giving and spending of money involve speech alone, some involve conduct primarily, and some involve a combination of the two. Yet this Court has never suggested that the dependence of a communication on the expenditure of money operates itself to introduce a nonspeech element or to reduce the exacting scrutiny required by the First Amendment.

424 U.S. at 17. The Court also concluded that its prior discussions relating to proper restrictions on conduct, i.e. time, place and manner restrictions, are inappropriate because the solicitation of funds does not constitute conduct, for First Amendment purposes. Id. at 17-19.

Moreover, the fact that IFI will be soliciting money does not affect its First Amendment protections. The Court in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976), emphasized that speech is protected "even though it is carried in a form that is 'sold' for profit", id. at 761 (citing Smith v. California, 361 U.S. 7, 150 (1959); Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 501 (1952); Murdock v. Pennsylvania, 319 U.S. 105, 111 (1943)), and "even though it may involve a solicitation to purchase or otherwise pay or contribute money." Id. (emphasis added) (citing New York Times Co. v. Sullivan, 376 U.S. 254, 266 (1964); NAACP v. Button, 371 U.S. 415, 429 (1963); Jamison v. Texas, 318 U.S. 413, 417 (1943)). The Supreme Court ultimately held that dissemination of information important or interesting to the public is protected. 425 U.S. at 765. Campaign contributor information and political messages, such as IFI seeks to disseminate, are undeniably important to the public interest. See CBS, Inc. v. FCC, 629 F.2d 1 (D.C. Cir. 1980); Let's Help Florida v. McCrary, 621 F.2d 195 (5th Cir. 1980), aff'd, 454 U.S. 1130, cert. denied 454 U.S. 1142 (1982).

As the above discussion shows, when candidates and organizations are not permitted to use the information to solicit funds, their speech is impaired. The restriction on the use of the published donor lists constitutes an infringement upon the constitutional guaranty of free speech because it inhibits the candidate's ability to accrue money and express campaign messages.

Having established that solicitation of funds is a form of political speech, the inquiry becomes whether the government has a compelling justification for restricting the use of contributor lists. The government must have a

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compelling justification for the restriction and must narrowly tailor the law to serve that purpose. The restrictions found in Section 438(a)(4) do not meet either of these requirements.

As mentioned above, the FEC will probably assert as justifications for the solicitation restriction that it is necessary to protect the privacy of the persons being solicited by mail. In addition, the government may argue that allowing the information to be used for solicitation purposes might have a chilling effect on contributions. Neither of these arguments is sound and they do not constitute the compelling state interest required to justify a restriction on free speech.

The proposition that the constitutionality of the solicitation restriction can be sustained because the use of contributor information for solicitation purposes results in an invasion of privacy is unfounded. The Supreme Court has already addressed this issue and concluded that such a potential invasion of privacy does not constitute a sufficient state interest to infringe on protected speech. Consolidated Edison Co. v. Public Service Commission, 447 U.S. 529, 542-45, n.11 (1980); see Village of Schaumburg, supra, 444 U.S. at 633 (Court concluded that door-to-door solicitation, which is much more of an intrusion than receiving mail, does not constitute sufficient invasion of privacy to justify banning such practice); Martin v. City of Struthers, 319 U.S. 141, 146-47 (1943). In order for the government to shut off discourse that may offend the sensibilities of some recipients, there must be a showing that substantial privacy interests are being invaded. Id. at 542 (quoting Cohen v. California, 403 U.S. 15, 21 (1971)); see First National Bank of Boston v. Bellotti, 435 U.S. 765, 783 (1978); Lamont v. Postmaster General, 381 U.S. 301 (1965)(Brennan, J. concurring); Lamont v. Commissioner of Motor Vehicles, 269 F. Supp. 880 (S.D.N.Y.), aff d, 386 F.2d 449 (2d Cir. 1967), cert denied, 391 U.S. 915 (1968). Moreover, the interest of protecting privacy is not compelling because recipients can take simple actions to avoid the minor inconvenience resulting from the solicitation. As the Court has noted, "customers who encounter an objectionable billing insert may 'effectively avoid further bombardment of their sensibilities simply by averting their eyes.'" Consolidated Edison, supra, 447 U.S. at 543 (quoting Cohen v. California, 403 U.S. 15, 21 (1971)). Moreover, recipients of unwanted solicitation can "escape exposure to objectionable material simply by transferring [it to] the wastebasket." Id

Furthermore, the solicitation restriction also is constitutionally infirm because it is not narrowly tailored. There are other methods to limit unwarranted intrusions on a less restrictive basis. As noted by the Ryan court if a person

does not want to continue to receive solicitations he may give notice to the Post Office Department to halt further mailings. Ryan v. Kirkpatrick, 669 S.W.2d at 219 (citing Rowan v. United States Post Office Department, 397 U.S. 728, 737 (1970)). In addition, the FECA could be modified to require solicitors to remove people from their mailing lists if requested.

Similarly, the assertion that there would be a chilling effect on contributors as a result of their loss of privacy is unsupportable. The contributor lists are in the public domain. The are "available for public inspection and copying." 2 U.S.C. § 438(a)(4). There is no prohibition on the publication of the contributors' names in newspapers or magazines. In fact, as noted in Federal Election Commission v. American Demographic Services, Inc., 629 F. Supp. 317 (E.D. Va. 1986)[3/], the FEC makes computer tapes of contributor lists available to fundraising organizations for the purpose of verifying the accuracy of their solicitation lists. Id. at 318. Such pervasive availability and use of contribution lists demonstrates that the solicitation restriction cannot be defended based on the concern that donors may curtail their generosity in apprehension of future solicitation. The concern is speculative and amounts to no more than what might be an annoyance. Ryan v. Kirkpatrick, 669 S.W.2d at 219. Moreover, the United States Supreme Court has held that mere speculation of harm does not overcome the right to free speech. Consolidated Edison Co. v. Public Service Commission of New York 447 U.S. 530 (1980).

The solicitation restriction also prohibits the use of information that is otherwise in the public domain. The Supreme Court has not looked favorably upon restrictions on information in the public domain. In Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975), the Court refused to restrict publication of a rape victim's identity since the judicial records are open to public inspection. Id. at 495. In Capital Cities Media Inc. v. Toole, 463 U.S. 1303 (1983), even where the Court assumed arguendo that the government had a compelling interest in keeping personal information about jurors confidential in a sensitive case, it required "far more justification . . . to show that this categorical, permanent prohibition against publishing information already in the public record was 'narrowly tailored to serve that interest.'"

3/ Although the American International decision resulted in a civil fine for violating 2 U.S.C. section 438(a)(4), the constitutionality of the statute was not raised by the defendant.

Id. at 1306. Although these cases arise in a different context than the one involved here, they provide guidance as to what the courts consider "compelling" justification to support a denial of or infringement upon a constitutional right. If the Supreme Court will disallow restrictions on publications of information that would have been available to any member of the public, "even for the obviously sympathetic purpose of protecting the privacy of rape victims," id. at 1306 (citing Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 607-609 (1982); Cox Broadcasting, 420 U.S. at 491-495), it will probably not uphold restrictions on the use of the much less sensitive FEC donor information where that use bolsters freedom of political expression.

The final question is whether the analysis would change if an intermediary supplied IFI with the names of contributors. The statute prohibits both 1) the commercial use of, and 2) solicitation based on information supplied in the FEC reports. If the intermediary does nothing but collect the information for sale to those who would solicit political contributions, then it is questionable whether the free speech constitutional analysis set forth above would extend protection to the intermediary's purely commercial use, because the intermediary would not be propounding a political message. As to IFI, however, even assuming, arguendo, that the solicitation restriction was constitutional, if IFI did not know the source of the information, and makes every effort to comply with the law, civil penalties probably could not be imposed on IFI. In order for a civil penalty to be imposed for violation of the FECA, it must be found that the "person . . . knowingly and willfully commit[ted] a violation of this Act." 2 U.S.C. § 437g(d)(1). In American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) v. FEC, 628 F.2d 97 (D.C. Cir.) cert. denied, 449 U.S. 982 (1980), the Court of Appeals refused to impose civil penalties because it found, based on a lack of case law and an ambiguity in FECA Section 441b, that the AFL-CIO thought it was in compliance and that the violation was not knowing and willful. See also National Right to Work Committee, Inc. v. FEC, 716 F.2d 1401 (D.C. Cir. 1983) (action not knowing and willful if there is a legitimate question as to applicability and in that of ambiguous statute).

The failure of any court specifically to address the constitutionality of Section 438(a)(4) makes it impossible for us to state, without qualification, that the solicitation restriction is unconstitutional. It is not possible to predict with certainty how a court will resolve these questions. Nevertheless, based on the foregoing analysis and conditioned on our assumption as to the interest of the government in

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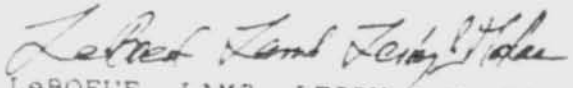
enforcing Section 438(a)(4), it is our opinion that, if properly challenged, the solicitation restriction on the use of contributor lists filed with the FEC would be found to be an unconstitutional restriction on political speech. The restriction infringes on political speech, does not further a compelling governmental interest and is not narrowly tailored to advance the interest the government seeks to promote. Further, if the statute is unconstitutional, IFI's potential liability for using such lists would not change if the lists were obtained from an intermediary. Further, even if the solicitation restriction were constitutional, if IFI obtains a solicitation list from intermediaries that obtained their lists by copying FEC contributor lists, IFI will not violate the FECA provided it has no knowledge that the list was obtained in such a manner.

If you have any questions concerning this opinion or would like us to consider a modified set of assumptions, please contact John F. Finston.

Very truly yours,



LeBOEUF, LAMB, LEIBY & MacRAE

9704380221

CONNECTION WITH THE FOLLOWING ACCOUNT

DATE		AMOUNT
	list rental	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

HE BEST LISTS, INC.
SPECIAL ACCOUNT
2071 CHAIN BRIDGE RD. SUITE 380
VIENNA, VA 22180

2540

March 2, 19 87

63-408/560 464

PAY TO THE ORDER OF I.F.I. $ 820.00

Eight-Hundred-Twenty and 00/100 DOLLARS

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

201338613-

⑈00002540⑈ ⑆056004089⑆ 65 ⑈7366206⑈ ⑈0000082000⑈

NO '87 09

AT ANY BANK
AMERICAN NATL BANK
WASHINGTON, D.C.

P.E.I. BANK OF VA CB10-06778
06 03-10-87 CIES 201338613-

9704388 22 62

Pat Grant Orig
Pat Scott

DEPOSITION
EXHIBIT
5
MK 6-15-88

IN CONNECTION WITH THE FOLLOWING ACCOUNT(S)		
		AMOUNT

CONNECTION WITH THE FOLLOWING ACCOUNTS

DATE		AMOUNT
	list rental	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

HE BEST LISTS, INC.
SPECIAL ACCOUNT
2071 CHAIN BRIDGE RD. SUITE 380
VIENNA, VA 22180

2508

February 12, 1987

68-403/560 464

PAY TO THE ORDER OF I.F.I. $ 1108.80

One-Thousand-One-Hundred-Eight and 80/100 DOLLARS

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

⑈00002508⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000110880⑈

For Deposit Only
Boris Lipski
PAY ANY BANK, P.E.O.
RIGGS
NATIONAL BANK
WASHINGTON, D.C.

FEB 18 '87

FB 87 18
PAY ANY BANK
WESTERN NATL. BANK
WASHINGTON, D.C.

C.E.O. BANK OF VA CE10-05776
05 02-19-87 0934 20331 965

9704438 0224

THIS CHECK IS ISSUED IN CONNECTION WITH THE FOLLOWING ACCOUNT (S)

DATE		AMOUNT
	Int Wtd	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

BEST LISTS, INC.
SPECIAL ACCOUNT
2070 CHAIN BRIDGE RD SUITE 380
VIENNA, VA 22180

2499

February 5, 19 87 — 68-408/560 — 464

PAY TO THE ORDER OF I.F.I. $ 1670.92

ONe-Thousand-Six-Hundred-Seventy and 92/100 DOLLARS

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

⑈0000 2499⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000167092⑈

For Deposit Only
Pay Any Bank
RIGGS
NATIONAL BANK
WASHINGTON, D.C.

FEB 9 '87

F3 '87 09
PAY ANY BANK
WASHINGTON, D.C.

P.E.S. BANK OF VA 0510-08778
20131 2763

9704388 0225

IN CONNECTION WITH THE FOLLOWING ACCOUNT:		

DATE		AMOUNT
	I.F.I. 12/12/86	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

THE BEST LISTS, INC.
SPECIAL ACCOUNT
2010 CHAIN BRIDGE RD SUITE 360
VIENNA, VA 22180

2488

January 27, 19 87 — 68-408/560 464

PAY TO THE ORDER OF I.F.I. $ 1368.12

One-Thousand-Three-Hundred-Sixty-Eight and 12/100 DOLLAR

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

⑈00002488⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈00001368 12⑈

For Deposit Only

FEB '87 02

PAY ANY BANK
THE RIGGS NAT'L BANK
WASHINGTON, D.C.

9704380 2267

CONNECTION WITH THE FOLLOWING ACCOUNT S

DATE		AMOUNT

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

BEST LISTS. INC.
SPECIAL ACCOUNT
2070 CHAIN BRIDGE RD SUITE 310
VIENNA, VA 22180

2467

January 12, 19 87 68-406/660 464

PAY TO THE ORDER OF I.F.I. $ 1,018.53

ONe-Thousand-Eighteen and 53/100 DOLLAR

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102
PAID-BANK OF VA.

⑈00002467⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000101853⑈

For Mass Lists

JA '87 15

PAY ANY BANK
THE RIGGS NAT'L BANK
WASHINGTON, D.C.

B.E.G. BANK OF VA 0510-05778
CS 01-16-87 CHE1 20421575

970438 022 8

THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT:

DATE		AMOUNT
	Est rental	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

BEST LISTS, INC.
SPECIAL ACCOUNT
2070 CHAIN BRIDGE RD. SUITE 200
VIENNA, VA 22180

2456

December 31, 19 86 — 68-408/560 454

PAY TO THE ORDER OF I.F.I. $ 655.92

Six-Hundred-Fifty-Five and 92/100 DOLLARS

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

⑈00002456⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000065592⑈

97043822 69

Est Rental

DATE		AMOUNT
	list voted	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

THE BEST LISTS, INC.
SPECIAL ACCOUNT
2070 CHAIN BRIDGE RD. SUITE 380
VIENNA, VA 22180

2441

December 22, 19 86 — 68-408/560 464

PAY TO THE ORDER OF IFI — $ 274.80

Two-Hundred-Seventy-Four Dollars and 80/100 — DOLLARS

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

PAID-BANK OF VA.

⑈0002441⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000027480⑈

JA '87 05
15-3 PROCESSED C-31
THE RIGGS NATL BANK
WASHINGTON, D.C.

F.E.D. BANK OF VA 0510-05778
CE 01-05-87 0130 2013037560

9704388220

THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT:

DATE		AMOUNT
	List rental	
	income	

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

BEST LISTS, INC.
SPECIAL ACCOUNT
2070 CHAIN BRIDGE RD SUITE 300
VIENNA, VA 22180

2391

Dec. 8, 1986 — 68-408/560 — 464

PAY TO THE ORDER OF I.F. I. $ **716.01**

*Seven hundred sixteen and 01/100---------- DOLLARS

Bank of Virginia
Tysons Corner Branch
McLean, Virginia 22102

⑈00002391⑈ ⑆056004089⑆ 651⑈7366206⑈ ⑈0000071601⑈

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PAY TO THE ORDER OF
INTERCOR INTERNATIONAL
WASHINGTON, D.C.

P.E.G. BANK OF VA 0810-0800
05 12-18-86 0032 [illegible]

Pay to the order of
Wilson Dell
[illegible]

ATTACHMENT II

507 Eighth Street, Southeast, Washington, DC 20003 202/543-9101

February 27, 1987

Robert Dolan
International Funding Institute, Inc.
2700 Virginia Avenue, NW Suite 404
Washington, DC 20037

Dear Bob:

As per our phone conversation I have summarized our discussion.

Washington On-Line will authorize the International Funding Institute to reactivate the remaining three months on your subscription agreement, anytime within six months of the above date, provided we receive the final quarterly installment of $1,135 by March 13, 1987.

In addition, you are authorized the renew your subscription to the Campaign Contribution Tracking System at the rate of $4,000 for an additional year. Please feel free to call me with any questions you may have.

Sincerely,

Ilka Oberst
General Manager

ICO:me

PAID 3/4/87

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DEPOSITION EXHIBIT
6
MK 6-15-88

REPORT OF RECEIPTS AND DISBURSEMENTS

For Other Than An Authorized Committee

(Summary Page)

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

88 APR 17 PM 2:10

USE FEC MAILING LABEL OR TYPE OR PRINT

1 NAME OF COMMITTEE (in full)
AMERICAN CITIZENS FOR POLITICAL ACTION

ADDRESS (number and street) XX Check if different than previously reported
1612 K STREET, NW
SUITE 208

CITY STATE and ZIP CODE
WASHINGTON, DC 20037

2 FEC IDENTIFICATION NUMBER
C00186861

3 This committee qualified as a multicandidate committee DURING THIS Reporting Period on _____ (date)

4. TYPE OF REPORT

(a) XX April 15 Quarterly Report

July 15 Quarterly Report

October 15 Quarterly Report

January 31 Year End Report

July 31 Mid Year Report (Non-election Year Only)

Termination Report

Monthly Report Due On

February 20	June 20	October 20
March 20	July 20	November 20
April 20	August 20	December 20
May 20	September 20	January 31

Twelfth day report preceding _____ (Type of Election) election on _____ in the State of _____

Thirtieth day report following the General Election on _____ in the State of _____

(b) Is this Report an Amendment? YES XX NO

SUMMARY

5 Covering Period 01-01-88 through 03-31-88

		COLUMN A This Period	COLUMN B Calendar Year-to-Date
6	(a) Cash on Hand January 1, 19 88		$ 77,409 68
	(b) Cash on Hand at Beginning of Reporting Period	$ 77,409 68	
	(c) Total Receipts (from Line 18)	$ 626,759 99	$ 626,759 99
	(d) Subtotal (add Lines 6(b) and 6(c) for Column A and Lines 6(a) and 6(c) for Column B)	$ 704,169 67	$ 704,169 67
7	Total Disbursements (from Line 28)	$ 605,226 84	$ 605,226 84
8	Cash on Hand at Close of Reporting Period (subtract Line 7 from Line 6(d))	$ 98,942 83	$ 98,942 83
9	Debts and Obligations Owed TO the Committee (itemized on Schedule C and or Schedule D)	$ 79,187 34	
10	Debts and Obligations Owed BY the Committee (itemized on Schedule C and or Schedule D)	$ 163 03	

For further information contact Federal Election Commission 999 E Street NW Washington DC 20463 Toll Free 800/424-9530

I, [illegible], that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

[illegible]

[illegible]

FEC FORM 3X

DEPOSITION EXHIBIT 7
MK 6-15-88

DETAILED SUMMARY PAGE

of Receipts and Disbursements
(Page 2, FEC FORM 3X)

Name of Committee (in full)
AMERICAN CITIZENS FOR POLITICAL ACTION

Report Covering the Period From 01-01-88 To 03-31-88

I. RECEIPTS	COLUMN A Total This Period	COLUMN B Calendar Year-To-Date	
11. CONTRIBUTIONS (other than loans) FROM			
a. Individuals/Persons Other Than Political Committees			
(i) Itemized (use Schedule A)	106,157 41	106,157 41	11(a)(i)
(ii) Unitemized	519,478 65	519,478 65	11(a)(ii)
(iii) Total of contributions from individuals	625,636 06	625,636 06	11(a)(iii)
b. Political Party Committees			11(b)
c. Other Political Committees (such as PACs)			11(c)
d. TOTAL CONTRIBUTIONS (add 11(a)(iii), (b), and (c))	625,636 06	625,636 06	11(d)
12. TRANSFERS FROM AFFILIATED/OTHER PARTY COMMITTEES			12
13. ALL LOANS RECEIVED			13
14. LOAN REPAYMENTS RECEIVED			14
15. OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)			15
16. REFUNDS OF CONTRIBUTIONS MADE TO FEDERAL CANDIDATES AND OTHER POLITICAL COMMITTEES	250 00	250 00	16
17. OTHER RECEIPTS (Dividends, Interest, etc.)	873 93	873 93	17
18. TOTAL RECEIPTS (add 11(d), 12, 13, 14, 15, 16 and 17)	626,759 99	626,759 99	18
II. DISBURSEMENTS			
19. OPERATING EXPENDITURES	305,380 06	305,380 06	19
20. TRANSFERS TO AFFILIATED/OTHER PARTY COMMITTEES			20
21. CONTRIBUTIONS TO FEDERAL CANDIDATES AND OTHER POLITICAL COMMITTEES	19,900 00	19,900 00	21
22. INDEPENDENT EXPENDITURES (use Schedule E)	271,698 78	271,698 78	22
23. COORDINATED EXPENDITURES MADE BY PARTY COMMITTEES (2 U.S.C. 441a(d)) (use Schedule F)			23
24. LOAN REPAYMENTS MADE			24
25. LOANS MADE			25
26. REFUNDS OF CONTRIBUTIONS TO			26
a. Individuals/Persons Other Than Political Committees			
b. Political Party Committees			
c. Other Political Committees (such as PACs)			
d. TOTAL CONTRIBUTION REFUNDS (add 26(a), (b), and (c))			26(d)
27. OTHER DISBURSEMENTS			27
28. TOTAL DISBURSEMENTS (add 19, 20, 21, 22, 23, 24, 25, 26(d), 27)	[illegible]	[illegible]	28
29. NET CONTRIBUTIONS/OPERATING EXPENDITURES			
a. TOTAL RECEIPTS (other than loans) (from Line 11(d))	[illegible]	[illegible]	
b. TOTAL REFUNDS (from Line 26(d))			
c. NET RECEIPTS (subtract Line b from a)	[illegible]	[illegible]	
d. TOTAL OPERATING EXPENDITURES (from Line 19)	[illegible]	[illegible]	
e. TOTAL OFFSETS (from Line 15)			
f. NET OPERATING EXPENDITURES (subtract Line e from d)	[illegible]	[illegible]	

FECA/QR FINANCE SYSTEM - SCHEDULE B ITEMIZED DISBURSEMENTS

Run Date 04 [illegible] 1998 Page 2 of [illegible]

[illegible] AMERICAN CITIZENS FOR POLITICAL ACTION For Line 8 19

Any Information Copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee

For the period 01-01-98 thru 03-31-98 Over $200 YTD TYPE D CAT ALL ALL ALL

Full Name Mailing Address and ZIP Code	Purpose of Disbursement / Aggregate Year-to-Date	Date (month, day, year)	Amount of Each Disbursement This Period	Disb for
Vendor FULFILLMENT MANAGEMENT SERV	continued	02-12-98	3,256.75	
		02-17-98	2,322.25	
		03-30-98	5,141.88	
NATNL FUNDING INSTITUTE INC		02-16-98	10,000.00	
2700 VIRGINIA AVENUE NW		03-23-98	3,063.00	
SUITE 404	TELE MARKETING	03-03-98	13,281.96	
WASHINGTON, DC 20037				
	Year to date $27,064.96			
PAYNE DAVIDSON		02-23-98	15,000.00	
1612 K STREET N W				
SUITE 204	CONSULTING			
WASHINGTON DC 20006				
	Year to date $15,000.00			
JAMES BURGESS ASSOCIATES LTD		02-[illegible]-98	[illegible]36.76	
[illegible] WASHINGTON BLVD		03-[illegible]-98	199.96	
[illegible] 22044	ACCOUNTING SERVICES			
	Year to date $1,436.76			
[illegible]		[illegible]	[illegible]	
[illegible]		[illegible]	[illegible]	
	LONG DISTANCE TELEPHONE SERV			
[illegible]				
	Year to date [illegible]			
[illegible]		[illegible]	7,935.00	
[illegible]		03-25-98	8,777.13	
	[illegible]			
[illegible]				
	Year to date [illegible]			
[illegible]				
[illegible]				
	[illegible]			
[illegible]				
	Year to date [illegible]			

COMPUTER FINANCE SYSTEM - SCHEDULE B — ITEMIZED DISBURSEMENTS

Run Date 04-13-1988 — Page 3 of 12

(ACP) AMERICAN CITIZENS FOR POLITICAL ACTION — For Line 6 (b)

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee

For the period 01-01-88 thru 03-31-88 Over $200 YTD TYPE D CAT ALL ALL ALL

Full Name, Mailing Address and ZIP Code	Purpose of Disbursement / Aggregate Year-to-Date	Date (month, day, year)	Amount of Each Disbursement This Period	Disb for
Vendor RESPONSE DYNAMICS, INC	continued	02-03-88	240 45	
		02-03-88	240 55	
		02-17-88	3,571 00	
		02-19-88	2,521 00	
		02-24-88	7,500 52	
		02-26-88	5,000 71	
		03-25-88	729 00	
		03-25-88	250 15	
SATURN CORP		01-11-88	1,012 53	
4701 LYDELL ROAD		01-28-88	3,614 60	
	COMPUTER FEE	01-22-88	1,079 53	
CHEVERLY, MD 20781		02-03-88	1,156 58	
	Year to date 119,407 00	02-03-88	550 96	
		02-05-88	1,724 34	
		02-17-88	2,035 41	
		02-19-88	1,458 25	
		02-19-88	299 94	
		03-09-88	1,785 45	
		03-25-88	430 88	
		03-25-88	1,264 30	
		03-29-88	[illegible]	
		03-30-88	[illegible]	
THE BEST LISTS		01-15-88	382 25	
2270 CHAIN BRIDGE ROAD		01-15-88	382 25	
	LIST RENTAL	01-15-88	222 84	
VIENNA, VA 22180		01-16-88	894 00	
	Year to date 48,785 92	01-29-88	382 25	

Subtotal This Page $43,092 25

CAMPAIGN FINANCE SYSTEM SCHEDULE B ITEMIZED DISBURSEMENTS

Run Date 04-13-1988

ACPI AMERICAN CITIZENS FOR POLITICAL ACTION

For Line B 10

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee

For the period 01-01-88 thru 03-31-88 Over $200 YTD TYPE B CAT ALL ALL ALL

Full Name Mailing Address and ZIP Code	Purpose of Disbursement Aggregate Year-to-Date	Date (month, day, year)	Amount of Each Disbursement This Period	Disb for
Vendor THE BEST LISTS	continued	02-10-88	150 00	
		02-10-88	1,011 92	
		02-10-88	110 05	
		02-17-88	921 25	
		03-04-88	510 00	
		03-08-88	420 00	
		03-25-88	2,004 22	
TRI-STATE ENVELOPE		01-15-88	6,903 92	
6900 FAIRLE ROAD		03-11-88	720 29	
	ENVELOPES			
BELTSVILLE MD 20705				
	Year to date 17,624 21			
U.S. POSTMASTER DC		01-26-88	44 00	
		01-05-88	2,000 00	
	POSTAGE	01-12-88	200 00	
WASHINGTON DC		01-12-88	0 00	
	Year to date 10,016 00	01-25-88	2,000 00	
		02-1 -88	1,000 00	
		02-26-88	1,000 00	
		03-14-88	1,000 00	
		03-23-88	1,000 00	
		03-29-88	500 00	
		01-12-88	12 00	
N. ERIAL LITHOGRAPH		01-21-88	590 46	
PO BOX OFFICE BOX 1587		01-28-88	812 59	
	LITHOGRAPHICS			
CHARLOTTESVILLE VA 22902				
	Year to date 51,453 87			

Subtotal This Page 623,274 62

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CAMPAIGN FINANCE SYSTEM - SCHEDULE B ITEMIZED DISBURSEMENTS

Run Date 04/13/1988 Page 1 of 1

(ACU) AMERICAN CITIZENS FOR POLITICAL ACTION For Line B 27

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee

For the period 01-01-88 thru 03-31-88 Over $200 YTD TYPE B CAT ALL ALL ALL

Full Name, Mailing Address and ZIP Code	Purpose of Disbursement Aggregate Year-to-Date	Date (month, day, year)	Amount of Each Disbursement This Period	Disb for
REAGAN VICTORY FOUNDATION		03-29-88	25 00	
1625 K STREET, NW	- DISBURSEMENT OF	03-28-88	300 00	
SUITE 510	GIFT CHECK CONTRIBUTIONS	03-28-88	300 00	
WASHINGTON, DC 20005		03-28-88	25 00	
	Year to date 10,250 00	03-28-88	875 00	
		03-28-88	6,725 00	
	Subtotal This Page		10,250 00	
	Total This Period		10,250 00	

Vendors printed

SCHEDULE D

DEBTS AND OBLIGATIONS
Excluding Loans

Page 1 of 1 for
LINE NUMBER 9
(See separate schedule for each numbered line)

Name of Committee (In Full)	Outstanding Balance Beginning This Period	Amount Incurred This Period	Payment This Period	Outstanding Balance at Close of This Period
American Citizens For Political Action				
Full Name, Mailing Address and Zip Code of Debtor or Creditor The Best Lists, Inc. 2000 Chain Bridge Road Vienna, VA 22070	49,678.34	-0-	-0-	49,678.34
Nature of Debt (Purpose) List Rental Income				
Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose)				
Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose)				
Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose)				
Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose)				

SCHEDULE D

(Revised 1/80)

DEBTS AND OBLIGATIONS
Excluding Loans

Page 1 of 1 for LINE NUMBER 10
(Use separate schedules for each numbered line)

Name of Filer (Committee or Candidate)	Outstanding Balance Beginning This Period	Amount Incurred This Period	Payment This Period	Outstanding Balance at Close of This Period
American Citizens For Political Action				
Name, Mailing Address and Zip Code of Debtor or Creditor The Best Blats, Inc. [illegible] Chain Bridge Road Vienna, VA 22070	[illegible]	[illegible]	[illegible]	-0-
Nature of Debt (Purpose) Film Rental Fees				
Name, Mailing Address and Zip Code of Debtor or Creditor Response Dynamics, Inc. 2070 Chain Bridge Road Vienna, VA 22180	[illegible]	[illegible]	232,484.55	-0-
Nature of Debt (Purpose) Direct Mail Services				
Name, Mailing Address and Zip Code of Debtor or Creditor Eastern Envelopes [illegible] Backlick Road Springfield, VA 22122	[illegible]	[illegible]	6,126.00	-0-
Nature of Debt (Purpose) Envelopes				
Name, Mailing Address and Zip Code of Debtor or Creditor Inter-State Printing [illegible] Faith Road Baltimore, MD [illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Nature of Debt (Purpose) [illegible]				
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Nature of Debt (Purpose) [illegible]				
[illegible]				

9704782

SCHEDULE E

ITEMIZED INDEPENDENT EXPENDITURES

(See Reverse Side for Instructions)

AMERICAN CITIZENS FOR POLITICAL ACTION — I D # (P010A08)

Full Name, Mailing Address & Zip Code of Each Payee	Purpose of Expenditure	Date (Month, day, year)	Amount	Name of Federal Candidate Supported or Opposed by the Expenditure & Office Sought
SATURN CORP 4781 LYDELL ROAD BEVERLY MD 20781	COMPUTER FEE	01-11-88	1,053.78	RETZENBAUM - OPPOSE [ ] Support [X] Oppose
THE AMER TELEPHONE MKTG GROUP 2070 CHAIN BRIDGE ROAD SUITE 300 VIENNA, VA 22180	TELEPHONE MARKETING	01-20-88 01-22-88 01-27-88 01-28-88 02-10-88 02-12-88	20,087.50 5,000.00 5,000.00 5,000.00 5,000.00 9,100.00	JOSEPH KENNEDY - OPPOSE [ ] Support [X] Oppose
THE BEST LISTS 2070 CHAIN BRIDGE ROAD VIENNA, VA 22182	LIST RENTAL	01-18-88	773.36	DOLE/BUSH [ ] Support [ ] Oppose

A. SUBTOTAL of Itemized Independent Expenditures $ [illegible]

B. SUBTOTAL of Unitemized Independent Expenditures $ _____

C. Total Independent Expenditures $ _____

[illegible] certify that the independent expenditures reported herein were not made in cooperation, consultation with, or at the request or suggestion of any candidate or any authorized agent of such candidate, committee, or party. Furthermore, these expenditures were not made in [illegible] $ _____

[illegible] Subscribed and sworn before me this [illegible]

[illegible]

SCHEDULE E — ITEMIZED INDEPENDENT EXPENDITURES

(See Reverse Side for Instructions)

AMERICAN CITIZENS FOR POLITICAL ACTION — I D # C00104081

Full Name, Mailing Address & Zip Code of Each Payee	Purpose of Expenditure	Date (Month, Day, year)	Amount	Name of Federal Candidate Supported or Opposed by the Expenditure & Office Sought
THE BEST LISTS 1370 CHAIN BRIDGE ROAD VIENNA VA 22180	LIST RENTAL	02-24-88	890 90	SEN DOLE HATCH - SUPPORT [✓] Support [ ] Oppose
THE BEST LISTS 1370 CHAIN BRIDGE ROAD VIENNA VA 22180	LIST RENTAL	03-15-88 03-15-88	3,995 68 5,585 38	ROBERT DOLE - SUPPORT [✓] Support [ ] Oppose
THE BEST LISTS 1370 CHAIN BRIDGE ROAD VIENNA VA 22180	LIST RENTAL	03-25-88	485 72	JOSEPH KENNEDY - OPPOSE [ ] Support [✓] Oppose

a. Total of Itemized Independent Expenditures $ 10,818 77

b. Total of Unitemized Independent Expenditures $ _____

Total Independent Expenditures $ _____

I certify that the independent expenditures set forth herein were not made in cooperation, consultation with, or at the request or suggestion of the candidate, his authorized committee or agent or such candidate's authorized committee. Furthermore, these expenditures were not made for the purpose of disseminating, distributing or making available in whole or in part, any communication prepared by the candidate, his authorized committee or agent.

Subscribed and sworn before me this _____ day of _____, 19____.

My Commission expires _____

NOTARY PUBLIC

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The Best Lists, Inc.
2070 Chain Bridge Road
Suite 380
Vienna, Virginia 22180
(703) 442-7595

970438 2 2 3

INVOICE

SOLD TO

AMERICAN CITIZENS FOR POLITICAL ACTION
2700 VIRGINIA AVENUE, NW
SUITE 404
WASHINGTON, DC 20037

SHIPPED TO

SATURN CORPORATION
IN HOUSE

ATTN: TERRY WALKER

DATE	MAIL DATE	OUR ORDER NO	YOUR ORDER NO	KEY CODE	TERMS	INVOICE NO
11-03-86	10-20-86	7086	VERBAL	AQTX2	NET 30	7026

QUANTITY	DESCRIPTION	PRICE	AMOUNT
5,000	ACTIVE REPUBLICAN DONORS	$ 80.00	$ 400.00
	Shipping Charges		$ 5.00
	HOUSE MAILING		
		TOTAL	$ 405.00

PAID DEC 02 1986
CR# 1584

ORIGINAL

THANK YOU

DEPOSITION EXHIBIT
8
MK 6-15-88

9704380224

The Best Lists, Inc.
2070 Chain Bridge Road
Suite 380
Vienna, Virginia 22180
(703) 442-7595

INVOICE

SOLD TO

AMERICAN CITIZENS FOR POLITICAL ACTION
2700 VIRGINIA AVENUE, NW
SUITE 404
WASHINGTON, DC 20037

SHIPPED TO

WIB
2727 MERRILEE DRIVE
FAIRFAX, VIRGINIA 22030
ATTN: LINDA RUSSELL

DATE	MAIL DATE	OUR ORDER NO.	YOUR ORDER NO.	KEY CODE	TERMS	INVOICE NO.
11-03-86	10-24-86	7147	VERBAL	AQIOX	NET 30	7027

QUANTITY	DESCRIPTION	PRICE	AMOUNT
3,177	ACTIVE REPUBLICAN DONORS MULTI DONORS	$150.00	$ 476.55
	Key Charge	$ 1.50	$ 4.77
	Shipping Charges		$ 5.00
	HOUSE MAILING		
		TOTAL	$ 486.32

PAID
Ck # 1590

ORIGINAL

THANK YOU

The Best Lists, Inc.
2070 Chain Bridge Road
Suite 380
Vienna, Virginia 22180
(703) 442-7595

9704 8 22 5

INVOICE

SOLD TO

AMERICAN CITIZENS FOR POLITICAL ACTION
2700 VIRGINIA AVENUE, NW
SUITE 404
WASHINGTON, DC 20037

SHIPPED TO

SATURN
ATTN: TERRY WALKER

DATE	MAIL DATE	OUR ORDER NO.	YOUR ORDER NO.	KEY CODE	TERMS	INVOICE NO.
12-30-86	11-24-86	7303	VERBAL	ADVX1	NET 30	7277

QUANTITY	DESCRIPTION	PRICE	AMOUNT
5,466	ACTIVE REPUBLICAN DONORS (MULTI DONORS)	$150.00	$ 819.90
	HOUSE MAILING		

PAID FEB 04 1987
1651

ORIGINAL

THANK YOU

TOTAL $ 819.90

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 1, 1988

Robert E. Dolan
2700 Virginia Avenue, N.W.
Suite 404
Washington, D.C. 20037

RE: MUR 2361
Robert E. Dolan

Dear Mr. Dolan:

Enclosed is a check for thirty-four dollars and twenty cents ($34.20), which represents the witness fee and mileage reimbursement for your deposition which occurred on June 15, 1988, in the Office of the General Counsel, Federal Election Commission, Washington, D.C. At the deposition, you were informed that the check would be mailed to you once it had been prepared.

If you have any questions, please contact Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure

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United States Treasury 15-51/000 W 025,793,216

Check No.

06 24 88 0 WASHINGTON, D.C. 3007 59254929

141868 02 ROBERT E DOLAN 95350001

Pay to the order of

ROBERT E DOLAN F E C WASH DC

$*****34*20

8AW080 WITNESS FEE

⑈30074⑈ ⑆000000518⑆ 592549298⑈

GCC#141

ACE-FEDERAL
REPORTERS, INC.

444 North Capitol Street
Washington, D.C. 20001
(202) 347-3700
(800) 336-6646

RECEIVED
FEDERAL ELECTION COMMISSION
88 AUG 16 AM 11:16

STENOTYPE REPORTERS

12 August 1988

Federal Election Commission
ATTN: Ms. Sandra H. Robinson
999 E Street, Northwest
Washington, DC 20436

Re: Deposition of ROBERT E. DOLAN,
Washington DC, 15 June 1988.

Dear Ms. Robinson:

Enclosed is the Original copy of the above-entitled deposition, which has been read by the Deponent. Two corrections have been made by the Deponent but signature was omitted.

Page 27, line 21: Change "hell" to "heck".

Page 68, line 22: Change "universal" to "universe".

Sincerely,

Edwin G. Crowley
Deposition Supervisor

9704354228

RECEIVED
88 AUG 16 AM 12:45

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT
SENSITIVE

88 DEC 30 PM 2:00

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
American Citizens for Political Action and Robert E. Dolan, as treasurer	)	
	)	MUR 2361
International Funding Institute	)	
	)	
Afghan Mercy Fund and Tony Campaigne, as president, and Anne Hurd, as project director	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On July 14, 1987, the Federal Election Commission ("Commission") found reason to believe the American Citizens for Political Action ("ACPA") and Robert E. Dolan, as treasurer, violated Section 438(a)(4) of the Federal Election Campaign Act of 1971, as amended ("the Act"), in connection with solicitations for contributions which were mailed to certain pseudonyms found in financial disclosure reports filed with the Commission. On that same date, the Commission merged MURs 2094, 2307 and 2346 with MUR 2361, and approved interrogatories and requests for production of documents. See, MUR 2361, 2346 & 2307 - General Counsel's Report, signed July 1, 1987, and MUR 2094 - General Counsel's Report, signed July 1, 1987. An analysis of the responses to the discovery requests received in this matter was made in the General Counsel's Report to the Commission, signed on April 1, 1988. On December 21, 1987, this Office received a request for pre-probable cause conciliation from ACPA and Mr. Dolan. On April 6, 1988, the Commission declined at that time to enter into pre-probable cause conciliation with these

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respondents.

On April 6, 1988, the Commission also found reason to believe the International Funding Institute, Inc. ("IFI") violated Section 438(a)(4) of the Act, approved a request for production of documents directed to the IFI, and approved a subpoena for the deposition of Mr. Dolan. It is noted that Mr. Dolan is also the executive vice-president of the IFI. On May 13, 1988, through counsel, the IFI submitted a response to the request for documents, and requested pre-probable cause conciliation. Attachment I. On June 6, 1988, the Commission declined at that time to enter into pre-probable cause conciliation with the IFI.

Mr. Dolan was notified through counsel that his deposition was scheduled on June 15, 1988. By letter dated June 7, 1988, this Office was informed that counsel was withdrawing from representing the respondents in this matter. Mr. Dolan, however, did appear without counsel for the deposition as scheduled on June 15, 1988.

II. ANALYSIS

The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits the selling of any information copied from reports and statements filed with the Commission, and it prohibits any person from using such information for the purpose of soliciting contributions or for commercial purposes, except the name and address of a political committee may be used to solicit contributions from such committee. 2 U.S.C. § 438(a)(4). Section 438(a)(4) also allows political committees to use up to

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10 pseudonyms on each report filed in order to protect against the illegal use of names and addresses of contributors. The list of such pseudonyms should be attached to the appropriate report, but it shall be excluded from the public record.

A. International Funding Institute, Inc.

The IFI is incorporated in the state of Virginia. According to its Articles of Incorporation, the purposes of the organization include "furnishing and performing political and managerial advisory and consulting services...;" and engaging in and conducting "any and all phases of the business of fund raising, by or through advertising, public relations, promotions, marketing, publishing, research and consulting..." At the time of its incorporation, the IFI had two initial directors, David Hendry and Robert E. Dolan.[1] Currently, however, Mr. Dolan is the sole director, officer and stockholder of the company. Attachment I(4), (6)-(8).

On May 22, 1986, the IFI contracted with Legi-Tech, Inc. to receive Legi-Tech's services known as Washington On-Line ("WOL").[2] Although it was not provided by the IFI, a copy of a supplemental contract made between the IFI and WOL was provided

---

1. It is noted that a David Hendry, Jr., was a respondent in MUR 2372. In that matter the issue was whether the project of a political committee could include the name of a candidate in the project name. Mr. Hendry had signed letters that solicited contributions to the project of the Conservatives for a Secure America ("CSA"), entitled "Kemp's First Fund." A complaint had been filed on behalf of the Jack Kemp presidential exploratory committee. The Commission found no reason to believe the Act had been violated and closed the file in that matter on July 14, 1987. See MUR 2372 - General Counsel's Report signed June 29, 1987.

2. Legi-Tech, Inc. is another respondent in this matter.

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by other respondents in this matter. See, MUR 2361 - General Counsel's Report, signed April 1, 1988. This supplemental contract stated the terms for subscribing to WOL's Campaign Contribution Tracking System ("CCTS"). Included in the CCTS contract was a provision which stated that information provided through the CCTS was obtained from the public record of the Commission and, further, that the use of such information for soliciting contributions from other than political committees was prohibited by federal law. Mr. Dolan admitted during his deposition that he signed both contracts on May 22, 1986, on behalf of the IFI.

In the course of the deposition of Mr. Dolan on June 15, 1988, he also disclosed the following information. WOL provided contributor information to the IFI by allowing computer access to WOL's data base. Such information included the names and addresses of individual contributors to federal candidates identified by each candidate's campaign committee. The information would also include the amount each individual had contributed and, in a few instances, a contributor's telephone number.

Mr. Dolan then realized the potential value of the information received from WOL and decided to market it in the form of contributor lists, which eventually came to be known as the "Active Republican Donors" list and the "Active Democrat Donors" list. Mr. Dolan stated that the only source for the names on these lists was the CCTS. The specific list at issue in

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this matter is the "Active Republican Donors" list.[3] Mr. Dolan, on behalf of the IFI, obtained the services of several computer contractors who programmed the information into usable form. He then had the computer tape which contained the lists housed with the Saturn Corporation. Upon receiving orders from list brokerage firms, Saturn produces mailing labels that are subsequently forwarded to a "letter shop" from where the solicitation documents are actually mailed.

Mr. Dolan also realized the potential illegality of using the information obtained from WOL. Therefore, prior to using the lists for any purpose, he obtained a legal opinion from the law firm of LeBoeuf, Lamb, Leiby & MacRae, regarding the constitutionality of Section 438(a)(4) of the Act. Mr. Dolan waived his attorney-client privilege and provided a copy of the opinion received from that law firm to staff of this Office during the deposition. Attachment II. According to that document, Mr. Dolan's specific concerns were whether he could supply his clients with contributor information obtained from the Commission's public records for the purpose of soliciting contributions and, further, whether obtaining that information from an intermediary would have any effect on his liability. Attachment II(2). The letter of opinion from the law firm is dated August 11, 1986, and is addressed to David Hendry. Mr. Dolan explained during the deposition that Mr. Hendry was merely a conduit, that it was actually Mr. Dolan who contacted

3. According to Mr. Dolan, the "Active Democrat Donors" list was never used for any purpose.

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the firm, requested the opinion, and had discussions with members of the law firm about the request. In summary, the legal opinion advised that "if properly challenged, the solicitation restriction on the use of contributor lists filed with the FEC would be found to be an unconstitutional restriction on political speech." The opinion further concluded that, even if the restrictions on solicitations were constitutional and the IFI obtained a list from intermediaries who had copied such list from the Commission's public record, the IFI would not be in violation of the Act if it had no prior knowledge of the source of the list. Attachment II (8).

Following receipt of the written opinion from the law firm, Mr. Dolan contacted The Best Lists, Inc., a list brokerage firm and offered the "Active Republican Donors" list to be marketed for profit on behalf of the IFI.[4] The list brokerage firm received a commission for its services and the IFI received the balance of the amount charged to an organization for using the list. To Mr. Dolan's knowledge, the "Active Republican Donors" list was used by approximately four or five different organizations. According to the contracts between the IFI and WOL, costs for the IFI to obtain the CCTS from WOL included an initial fee of $750, an annual access fee of $500, and an annual subscription of $3,500, totaling $4,750. Copies of checks provided by the IFI show that it actually paid at least $3,285 for the CCTS. Attachment I(23)-(26). It is likely that other costs were incurred by the IFI as a result of these transactions,

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4. The Best Lists, Inc. is also a respondent in this matter.

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however, such information is not available to this Office. Copies of checks received by the IFI from the Best Lists, Inc. were identified by Mr. Dolan during the deposition as income received as a result of renting names from the "Active Republican Donor" list. The total of these checks is $9,513.10. Attachment I(20)-(39).

The legislative history of the 1976 amendments to the Act discuss knowing and willful violations. Congressman Hays noted in his comments during the House debates on the Conference Report that the phrase "knowing and willful" referred to "actions taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). The House Report distinguished the phrase to include "violations as to which the Commission has clear and convincing proof that the acts were committed with a knowledge of all the relevant facts and a recognition that the action is prohibited by law." H.R. Rep. No. 94-917, 94th Cong. 2d Sess. 3-4 (1976). Further, in Federal Election Commission v. John A. Dramesi for Congress Committee, 640 F.Sup. 985 (D.N.J. 1986), the Court noted that the knowing and willful standard requires knowledge that one is violating the law. The facts in this matter clearly demonstrate that Mr. Dolan, as an agent for the IFI, obtained information from the Commission's public record and subsequently used such information for commercial purposes, in a knowing and willful violation of 2 U.S.C. § 438(a)(4). The fact that Mr. Dolan obtained this information through an intermediary is inconsequential in this instance, since he was still informed

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that the information obtained from that intermediary, WOL, was derived by them from the Commission's public record. Although this Office does not adopt by reference the opinion of Mr. Dolan's counsel, it is noted that such counsel advised him in the above referenced legal opinion that "if the IFI obtains a solicitation list from intermediaries that obtained their lists by copying FEC contributor lists, the IFI will not violate the FECA provided it has no knowledge that the list was obtained in such a manner" (emphasis added). Attachment II(8). Mr. Dolan chose to ignore his counsel's advice and initially attempted to shield his prior knowledge of the source of the WOL names and addresses from the investigation into this matter. Mr. Dolan did not present a copy of the supplemental contract for the CCTS service with other documents provided in response to the request for documents. However, when presented with a copy of such contract during the deposition, he acknowledged that he had signed it on May 22, 1986, and that he was then aware of the provision wherein the source of the CCTS information is identified.

This Office recommends that the Commission enter into pre-probable cause conciliation with the International Funding Institute, Inc.

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B. American Citizens for Political Action and Robert E. Dolan, as treasurer

The deposition of Mr. Dolan provided additional information about the involvement of ACPA in this matter. ACPA is a political committee registered with the Commission pursuant to 2 U.S.C. § 433(a). Mr. Dolan indicated that his primary interest was in providing the "Active Republican Donors" list to ACPA for its solicitation purposes. Mr. Dolan decided to make the list available through a list broker in order to maintain an arms-length business relationship between the IFI and ACPA, and to avoid any implication of a corporate contribution to ACPA from the IFI. Through Response Dynamics, the company that conducts mailings on behalf of ACPA, about five test mailings of approximately 5000 names each were conducted using the "Active Republican Donors" list. Although some contributions were received as a result of the solicitations, Mr. Dolan stated in the deposition that, considering the expenses incurred with the solicitations, ACPA may have, at the most, broken even or realized a financial loss. In written responses previously submitted through counsel, Mr. Dolan stated that the costs incurred for renting the "Active Republican Donors" list for at least three mailings was $405, $486.32, and $819.90, respectively, and that ACPA'S average net yield from all of the solicitations at issue approximated $740. See MUR 2361 - General

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Counsel's Reports signed July 1, 1987, and April 1, 1988. Here, too, additional costs may have been incurred by ACPA as a result of these transactions, however, such information is not available to this Office.

There are two complaints at issue in this matter wherein ACPA and Mr. Dolan are named as respondents. Each complaint, filed separately by the Fund for a Conservative Majority and the Republican National Committee ("RNC"), alleged that Respondents solicited contributions from pseudonyms found in the complainants' respective financial disclosure reports on file with the Commission. In each instance, Respondents have stated that the names solicited were originally obtained from WOL. As discussed above, the knowing and willful standard has also been met in this instance. It is clear that Mr. Dolan was informed that the source of the names used in the solicitations for contributions to ACPA were obtained by WOL from the Commission's public record, and that he used such names notwithstanding his prior knowledge. In addition, in the complaint filed by the RNC allegations were made concerning telemarketing calls made on behalf of ACPA to persons found in the RNC's financial disclosure reports. It was alleged that during the telephone solicitations the caller implied that there was an association between ACPA and the RNC. Mr. Dolan has admitted that certain names obtained from WOL also included telephone numbers. He also stated that ACPA used telemarketing on an on-going basis to solicit contributions.

This Office recommends that the Commission enter into pre-probable cause conciliation with American Citizens for

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Political Action and Robert E. Dolan, as treasurer.

C. Afghan Mercy Fund, Tony Campaigne, as president, and Anne Hurd, as project director

One of the initial complaints in this matter alleged that the Afghan Mercy Fund, Tony Campaigne, as president, and Anne Hurd, as project director, violated 2 U.S.C. § 438(a)(4) by copying information from the Commission's public record and using such information to solicit contributions. The Afghan Mercy Fund had conducted a mailing that included pseudonyms found on the Commission's public record. At the time of the reason to believe findings in this matter, this Office made no recommendations as to these respondents, pending receipt of responses from the other respondents. See MURs 2361, 2346 & 2307 - General Counsel's Report, signed July 1, 1987.

Mr. Campaigne provided information to the Commission on behalf of the Afghan Mercy Fund and associates wherein he denied obtaining any information from the Commission's public record for solicitation purposes. The information provided identified the mailing list used by the Afghan Mercy Fund as the "Active Republican Multi-Donors" list. Id.

Subsequent information obtained from Mr. Dolan, ACPA, and the IFI, corroborate the assertions of Mr. Campaigne. The evidence supports the assertion that these respondents conducted their mailing with the assistance of a list broker, The Best Lists, Inc., and were not informed about the source of the names.

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The Afghan Mercy Fund has been identified by other respondents in this matter as one of the organizations that rented the list at issue here from the above list brokerage firm used by Mr. Dolan to market it. There is no information available to this Office to suggest that Mr. Campaigne, Ms. Hurd, the Afghan Mercy Fund or its agents had prior knowledge of the source of the names used for their solicitations at issue here, or that they copied such information from the Commission's public record for solicitation purposes.

Based on the foregoing, this Office recommends that the Commission take no further action against Afghan Mercy Fund, Mr. Campaigne, as president, and Ms. Hurd, as project director, and close the file as it pertains to them.[6]

III. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

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6. The other respondents in this matter, Legi-Tech, Inc. and The Best Lists, Inc., have not requested pre-probable cause conciliation. Briefs addressing the allegations concerning these respondents, including appropriate recommendations, will be prepared by this Office.

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IV. RECOMMENDATIONS

1. Enter into conciliation with American Citizens for Political Action and Robert E. Dolan, as treasurer, prior to a finding of probable cause to believe.

2. Enter into conciliation with the International Funding Institute, Inc. prior to a finding of probable cause to believe.

3. Take no further action against the Afghan Mercy Fund, Tony Campaigne, as president, and Anne Hurd, as project director, and close the file as it pertains to them.

4. Approve the attached proposed conciliation agreements and letters.

Date 12/29/84

Lawrence M. Noble
General Counsel

Attachments
1. Response to request for documents from the IFI.
2. Legal opinion obtained by the IFI.
3. Proposed Conciliation Agreements (2) and letters (4).

Staff assigned: Sandra H. Robinson

9704384223112

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	
American Citizens for Political Action and Robert E. Dolan, as treasurer	)	MUR 2361
	)	
International Funding Institute	)	
	)	
Afghan Mercy Fund and Tony Campaigne, as president, and Anne Hurd, as project director	)	
	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 9, 1989, the Commission decided by a vote of 6-0 to take the following actions in MUR 2361:

1. Enter into conciliation with American Citizens for Political Action and Robert E. Dolan, as treasurer, prior to a finding of probable cause to believe.

2. Enter into conciliation with the International Funding Institute, Inc. prior to a finding of probable cause to believe.

3. Take no further action against the Afghan Mercy Fund, Tony Campaigne, as president, and Anne Hurd, as project director, and close the file as it pertains to them.

(Continued)

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4. Approve the proposed conciliation agreements and letters, as recommended in the General Counsel's report signed December 29, 1988.

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

Attest:

January 9, 1989
Date

Hilda Arnold
for Marjorie W. Emmons
Secretary of the Commission

Received in the Office of Commission Secretary: Fri., 12-30-88, 1:59
Circulated on 48 hour tally basis: Tues., 01-03-89, 11:00
Deadline for vote: Mon., 01-09-89, 4:00

9704384230 4

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 12, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert E. Dolan, Treasurer
American Citizens for Political Action
1612 K Street, N.W, Suite 206
Washington, D.C. 20036

RE: MUR 2361
American Citizens for
Political Action and
Robert E. Dolan, as
treasurer

Dear Mr. Dolan:

On July 14, 1987, the Federal Election Commission found reason to believe that American Citizens for Political Action and you, as treasurer, violated 2 U.S.C. § 438(a)(4). At your request, on January 9, 1989, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved 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. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 12, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert E. Dolan, Chairman
International Funding Institute, Inc.
2700 Virginia Avenue, N.W., Suite 404
Washington, D.C. 20037

RE: MUR 2361
International Funding
Institute, Inc.

Dear Mr. Dolan:

On April 6, 1988, the Federal Election Commission found reason to believe the International Funding Institute, Inc. violated 2 U.S.C. § 438(a)(4). At your request, on January 9, 1989, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved 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. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 12, 1989

Anne Hurd, Project Director
Afghan Mercy Fund
P.O. Box 5920
Washington, D.C. 20016

RE: MUR 2361
Anne Hurd, as
project director

Dear Ms. Hurd:

On February 19, 1987, the Federal Election Commission notified you, as project director, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

After considering the circumstances of the matter, the Commission determined on January 9, 1989, to take no further action against you, as project director, and closed the file as it pertains to you. The file will be made part of the public record within 30 days after this matter has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

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 is closed. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 12, 1989

Tony Campaigne, President
Afghan Mercy Fund
P.O. Box 5920
Washington, D.C. 20016

RE: MUR 2361
Afghan Mercy Fund and
Tony Campaigne, as
president

Dear Mr. Campaigne:

On February 19, 1987, the Federal Election Commission notified Afghan Mercy Fund and you, as president, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

After considering the circumstances of the matter the Commission determined on January 9, 1989, to take no further action against Afghan Mercy Fund and you, as president, and closed the file as it pertains to these respondents. The file will be made part of the public record within 30 days after this matter has been closed with respect to all respondents. If you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

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 is closed. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Sandra H. Robinson, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
Legi-Tech, Inc.; American Citizens for Political Action and Robert E. Dolan, as treasurer; and the International Funding Institute	)	MUR 2361

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to Legi-Tech, Inc.; American Citizens Action and Robert E. Dolan, as treasurer; and the International Funding Institute, Inc., based on the assessment of the information presently available.[1]

1/31/90
Date

Lawrence M. Noble
General Counsel

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1. This Office is preparing a separate report to Commission with regard to The Best Lists, Inc., another respondent in this matter.

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2361
The Best Lists, Inc.	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was generated by a complaint filed by the Republican National Committee. The complaint alleged that The Best Lists, Inc. ("Respondent") sold a list of names, which contained individual contributor information copied from the complainant's financial disclosure reports filed with the Commission, to an organization that subsequently used such list for solicitation purposes. On July 14, 1987, the Commission found reason to believe Respondent violated 2 U.S.C. § 438(a)(4), and instituted an investigation into this matter.[1]

II. ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits the use of any information copied from reports and statements filed with the Commission from being sold or used by any person for the purpose of soliciting contributions or for commercial purposes, except that the name and address of any political committee may be used to solicit contributions from such committee. A political committee may submit 10 pseudonyms on each report filed with the Commission to protect against the

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1. This Office is preparing briefs with regard to the other respondents in this matter, Legi-Tech, Inc.; American Citizens for Political Action and Robert E. Dolan, as treasurer; and the International Funding Institute, Inc.

illegal use of names and addresses of contributors. Such pseudonyms shall be provided on a separate list attached to the appropriate report and shall be excluded from the public record. 2 U.S.C. § 438(a)(4).

In a series of Advisory Opinions, the Commission has allowed expansive use of information found on the public record, but has always reinforced the prohibition on the use of individual names and addresses obtained from such record for the purpose of soliciting contributions or for commercial purposes.

In Advisory Opinion 1980-101 the Commission allowed the use of any information found on its public record for commercial purposes, except the use of information on individual contributors. Here the Commission stated that "(i)t appears from the legislative history of the 1979 amendments to the Act, that a commercial vendor may compile the names and addresses of political committees for the purpose of selling those names but that the prohibition on the copying and use of names and addresses of individual contributors is crucial and so was maintained."

In Advisory Opinion 1980-78 a candidate was permitted to use information about the total disbursements disclosed by other candidates in previous campaigns in his own letter of solicitation. It was noted that the letter would not include any information about the identity of contributors. In this Opinion the Commission stated that "(t)he focus of the proponents of 2 U.S.C. § 438(a)(4) centered on protecting the privacy of the 'very public spirited citizens' who make contributions to

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campaigns. The principal, if not sole, purpose of the provision was to protect contributor information and lists from being used for commercial purposes," and further that "(t)he prevention of list brokering, not the suppression of financial information is the purpose of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15."

In Advisory Opinion 1981-5 the Commission permitted a candidate to send letters to individual contributors to his opponent's campaign to explain certain alleged defamatory comments made during the campaign. In these circumstances it was significant that the letters were not for the purpose of soliciting contributions or for commercial purposes.

Finally, in Advisory Opinion 1986-25 the Commission prohibited a corporation from compiling and selling contributor information. The corporation proposed to compile the names, city, state and zip code of individual contributors on computer tapes and to sell access to this information. Here the Commission noted that "(t)he 'commercial purpose' provision has been held to prohibit the copying and selling of contributor information when such lists incorporate nearly all of the identification of individual contributors contained in reports filed with the Commission, thus making such information commercially valuable to list owners, managers, brokers, or those who use such lists."

In each of the above Advisory Opinions, and others, the Commission has repeated its position, supported by the legislative history of the Act, that information about individual contributors maintained in its public record should be accorded

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special protection from use for the purpose of solicitation or for commercial purposes. See also, Advisory Opinions 1977-66, 1979-3, 1979-18, 1984-2, and 1985-16.

In discussions on the amendments to the Act, Senator Bellmon proposed the addition of the terminology that was later adopted, which prohibited the use of information from the Commission's public record to be used for the purpose of soliciting contributions or for commercial purposes. In his comments, Senator Bellmon stated that,

> the purpose of the amendment is to protect the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party. We all know how much of a business the matter of selling lists and list brokering has become. These names would certainly be prime prospects for all kinds of solicitations, and I am of the opinion that unless this amendment is adopted, we will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment, and in that way tend to discourage them from helping out as we need to have them do.

Senator Bellmon stated further that the amendment was intended "to protect...the men and women who make contributions to candidates or political parties from being victimized by that practice." 117 Cong. Rec. S30057 (daily ed. August 5, 1971) (Bellmon remarks), reprinted in FEC Legislative History of the Federal Election Campaign Act of 1971 at 581 (GPO 1981). In the House Report on the 1979 amendments to the Act it was noted that the prohibition on the use of individual contributors' names and addresses was maintained. H.R. Report No. 422, 96th Cong., 1st Sess. at 23 (1979), reprinted in FEC Legislative History of Federal Election Campaign Act Amendments of 1979 at 185, 207 (GPO

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1983).

B. Analysis

Respondent has described itself as "a national broker of names in the direct response industry." Respondent has denied any involvement in the compilation of the list at issue in this matter and stated further that, upon being notified that the names on the list came from reports filed with the Commission, it ceased all activity with respect to the list. Respondent explained the following sequence of events that resulted in its commercial use of the list in question.

In September or October of 1986, Respondent was contacted by Robert E. Dolan, treasurer of American Citizens for Political Action ("ACPA"), a political committee registered with the Commission. Respondent stated that it had an on-going business relationship with ACPA. Mr. Dolan requested that Respondent broker a list, apparently stated to be owned by ACPA, entitled "Active Republican Donors," which was housed with a separate computer bureau.[2] In accordance with its normal business practice, Respondent required Mr. Dolan to inform it of the source of the names. Mr. Dolan stated that the list was gathered from "all over the country" and included individuals who had contributed at least $100 to political candidates. Mr. Dolan apparently assured Respondent that any addition of new names to the list would not violate the Act. Respondent agreed to broker

2. This Office has learned that the Active Republican Donors list was in fact owned by the International Funding Institute, Inc., of which Mr. Dolan was the only officer and stockholder.

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the list, but there were no written agreements signed.

Respondent never received a copy of the Active Republican Donors list. In accordance with its normal business practice, Respondent would submit a purchase order for the list selected to the computer service bureau where the list was maintained, as orders were received. The bureau was Saturn Corporation. The placement of an order with Saturn Corporation was subject to Mr. Dolan's approval. Saturn Corporation would then produce and ship the names ordered to the list user. Respondent billed the list user after receiving notification that the product had been shipped by Saturn Corporation. When payment was received from the list user, Respondent would retain a 20% commission and forward the balance to Mr. Dolan.

Respondent rented names from the Active Republican Donors list to four organizations, including ACPA. Respondent's invoices show that the list was rented for such fees as $150, $158, $125 or $80 per thousand names. Each order generally requested several thousand names.

On February 6, 1987, Respondent met with Mr. Dolan to discuss calls from two users of the Active Republican Donors list. The users indicated that they had received inquires about the source of the names on the list as a result of their using it. At that meeting Mr. Dolan informed Respondent that the names were obtained from a service called Washington On-Line ("WOL"),

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which obtained the names from reports filed with the Commission.[3] On that same date, Respondent issued a memorandum to its staff stating that all scheduled use of the Active Republican Donors list was to be canceled immediately.

In his deposition, Mr. Dolan did not recall that he made any statements to Respondent about the source of the names on the Active Republican Donors list. Mr. Dolan stated that he did not recall telling Respondent anything about the source of the list, because he did not want to divulge its source and, thus, give up what he considered a competitive edge over Respondent. Mr. Dolan did state that he did not inform Respondent until the meeting in 1987 that the names on the list had come from reports filed with the Commission via WOL. As noted above, Respondent's use of the list was discontinued after that meeting.

This Office recommends that the Commission take no further action against Respondent. Although technically Respondent has used information from the Commission's public record for commercial purposes, the evidence shows that Respondent was an unwitting participant in this violation. There is no evidence that Respondent was involved in the development of the list, or

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3. WOL is a computer information service provided by Legi-Tech, Inc. WOL provides information obtained from the Commission's public record through its service called the Campaign Contribution Tracking System ("CCTS"). The International Funding Institute, Inc., noted above, through Mr. Dolan, contracted with WOL to receive that service on May 22, 1986.

ever had possession of the list.[4]

III. RECOMMENDATIONS

1. Take no further action against The Best Lists, Inc.

2. Close the file as it pertains to this respondent.

3. Approve the attached letter.

2/5/90
Date

Lawrence M. Noble
General Counsel

Attachment
Letter

Staff assigned: Sandra H. Robinson
Dan Blessington

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4. This recommendation is consistent with action taken by the Commission in MUR 2293. In that matter it was determined that, since two of the list brokers never had possession of the list in question and had no reason to know that the list was tainted, no further action would be taken against them. See MUR 2293 - General Counsel's Report dated August 8, 1989.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2361
The Best Lists, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 8, 1990, the Commission decided by a vote of 5-0 to take the following actions in MUR 2361:

1. Take no further action against The Best Lists, Inc., as recommended in the General Counsel's report dated February 5, 1990.

2. Close the file as it pertains to this respondent, as recommended in the General Counsel's report dated February 5, 1990.

3. Approve the letter, as recommended in the General Counsel's report dated February 5, 1990.

Commissioners Aikens, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Elliott did not cast a vote.

Attest:

2-9-90
Date

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

Received in the Secretariat: Monday, Feb. 5, 1990 4:10 p.m.
Circulated to the Commission: Tuesday, Feb. 6, 1990 11:00 a.m.
Deadline for vote: Thursday, Feb. 8, 1990 11:00 a.m.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

February 12, 1990

Alan R. Swendiman, Esq.
Jackson & Campbell, P.C.
One Lafayette Centre, Suite 300 South
1120 20th Street, N.W.
Washington, D.C. 20036-3437

RE: MUR 2361
The Best Lists, Inc.

Dear Mr. Swendiman:

On July 22, 1987, your client, The Best Lists, Inc., was notified that the Federal Election Commission found reason to believe that The Best Lists, Inc., violated 2 U.S.C. § 438(a)(4). On August 17, 1987, you submitted a response to the Commission's reason to believe finding in this matter.

After considering the circumstances of the matter, the Commission determined on February 8, 1990, to take no further action against The Best Lists, Inc., and closed the file as it pertains to The Best Lists, Inc.. The file will be made part of the public record within 30 days after this matter has been closed with respect to all other respondents involved. Should you wish to submit any factual or legal materials to appear on the public record, please do so within ten days of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

The confidentiality provisions of 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

The Commission reminds you that the use of information copied from reports filed with the Commission for commercial purposes is a violation of 2 U.S.C. § 438(a)(4). Your client should take immediate steps to insure that this activity does not occur in the future.

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If you have any questions, please contact Dan Blessington, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

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90 FEB 12 AM 9:19

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

SENSITIVE

February 9, 1990

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: MUR 2361

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 the brief and letter notifying the respective respondent of the General Counsel's intent to recommend to the Commission findings of probable cause to believe were mailed on February 9, 1990. Following receipt of the each respondent's reply to the notice, this Office will make a further report to the Commission.

Attachments
1. Briefs (3)
2. Letters to respondents (3)

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OGC 9528

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

February 9, 1990

Robert E. Dolan, Treasurer
American Citizens for Political Action
2700 Virginia Avenue, N.W.
Washington, D.C. 20037

RE: MUR 2361
American Citizens for
Political Action and
Robert E. Dolan, as
treasurer

Dear Mr. Dolan:

Based on complaints filed with the Federal Election Commission on December 18, 1986, and on February 12, 1987, and information supplied by you, the Commission, on February 26, 1987, found that there was reason to believe American Citizens for Political Action ("Committee") and you, as treasurer, violated 2 U.S.C. § 438(a)(4), and instituted an investigation of this matter. On July 14, 1987, the Commission made another finding of reason to believe the Committee and you, as treasurer, violated 2 U.S.C. § 438(a)(4).

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.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten 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 the 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 whether there is probable cause to believe a violation has occurred.

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If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

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

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2361
American Citizens for Political Action and Robert E. Dolan, as treasurer	)	
	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was generated by two complaints, filed by the Fund for a Conservative Majority and the Republican National Committee (MURs 2307 and 2346, respectively). Each complaint alleged that American Citizens for Political Action and Robert E. Dolan, as treasurer ("Respondents"), solicited contributions from pseudonyms found in each complainant's respective financial disclosure reports filed with the Commission. On February 26, 1987, the Federal Election Commission ("Commission") found reason to believe Respondents violated 2 U.S.C. § 438(a)(4) with regard to MUR 2307. On July 14, 1987, the Commission made another finding of reason to believe Respondents violated 2 U.S.C. § 438(a)(4). On that same date, the Commission merged MURs 2307 and 2346 with MUR 2361. An investigation was instituted into this matter.

II. Analysis

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits the use of any information copied from reports and statements filed with the Commission from being sold or used by any person for the purpose of soliciting contributions or for commercial purposes, except that the name and address of any

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political committee may be used to solicit contributions from such committee. A political committee may submit 10 pseudonyms on each report filed with the Commission to protect against the illegal use of names and addresses of contributors. Such pseudonyms shall be provided on a separate list attached to the appropriate report and shall be excluded from the public record. 2 U.S.C. § 438(a)(4).

In a series of Advisory Opinions the Commission has allowed expansive use of information found on the public record, but has always reinforced the prohibition on the use of individual names and addresses obtained from such record for the purpose of soliciting contributions or for commercial purposes. For example, in Advisory Opinion 1979-3, the Commission permitted a political committee to release its list of contributors maintained in the committee's files to another organization and to even charge a fee for such list. The Commission emphasized, however, that the committee could not authorize that organization to copy the list from its reports on file with the Commission. It was noted that the source of the information in that instance was the determining factor of whether the Act would be violated.

In Advisory Opinion 1980-78 a candidate was permitted to use information about the total disbursements disclosed by other candidates in previous campaigns in his own letter of solicitation. It was noted that the letter would not include any information about the identity of contributors. In this Opinion the Commission stated that "(t)he focus of the proponents of 2 U.S.C. § 438(a)(4) centered on protecting the privacy of the

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'very public spirited citizens' who make contributions to campaigns. The principal, if not sole, purpose of the provision was to protect contributor information and lists from being used for commercial purposes," and further that "(t)he prevention of list brokering, not the suppression of financial information is the purpose of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15."

In Advisory Opinion 1980-101 the Commission allowed the use of any information found on its public record for commercial purposes, except the use of information on individual contributors. Here the Commission stated that "(i)t appears from the legislative history of the 1979 amendments to the Act, that a commercial vendor may compile the names and addresses of political committees for the purpose of selling those names but that the prohibition on the copying and use of names and addresses of individual contributors is crucial and so was maintained."

In Advisory Opinion 1981-5 the Commission permitted a candidate to send letters to individual contributors to his opponent's campaign to explain certain alleged defamatory comments made during the campaign. In these circumstances it was significant that the letters were not for the purpose of soliciting contributions or for commercial purposes.

In Advisory Opinion 1981-38 the Commission permitted the use of information from its public record in a newsletter for the purposes of subscription solicitation and for stories in the newsletter. In the circumstances of the request individual contributor information was not to be used.

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Finally, in Advisory Opinion 1986-25 the Commission prohibited a corporation from compiling and selling contributor information. The corporation proposed to compile the names, city, state and zip code of individual contributors on computer tapes and to sell access to this information. Here the Commission noted that "(t)he 'commercial purpose' provision has been held to prohibit the copying and selling of contributor information when such lists incorporate nearly all of the identification of individual contributors contained in reports filed with the Commission, thus making such information commercially valuable to list owners, managers, brokers, or those who use such lists."

In each of the above Advisory Opinions, and others, the Commission has repeated its position, supported by the legislative history of the Act, that information about individual contributors maintained in its public record should be accorded special protection from use for the purpose of solicitation or for commercial purposes. See also, Advisory Opinions 1977-66, 1979-18, 1984-2, and 1985-16.

In discussions on the amendments to the Act, Senator Bellmon proposed the addition of the terminology that was later adopted, which prohibited the use of information from the Commission's public record to be used for the purpose of soliciting contributions or for commercial purposes. In his comments, Senator Bellmon stated that,

> the purpose of the amendment is to protect the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party. We all know how much of a business

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> the matter of selling lists and list brokering has become. These names would certainly be prime prospects for all kinds of solicitations, and I am of the opinion that unless this amendment is adopted, we will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment, and in that way tend to discourage them from helping out as we need to have them do.

Senator Bellmon stated further that the amendment was intended "to protect...the men and women who make contributions to candidates or political parties from being victimized by that practice." 117 Cong. Rec. S30057 (daily ed. August 5, 1971) (Bellmon remarks), reprinted in FEC Legislative History of the Federal Election Campaign Act of 1971 at 581 (GPO 1981). In the House Report on the 1979 amendments to the Act it was noted that the prohibition on the use of individual contributors' names and addresses was maintained. H.R. Report No. 422, 96th Cong., 1st Sess. at 23 (1979), reprinted in FEC Legislative History of Federal Election Campaign Act Amendments of 1979 at 185, 207 (GPO 1983).

B. Analysis

I. American Citizens for Political Action and Robert E. Dolan, as treasurer, Used Information Copied from the Commission's Public Record for Commercial Purposes.

American Citizens for Political Action ("ACPA") is a political committee registered with the Commission pursuant to 2 U.S.C. § 433(a). Robert E. Dolan is the treasurer of this committee. Respondents conducted approximately five mailings using approximately 5,000 names for each mailing. The names were obtained from a list entitled "Active Republican Donors." The costs incurred for renting the Active Republican Donors list for

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at least three of these mailings was $405, $486.32, and $819.90, respectively.[i] Respondents estimated that their average net yield from all of the solicitations using the Active Republican Donors list was $740.

In addition to being the treasurer of ACPA, Mr. Dolan was also the sole director, officer, and stockholder of the International Funding Institute, Inc. ("the IFI"). The IFI is a political and managerial consulting firm that also engages in fund raising, advertising, public relations, marketing, and other commercial activities.

On May 22, 1986, Mr. Dolan, as an agent for the IFI, contracted with Washington On-Line ("WOL"), a service of Legi-Tech, Inc., to receive its Campaign Contribution Tracking System ("CCTS"). The information was retrieved from the CCTS via a computer terminal, and included the amount and date of contributions to a political committee; the identity of the recipient committee; the types of disbursements made by the committee; and the name, address, occupation, employer, and sometimes, the telephone number of individual contributors.

As an officer of the IFI, Mr. Dolan signed two contracts with WOL on May 22, 1986, to obtain the CCTS, a Master Service Agreement and a CCTS Subscription Agreement. The CCTS contract included a provision that stated that information provided through the CCTS was obtained from reports filed with the Federal Election Commission and that the use of such information for soliciting contributions from other than political committees was prohibited by federal law.

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Upon realizing the potential value of the information received from the CCTS, Mr. Dolan, as an officer of the IFI, decided to market such information in the form of contributor lists. The services of several computer contractors were used to program the information obtained from CCTS into usable form. Two lists resulted from this endeavor, which were known as the "Active Republican Donors" list and the "Active Democrat Donors" list. The only source for the names on these lists was the CCTS. The specific list at issue in this matter is the "Active Republican Donors" list.[1] The computer tape which contained the lists was housed with the Saturn Corporation. Upon receiving orders from list brokerage firms, Saturn produces mailing labels that are subsequently forwarded to a "letter shop" from where the solicitation documents are actually mailed.

Mr. Dolan, as an agent for the IFI, contacted The Best Lists, Inc., a list brokerage firm, and offered the "Active Republican Donors" list to be marketed for profit on behalf of the IFI. Respondents in this matter, ACPA and Mr. Dolan, as treasurer, rented the Active Republican Donors list from The Best Lists, Inc.

Mr. Dolan indicated that his primary interest was in providing the "Active Republican Donors" list to ACPA for solicitation purposes. Mr. Dolan decided to make the list available through a list broker in order to maintain an arms-length business relationship between the IFI and ACPA, and

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1. The "Active Democrat Donors" list was never used for any purpose.

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to avoid any implication of a corporate contribution to ACPA from the IFI. Through Response Dynamics, the company that conducts mailings on behalf of ACPA, about five test mailings of approximately 5000 names each were conducted using the "Active Republican Donors" list, as noted above.

Furthermore, in the complaint filed by the RNC, allegations were made concerning telemarketing calls made on behalf of ACPA to persons found in the RNC's financial disclosure reports. It was alleged that during the telephone solicitations the caller implied that there was an association between ACPA and the RNC. As noted above, certain names obtained from WOL also included telephone numbers. ACPA used telemarketing on an on-going basis to solicit contributions.

Respondents used information on individual contributors copied from reports filed with the Commission for the purpose of soliciting contributions, in violation of 2 U.S.C.§ 438(a)(4).

II. American Citizens for Political Action and Robert E. Dolan, as treasurer, Knowing and Willfully Violated the Federal Election Campaign Act of 1971, as amended.

The legislative history of the 1976 amendments to the Act discuss knowing and willful violations. Congressman Hays noted in his comments during the House debates on the Conference Report, that the phrase "knowing and willful" referred to "actions taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976), reprinted in FEC Legislative History of Federal Election Campaign Act Amendments of 1976 at 1078 (1977). The knowing and willful standard has also been

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addressed in the courts. In Federal Election Commission v. John A. Dramesi for Congress Committee, 640 F.Sup. 985 (D.N.J. 1986), the Court noted that the knowing and willful standard requires knowledge that one is violating the law.

In addition to realizing the commercial value of the information being provided by the CCTS, Mr. Dolan also realized the potential illegality of using such information. Therefore, prior to using the lists for any purpose, he obtained a legal opinion on behalf of the IFI from the law firm of LeBoeuf, Lamb, Leiby & MacRae, regarding the constitutionality of Section 438(a)(4) of the Act. According to that document, dated August 11, 1986, the IFI's specific concerns were whether it could supply clients with contributor information obtained from the Commission's public records for the purpose of soliciting contributions and, further, whether obtaining that information from an intermediary would have any effect on any liability. In summary, the legal opinion advised that "if properly challenged, the solicitation restriction on the use of contributor lists filed with the FEC would be found to be an unconstitutional restriction on political speech." The opinion further concluded that, even if the restrictions on solicitations were constitutional and the IFI obtained a list from intermediaries who had copied such list from the Commission's public record, the IFI would not be in violation of the Act if it had no prior knowledge of the source of the list.

Thus, it is demonstrated that Mr. Dolan had prior knowledge that the names he used to solicit contributions to ACPA were

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obtained from the Commission's public record and, further, that he took deliberate steps to use such names notwithstanding his prior knowledge. The written contract agreement with the CCTS that included a provision informing subscribers of the source of the names was signed by Mr. Dolan, and the fact that he sought legal advice on his planned use of the names obtained from the Commission's public record, corroborate his prior knowledge. Moreover, although it is not adopted by reference as an opinion of this Office, it is noted that the IFI's counsel advised in the above referenced legal opinion that "if the IFI obtains a solicitation list from intermediaries that obtained their lists by copying FEC contributor lists, the IFI will not violate the FECA provided it has no knowledge that the list was obtained in such a manner" (emphasis added). Irrespective of this advice, Respondents used the Active Republican Donors list, which consisted of names copied from reports filed with the Commission for the purpose of soliciting contributions in a knowing and willfully violation of 2 U.S.C. § 438(a)(4).

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that American Citizens for Political Action and Robert E. Dolan, as treasurer, knowing and willfully violated 2 U.S.C. § 438(a)(4).

2/9/90
Date

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

February 9, 1990

Robert E. Dolan
International Funding Institute, Inc.
2700 Virginia Avenue, N.W., Suite 404
Washington, D.C. 20037

RE: MUR 2361
International Funding
Institute, Inc.

Dear Mr. Dolan:

Based on information ascertained in the normal course of carrying out its statutory responsibilities, and information supplied by you, on April 6, 1988, the Federal Election Commission found reason to believe that the International Funding Institute, Inc., violated 2 U.S.C. § 438(a)(4), and instituted an investigation in 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.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten 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 the 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 whether there is probable cause to believe a violation has occurred.

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If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A findirg of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

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

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2361
International Funding Institute, Inc.	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was internally generated by the Federal Election Commission ("Commission") in the normal course of carrying out its statutory duties. On April 6, 1988, the Commission found reason to believe the International Funding Institute, Inc. ("Respondent"), violated 2 U.S.C. § 438(a)(4), and instituted an investigation into this matter. The finding was based on the Respondent's use of individual contributor information copied from the Commission's public record for commercial purposes.

II. ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits the use of any information copied from reports and statements filed with the Commission from being sold or used by any person for the purpose of soliciting contributions or for commercial purposes, except that the name and address of any political committee may be used to solicit contributions from such committee. A political committee may submit 10 pseudonyms on each report filed with the Commission to protect against the illegal use of names and addresses of contributors. Such pseudonyms shall be provided on a separate list attached to the appropriate report and shall be excluded from the public record. 2 U.S.C. § 438(a)(4).

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In a series of Advisory Opinions the Commission has allowed expansive use of information found on the public record, but has always reinforced the prohibition on the use of individual names and addresses obtained from such record for the purpose of soliciting contributions or for commercial purposes. For example, in Advisory Opinion 1979-3, the Commission permitted a political committee to release its list of contributors maintained in the committee's files to another organization and to even charge a fee for such list. The Commission emphasized, however, that the committee could not authorize that organization to copy the list from its reports on file with the Commission. It was noted that the source of the information in that instance was the determining factor of whether the Act would be violated.

In Advisory Opinion 1980-78 a candidate was permitted to use information about the total disbursements disclosed by other candidates in previous campaigns in his own letter of solicitation. It was noted that the letter would not include any information about the identity of contributors. In this Opinion the Commission stated that "(t)he focus of the proponents of 2 U.S.C. § 438(a)(4) centered on protecting the privacy of the 'very public spirited citizens' who make contributions to campaigns. The principal, if not sole, purpose of the provision was to protect contributor information and lists from being used for commercial purposes," and further that "(t)he prevention of list brokering, not the suppression of financial information is the purpose of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15."

In Advisory Opinion 1980-101 the Commission allowed the use

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of any information found on its public record for commercial purposes, except the use of information on individual contributors. Here the Commission stated that "(i)t appears from the legislative history of the 1979 amendments to the Act, that a commercial vendor may compile the names and addresses of political committees for the purpose of selling those names but that the prohibition on the copying and use of names and addresses of individual contributors is crucial and so was maintained" (emphasis included).

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In Advisory Opinion 1981-38 the Commission permitted the use of information from its public record in a newsletter for the purposes of subscription solicitation and for stories in the newsletter. In the circumstances of the request individual contributor information was not to be used.

Finally, in Advisory Opinion 1986-25 the Commission prohibited a corporation from compiling and selling contributor information. In that instance the corporation was not unlike Respondent in this current matter. The corporation proposed to compile the names, city, state and zip code of individual contributors on computer tapes and to sell access to this information. Here the Commission noted that "(t)he 'commercial

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purpose' provision has been held to prohibit the copying and selling of contributor information when such lists incorporate nearly all of the identification of individual contributors contained in reports filed with the Commission, thus making such information commercially valuable to list owners, managers, brokers, or those who use such lists."

In each of the above Advisory Opinions, and others, the Commission has repeated its position, supported by the legislative history of the Act, that information about individual contributors maintained in its public record should be accorded special protection from use for the purpose of solicitation or for commercial purposes. See also, Advisory Opinions 1977-66, 1979-18, 1984-2, and 1985-16.

In discussions on the amendments to the Act, Senator Bellmon proposed the addition of the terminology that was later adopted, which prohibited the use of information from the Commission's public record to be used for the purpose of soliciting contributions or for commercial purposes. In his comments, Senator Bellmon stated that,

> the purpose of the amendment is to protect the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party. We all know how much of a business the matter of selling lists and list brokering has become. These names would certainly be prime prospects for all kinds of solicitations, and I am of the opinion that unless this amendment is adopted, we will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment, and in that way tend to discourage them from helping out as we need to have them do.

Senator Bellmon stated further that the provision was intended

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"to protect...the men and women who make contributions to candidates or political parties from being victimized by that practice." 117 Cong. Rec. S30057 (daily ed. August 5, 1971) (Bellmon remarks), reprinted in FEC Legislative History of the Federal Election Campaign Act of 1971 at 581 (GPO 1981). In the House Report on the 1979 amendments to the Act it was noted that the prohibition on the use of individual contributors' names and addresses was maintained. H.R. Report No. 422, 96th Cong., 1st Sess. at 23 (1979), reprinted in FEC Legislative History of Federal Election Campaign Act Amendments of 1979 at 185, 207 (GPO 1983).

B. Analysis

I. The International Funding Institute, Inc., Used Information Copied from the Commission's Public Record for Commercial Purposes.

Respondent is incorporated in the state of Virginia. According to its Articles of Incorporation, the purposes of the organization include "furnishing and performing political and managerial advisory and consulting services...;" and engaging in and conducting "any and all phases of the business of fund raising, by or through advertising, public relations, promotions, marketing, publishing, research and consulting..." At the time of its incorporation, Respondent had two directors, David Hendry and Robert E. Dolan. At the time of the investigation of this matter, Mr. Dolan was the only director, officer and stockholder of the company.

On May 22, 1986, Respondent contracted with Washington On-Line ("WOL"), a service of Legi-Tech, Inc., to receive its

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Campaign Contribution Tracking System ("CCTS"). Respondent retrieved information from the CCTS via a computer terminal. The information retrieved included the amount and date of contributions to a political committee; the identity of the recipient committee; the types of disbursements made by the committee; and the name, address, occupation, employer, and sometimes, the telephone number of individual contributors.

Mr. Dolan, as an officer of Respondent, signed two contracts with WOL on May 22, 1986, to obtain the CCTS, a Master Service Agreement and a CCTS Subscription Agreement. The CCTS contract included a provision that stated that information provided through the CCTS was obtained from reports filed with the Federal Election Commission and that the use of such information for soliciting contributions from other than political committees was prohibited by federal law.

Upon realizing the potential value of the information received retrieved from the CCTS, Mr. Dolan, as an officer of Respondent, decided to market such information in the form of contributor lists. The services of several computer contractors were used to program the information obtained from CCTS into usable form. Two lists resulted from this endeavor, which were known as the "Active Republican Donors" list and the "Active Democrat Donors" list. The only source for the names on these lists was the CCTS. The specific list at issue in this matter is the "Active Republican Donors" list.[1] The computer tape which

1. The "Active Democrat Donors" list was never used for any purpose.

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contained the lists was housed with the Saturn Corporation. Upon receiving orders from list brokerage firms, Saturn produces mailing labels that are subsequently forwarded to a "letter shop" from where the solicitation documents are actually mailed.

Respondent contacted The Best Lists, Inc., a list brokerage firm, and offered the "Active Republican Donors" list to be marketed for profit on behalf of Respondent. The list brokerage firm received a commission for its services and Respondent received the balance of the amount charged to an organization for using the list. The "Active Republican Donors" list was used by approximately four or five different organizations.

According to the contracts between Respondent and WOL, costs for Respondent to obtain the CCTS from WOL included an initial fee of $750, an annual access fee of $500, and an annual subscription of $3,500, totaling $4,750. As evidenced by Respondent's canceled checks, it actually paid at least $3,285 for the CCTS. Respondent received at least $9,513.10 from the Best Lists, Inc., as income derived from the rental of the "Active Republican Donor" list.

II. The International Funding Institute, Inc., Knowing and Willfully Violated the Federal Election Campaign Act of 1971, as amended.

The legislative history of the 1976 amendments to the Act discuss knowing and willful violations. Congressman Hays noted in his comments during the House debates on the Conference Report, that the phrase "knowing and willful" referred to "actions taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong.

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Rec. H3778 (daily ed. May 3, 1976), reprinted in FEC Legislative History of Federal Election Campaign Act Amendments of 1976 at 1078 (1977). The knowing and willful standard has also been addressed in the courts. In Federal Election Commission v. John A. Dramesi for Congress Committee, 640 F.Sup. 985 (D.N.J. 1986), the Court noted that the knowing and willful standard requires knowledge that one is violating the law.

In addition to realizing the commercial value of the information being provided by the CCTS, Respondent also realized the potential illegality of using such information. Therefore, prior to using the lists for any purpose, a legal opinion was obtained from the law firm of LeBoeuf, Lamb, Leiby & MacRae, regarding the constitutionality of Section 438(a)(4) of the Act. According to that document, dated August 11, 1986, Respondent's specific concerns were whether it could supply clients with contributor information obtained from the Commission's public records for the purpose of soliciting contributions and, further, whether obtaining that information from an intermediary would have any effect on any liability. In summary, the legal opinion advised that "if properly challenged, the solicitation restriction on the use of contributor lists filed with the FEC would be found to be an unconstitutional restriction on political speech." The opinion further concluded that, even if the restrictions on solicitations were constitutional and Respondent obtained a list from intermediaries who had copied such list from the Commission's public record, Respondent would not be in violation of the Act if it had no prior knowledge of the source

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of the list.

The facts in this matter demonstrate that Respondent obtained information from the Commission's public record and subsequently used such information for commercial purposes, in a knowing and willful violation of 2 U.S.C. § 438(a)(4). The fact that Respondent obtained this information through an intermediary is inconsequential in this instance, since Respondent was informed that the information obtained from that intermediary, WOL, was derived from the Commission's public record. The contract signed by Respondent's agent expressly stated that the information provided by the CCTS was from reports filed with the Commission.

Moreover, although it is not adopted by reference as an opinion of this Office, it is noted that Respondent's counsel advised in the above referenced legal opinion that "if the IFI obtains a solicitation list from intermediaries that obtained their lists by copying FEC contributor lists, the IFI will not violate the FECA provided it has no knowledge that the list was obtained in such a manner" (emphasis added). Irrespective of this advice, Respondent developed the Active Republican Donors and Active Democratic Donors lists, and subsequently marketed the Active Republican Donors list.

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III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that the International Funding Institute, Inc., knowing and willfully violated 2 U.S.C. § 438(a)(4).

Date 2/9/90

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 9, 1990

Terrence J. Leahy, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
1825 Eye Street, N.W.
Washington, D.C. 20006

RE: MUR 2361
Legi-Tech, Inc.

Dear Mr. Leahy:

Based on a complaint filed with the Federal Election Commission on Ocotber 24, 1985, and information supplied by your client, Legi-Tech, Inc., the Commission, on January 2, 1986, found that there was reason to believe your client violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15, and instituted an investigation of this matter. On July 14, 1987, the Commission made another finding of reason to believe your client violated 2 U.S.C. § 438(a)(4), based on information ascertained in the normal course of carrying out its statutory responsibilities.

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 violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten 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 the 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 whether there is probable cause to believe a violation has occurred.

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A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

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Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2361
Legi-Tech, Inc.	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was initially generated by a complaint filed by the National Republican Congressional Committee ("NRCC") against Legi-Tech, Inc. (MUR 2094). The complaint alleged that Legi-Tech, Inc. (Respondent) copied information from disclosure reports filed by the NRCC and maintained in the Federal Election Commission's ("Commission") public record pursuant to 2 U.S.C. § 438(a)(4). The complaint alleged that Respondent violated the Federal Election Campaign Act of 1971, as amended ("the Act") by copying information from the Commission's public record and using that information for commercial purposes through its computerized Campaign Contribution Tracking System. On January 2, 1986, the Commission found reason to believe Respondent violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15, and instituted an investigation into this matter. On May 22, 1986, following such investigation, the Commission found probable cause to believe that Respondent had violated the Act and Commission regulations.

On July 14, 1987, the Commission made another finding of reason to believe Respondent violated 2 U.S.C. § 438(a)(4). This new finding was based on information obtained through the normal course of investigating another matter under review (MUR 2361). The new finding stemmed from circumstances where Respondent had

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contracted with an entity associated with a political committee registered with the Commission to provide the Campaign Contribution Tracking System to such entity. That committee's subsequent use of the information obtained from Respondent resulted in pseudonyms found on the Commission's public record being solicited for contributions. On that same date, the Commission merged MUR 2094 with MUR 2361. Further investigation followed this action.[1]

II. ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits the use of any information copied from reports and statements filed with the Commission from being sold or used by any person for the purpose of soliciting contributions or for commercial purposes, except that the name and address of any political committee may be used to solicit contributions from such committee. A political committee may submit 10 pseudonyms on each report filed with the Commission to protect against the illegal use of names and addresses of contributors. Such pseudonyms shall be provided on a separate list attached to the appropriate report and shall be excluded from the public record. 2 U.S.C. § 438(a)(4).

Commission regulations further provide an exemption to this

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1. It is noted that this matter was briefed by this Office and a response brief was submitted by Respondents in regard to MUR 2094, prior to its merger with the current matter. This brief incorporates the foregoing brief by this Office, and is also based on the new reason to believe finding made by the Commission on July 14, 1987, and the subsequent investigation.

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use prohibition to the extent that newspapers, magazines, books or other similar communications are permitted to use information copied from the Commission's public record as long as the principal purpose of such communications is not to communicate such information for the purpose of soliciting contributions or for other commercial purposes. 11 C.F.R. § 104.15(c).

In a series of Advisory Opinions the Commission has allowed expansive use of information found on the public record, but has always reinforced the prohibition on the use of individual names and addresses obtained from such record for the purpose of soliciting contributions or for commercial purposes. For example, in Advisory Opinion 1979-3, the Commission permitted a political committee to release its list of contributors maintained in the committee's files to another organization and to even charge a fee for such list. The Commission emphasized, however, that the committee could not authorize that organization to copy the list from its reports on file with the Commission. It was noted that the source of the information in that instance was the determining factor of whether the Act would be violated.

In Advisory Opinion 1980-78 a candidate was permitted to use information about the total disbursements disclosed by other candidates in previous campaigns in his own letter of solicitation. It was noted that the letter would not include any information about the identity of contributors. In this Opinion the Commission stated that "(t)he focus of the proponents of 2 U.S.C. § 438(a)(4) centered on protecting the privacy of the 'very public spirited citizens' who make contributions to

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campaigns. The principal, if not sole, purpose of the provision was to protect contributor information and lists from being used for commercial purposes," and further that "(t)he prevention of list brokering, not the suppression of financial information is the purpose of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15."

In Advisory Opinion 1980-101 the Commission allowed the use of any information found on its public record for commercial purposes, except the use of information on individual contributors. Here the Commission stated that "(i)t appears from the legislative history of the 1979 amendments to the Act, that a commercial vendor may compile the names and addresses of political committees for the purpose of selling those names but that the prohibition on the copying and use of names and addresses of individual contributors is crucial and so was maintained" (emphasis included).

In Advisory Opinion 1981-5 the Commission permitted a candidate to send letters to individual contributors to his opponent's campaign to explain certain alleged defamatory comments made during the campaign. In these circumstances it was significant that the letters were not for the purpose of soliciting contributions or for commercial purposes.

In Advisory Opinion 1981-38 the Commission permitted the use of information from its public record in a newsletter for the purposes of subscription solicitation and for stories in the newsletter. In the circumstances of the request individual contributor information was not to be used.

Finally, in Advisory Opinion 1986-25 the Commission

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prohibited a corporation from compiling and selling contributor information. In that instance the corporation was not unlike Respondent in this current matter. The corporation proposed to compile the names, city, state and zip code of individual contributors on computer tapes and to sell access to this information. Here the Commission noted that "(t)he 'commercial purpose' provision has been held to prohibit the copying and selling of contributor information when such lists incorporate nearly all of the identification of individual contributors contained in reports filed with the Commission, thus making such information commercially valuable to list owners, managers, brokers, or those who use such lists."

In each of the above Advisory Opinions, and others, the Commission has repeated its position, supported by the legislative history of the Act, that information about individual contributors maintained in its public record should be accorded special protection from use for the purpose of solicitation or for commercial purposes. See also, Advisory Opinions 1977-66, 1979-18, 1984-2, and 1985-16.

In discussions on the amendments to the Act, Senator Bellmon proposed the addition of the terminology that was later adopted, which prohibited the use of information from the Commission's public record to be used for the purpose of soliciting contributions or for commercial purposes. In his comments, Senator Bellmon stated that,

> the purpose of the amendment is to protect the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party. We all know how much of a business

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> the matter of selling lists and list brokering has become. These names would certainly be prime prospects for all kinds of solicitations, and I am of the opinion that unless this amendment is adopted, we will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment, and in that way tend to discourage them from helping out as we need to have them do.

Senator Bellmon stated further that the provision was intended "to protect...the men and women who make contributions to candidates or political parties from being victimized by that practice." 117 Cong. Rec. S30057 (daily ed. August 5, 1971) (Bellmon remarks), reprinted in FEC Legislative History of the Federal Election Campaign Act of 1971 at 581 (GPO 1981). In the House Report on the 1979 amendments to the Act it was noted that the prohibition on the use of individual contributors' names and addresses was maintained. H.R. Report No. 422, 96th Cong., 1st Sess. at 23 (1979), reprinted in FEC Legislative History of Federal Election Campaign Act Amendments of 1979 at 185, 207 (GPO 1983).

B. Analysis

I. Legi-Tech, Inc. Copied Information From the Commission's Public Record and Used Such Information for Commercial Purposes.

Legi-Tech, Inc. ("Respondent") is a subsidiary of McClatchy Newspapers. According to Respondent, McClatchy is a diversified company, having holdings in the newspaper industry, radio, cable, and other "new communications technologies." Respondent began operation in 1981 and was incorporated in 1982 in the State of California, which is its principal place of business. Respondent began operating in the State of New York in 1983. It's primary

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business in California and New York provides legislative and political information to customers or subscribers. Respondent develops software from information obtained by monitoring the legislative process in each state and from contributor information filed with each state government regarding state elections. This information is transmitted to subscribers via computers. Subscribers are able to use the information in various ways to research and analyze the legislative process in the respective state.

Upon a decision to begin a similar operation on the federal level, Respondent created Washington On-Line ("WOL"), which is located in Washington, D.C. Two computer information services were developed for distribution. The services are the Bill Text Tracking System and the Campaign Contribution Tracking System ("CCTS"). The CCTS is the service at issue in this matter.

The CCTS began operation on October 1, 1985. Subscribers to the system are provided complete information about the financial activity of federal campaign committees and political action committees that file periodic reports with the Commission. The information provided includes the amount and date of contributions; the identity of the recipient committee; the types of disbursements made by the committee; and the name, address, occupation, employer, and sometimes, the telephone number of individual contributors.

Respondent has admitted throughout these proceedings that the information distributed through the CCTS is obtained from the Commission's public record. This fact is openly displayed on the

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brochure that advertises the system. The brochure includes such phrases as:

> The Campaign Contribution Tracking System includes every piece of relevant information from each FEC report;
>
> Individual contributors donate money to candidates, political parties, or PACs; but individuals are not required to make public disclosure;
>
> All contributions over $200 and committee expenditures must be regularly reported to the FEC;
>
> FEC makes reports public within two days of filing. Records are on paper and microfilm, available only at the FEC;
>
> Washington On-Line obtains FEC reports and enters all relevant information into the Campaign Contribution Tracking System;
>
> You call the system by phone and then search for and retrieve information on your own computer;
>
> ...
>
> Washington On-Line has assembled the first computerized file of FEC reports available for unlimited use. The Campaign Contribution Tracking System;
>
> The system includes all FEC reports filed since 1983: more than 50,000 reports representing 1 million pages of information on 500,000 contributions exceeding $1 billion. Filings are continually updated as new reports become public.

Thus, there is no dispute that the information available through the CCTS was that obtained from the Commission's public record.

There can also be no dispute that Respondent was using such information copied from the Commission's public record for commercial purposes. The same brochure discussed above notes the "low cost" of the service to subscribers. It describes an annual fee to obtain access to the system and states that there is "no

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hourly use charge, connect fees, and other additional costs."

Subscribers to the CCTS generally signed two contract agreements with Respondent to obtain the service. The Master Service Contract ratified an agreement to subscribe to WOL. The subscriber paid a one-time initial fee of seven hundred fifty dollars ($750) and an annual fee of five hundred dollars ($500). The second contract, entitled the CCTS Subscription Contract, required the payment of a subscription fee of three thousand five hundred dollars ($3,500). The Subscription Contract was renewable annually.

The CCTS brochure and the CCTS Subscription Contract both contain disclaimers with regard to information obtained from the public record. The brochure states,

> It is a violation of federal law to sell or use information copied from FEC reports for the purpose of soliciting contributions from other than political committees.

The contract states,

> You understand that information included in the Campaign Contribution Tracking System has been copied by us from reports filed with the Federal Election Commission. It is a violation of federal law to sell or use information copied from such reports for the purpose of soliciting contributions from other than political committees.

It is noted that neither written disclaimer makes a reference to the prohibition on using such information for commercial purposes. Respondent stated that the disclaimer that appears on the CCTS database includes such prohibition.

Moreover, respondent has sold its services to entities that routinely use it to solicit contributions. For example, on May

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22, 1986, the International Funding Institute ("IFI"), a Virginia corporation of which Robert E. Dolan is the only director, officer, and stockholder, contracted with Washington On-Line, a service of Legi-Tech, Inc., to receive its Campaign Contribution Tracking System. IFI retrieved information from the CCTS via a computer terminal. The information retrieved included the amount and date of contributions to a political committee; the identity of the recipient committee; the types of disbursements made by the committee; and the name, address, occupation, employer, and sometimes, the telephone number of individual contributors.

Mr. Dolan, as an officer of IFI, signed two contracts with WOL on May 22, 1986, to obtain the CCTS, a Master Service Agreement and a CCTS Subscription Agreement. The CCTS contract included a provision that stated that information provided through the CCTS was obtained from reports filed with the Federal Election Commission and that the use of such information for soliciting contributions from other than political committees was prohibited by federal law.

Upon realizing the potential value of the information retrieved from the CCTS, Mr. Dolan, as an officer of IFI, decided to market such information in the form of contributor lists. The services of several computer contractors were used to program the information obtained from CCTS into usable form. Two lists resulted from this endeavor, which were known as the "Active Republican Donors" list and the "Active Democrat Donors" list. The only source for the names on these lists was the CCTS. The specific list at issue in this matter is the "Active Republican

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Donors" list.[2] The computer tape which contained the lists was housed with the Saturn Corporation. Upon receiving orders from list brokerage firms, Saturn produces mailing labels that are subsequently forwarded to a "letter shop" from where the solicitation documents are actually mailed.

IFI contacted The Best Lists, Inc., a list brokerage firm, and offered the "Active Republican Donors" list to be marketed for profit on behalf of IFI. The list brokerage firm received a commission for its services and IFI received the balance of the amount charged to an organization for using the list. The "Active Republican Donors" list was used by approximately four or five different organizations.

According to the contracts between IFI and WOL, costs for IFI to obtain the CCTS from WOL included an initial fee of $750, an annual access fee of $500, and an annual subscription of $3,500, totaling $4,750. As evidenced by IFI's canceled checks, it actually paid at least $3,285 for the CCTS. IFI received at least $9,513.10 from the Best Lists, Inc., as income derived from the rental of the "Active Republican Donor" list. American Citizens for Political Action and Mr. Dolan, as treasurer, then rented the Active Republican Donors list from The Best Lists, Inc.

Mr. Dolan indicated that his primary interest was in providing the "Active Republican Donors" list to ACPA for solicitation purposes. Mr. Dolan decided to make the list

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2. The "Active Democrat Donors" list was never used for any purpose.

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available through a list broker in order to maintain an arms-length business relationship between the IFI and ACPA, and to avoid any implication of a corporate contribution to ACPA from the IFI. Through Response Dynamics, the company that conducts mailings on behalf of ACPA, about five test mailings of approximately 5000 names each were conducted using the "Active Republican Donors" list, as noted above.

Furthermore, there have been allegations made concerning telemarketing calls made on behalf of ACPA to persons found in the Republican National Committee's financial disclosure reports. During the telephone solicitations, the caller reportedly implied that there was an association between ACPA and the RNC. As noted above, certain names obtained from WOL also included telephone numbers. ACPA used telemarketing on an on-going basis to solicit contributions.

Thus, there is probable cause to believe Respondent has copied information on individual contributors from reports filed with the Federal Election Commission and sold and used such information for commercial purposes in violation 2 U.S.C. § 438(a)(4).

II. Legi-Tech, Inc. Does Not Qualify as An Exempt Newspaper or Other Similar Communication.

Respondent has asserted that the CCTS must not be viewed in a "vacuum," but within the context of all of the interests held by its parent company, McClatchy Newspapers. It appears that Respondent would place a McClatchy Newspapers "umbrella" over McClatchy's entire operations to include the CCTS, which does not

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qualify as legitimate newspaper activity for the purposes of the Act. It is the position of this Office that the contrary view must be taken. It is not the activity of the entire conglomerate of McClatchy Papers that is at issue in this matter. There is no allegation or evidence before the Commission with regard to whether the other entities held by McClatchy Newspapers have violated the Act. Instead, the CCTS is the sole object of our review.

In support of its position, Respondent partially relies on Legi-Tech, Inc. v. David W. Keiper, et al. 766 F.2d 728 (2d Cir. 1985). In this case the primary issue was whether the Legislative Bill Drafting Commission of the State of New York could be enjoined from prohibiting Respondent from obtaining legislative information from the state's own computer database. The State had enacted a law specifically prohibiting services such as Respondent from obtaining its database and then using it as its own to sell to customers. The information sought by Respondent in this case was that pertaining to legislative proceedings within the state. Respondent, on its own accord, added other information to the database to include voting and attendance records of legislators and campaign contributions to such legislators. Within the discussion of the case, the court referred to Respondent as "an organ of the press." Id., 730. Such language falls short of labeling Respondent a newspaper, magazine, book or other similar communication exempted by 11 C.F.R. § 104.15(c). Even when discussing the computer database operated by the state the court described it as "an

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organ of the press." Id., 733.

Moreover, Respondent's method of gathering information for its state and federal legislative databases can be distinguished from that used to obtain information for the CCTS. According to its own description, to obtain certain information with regard to legislative proceedings Respondent's staff or "reporters" actually attend legislative sessions and take notes. Information obtained through these "reporters" is also included in the legislative databases. The CCTS information is obtained merely by purchasing tapes from the Commission. Respondent stated that an outside firm was used to locate telephone numbers for contributors to be included in the database. Clearly, Respondent is not functioning as a newspaper with its CCTS.

The emphasis on protecting individual contributors from such activities is reflected in NRCC v. Legi-Tech Corp., 795 F.2d 190 (D.C. Cir. 1986), which discussed 2 U.S.C. § 438(a)(4). The court said that Section 438(a)(4) applies to "any individual or organization that sells information obtained from FEC reports for a profit, including Legi-Tech." Id. at 192. But the court recognized that to interpret Section 438(a)(4) literally would "bar newspapers and other commercial purveyors of news from publishing the information contained in those reports under any circumstances." Clearly, the court said, this result would frustrate the intended purpose of the disclosure provisions of the Act. Id.

The court in Legi-Tech recognized, however, that the "commercial purposes" proviso should not be taken literally.

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As the court noted, the legislative history indicates that Section 438(a)(4) was added to the Act for the intended purpose of protecting campaign contributors from the deluge of solicitations and harassment they would receive if "list brokers" were allowed to sell donor lists on file at the Commission. Id. The court added that the history of Section 438(a)(4) explicitly indicates that newspapers and other like publications are not prohibited by the commercial purposes provision from using such information as news or research regarding the sources of campaign funds. See id. at 193; see also 117 Cong. Rec. 30057-58.

After examining the Act and its legislative history, the court also said that Congress has "left a gap" for the Commission to fill "in determining what commercial activities fall within the proviso's prohibition (actively akin to that of a list broker) and what commercial activity is not proscribed (actively akin to that of a newspaper)." Id. But the Commission has not yet addressed how the prohibition found in Section 438(a)(4) should be applied to organizations such as Respondent's tracking service. But see, FEC v. American Int'l Demographic Serv., Inc., [AIDS] 629 F. Supp. 317 (E.D. Va. 1986) (the court upheld the Commission's finding that AIDS violated the Act by renting out lawfully obtained FEC tapes for the purpose of list brokering). The court recognized that it is the Commission, not the court, that must make the initial determination as to whether a particular activity is prohibited commercial activity. Id. at 193-94.

As discussed above, Respondent's CCTS does not qualify as a

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newspaper, magazine, book or similar communication to exempt its use of individual contributor information from the definition of commercial purpose. Respondent's activity of selling such information obtained directly from the Commission's public record via its CCTS is a violation of the Act.

III. GENERAL COUNSEL'S RECOMMENDATION

1. Find probable cause to believe that Legi-Tech, Inc., violated 2 U.S.C. § 438(a)(4).

2. Find probable cause to believe that Legi-Tech, Inc., violated 11 C.F.R. § 104.15.

2/9/90
Date

Lawrence M. Noble
General Counsel

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90 MAR -8 PM 3:53

ROBERT E. DOLAN
2700 Virginia Ave., N.W.
Suite 404
Washington, D.C. 20037

March 9, 1990

90 MAR -8 AM 11:44

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

Re: MUR 2361
International Funding Institute, Inc.
American Citizens for Political Action, and
Robert E. Dolan, as treasurer

Dear Mr. Noble:

This is to formally advise you that the above-named respondents in MUR 2361 are now represented by David M. Kopstein, Esquire, Dross & Levenstein, 1825 Eye Street, N.W., Suite [illegible], Washington, D.C. 20006.

Very truly yours,

Robert E. Dolan

cc: David M. Kopstein, Esquire
(296-7037)

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 9, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Terrence J. Leahy, Esquire
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
1825 Eye Street, N.W.
Washington, D.C. 20006

RE: MUR 2361
Legi-Tech, Inc.

Dear Mr. Leahy:

On February 9, 1990, you were mailed a brief stating the position of the General Counsel on the legal and factual issues in this matter under review. This brief and accompanying letter notified you of the General counsel's intent to recommend to the Commission a finding of probable cause to believe Legi-Tech, Inc., violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15.

To date, you have not responded to the General Counsel's brief. Unless we receive a response from you within 10 days of your receipt of this letter, this Office will circulate a report to the Commission recommending a finding of probable cause. You should submit 10 copies of your response to the Secretary of the Commission, and forward 3 copies to the Office of the General Counsel.

Should you have any questions, please contact Daniel J. Blessington, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

LMNoble (GF)

Lawrence M. Noble
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2361
International Funding Institute, Inc.	)	
American Citizens for Political Action	)	
and Robert E. Dolan, as treasurer	)	

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
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RESPONDENTS' MOTION OUT OF TIME
FOR LEAVE TO FILE BRIEF

International Funding Institute, Inc., American Citizens for Political Action and Robert E. Dolan, as treasurer, hereby request leave to file the accompanying brief in opposition to the General Counsel's briefs of February 9, 1990.

The Respondents' delay is attributable to the fact that they have only just succeeded in retaining new counsel, who required sufficient time to review the file.

Respectfully submitted,

David M. Kopstein
DROSS & LEVENSTEIN
1825 Eye Street, N.W.
Suite 1201
Washington, D.C. 20006
(202) 296-7032

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2361
International Funding Institute, Inc.	)	
American Citizens for Political Action	)	
and Robert E. Dolan, as treasurer	)	

RESPONDENTS' BRIEF

International Funding Institute, Inc., American Citizens for Political Action and Robert E. Dolan, as treasurer, submit this brief in opposition to the General Counsel's Briefs of February 9, 1990, which recommend that the Commission find probable cause to believe that a violation of 2 U.S.C. §438(a)(4) has occurred.

The Commission has already been apprised of the Respondents' position with respect to whether a violation of 2 U.S.C. §438(a)(4) occurred and whether, in any event, the statutory provision in question is constitutional.[1]

The only new matter raised by the General Counsel's briefs is the shocking assertion that the alleged violation was "knowing and willful." In making this assertion, the General Counsel relies upon a certain legal opinion, dated August 11, 1986, that IFI[2] received from the law firm of LeBoeuf, Lamb,

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[1]See, letter dated April 6, 1987 from Kenneth A. Gross, Esquire to Sandra Robinson, Esquire on behalf of ACPA and Dolan (Exhibit "A" hereto) and letter dated May 13, 1988 from Kenneth A. Gross, Esquire to Lawrence M. Noble, Esquire on behalf of IFI (Exhibit "B" hereto). The arguments stated therein are incorporated herein by reference.

[2]The General Counsel's briefs allege that Mr. Dolan obtained this opinion on behalf of IFI. In fact, the opinion is specifically directed to Mr. David Hendry of IFI. Mr. Dolan's name appears nowhere on it. The General Counsel's attempt to impute this knowledge to Mr. Dolan and ACPA finds

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Leiby & MacRae. The opinion purports to respond to an inquiry as to whether IFI "may supply [its] clients with the names of contributors who appear on disclosure statements filed with the FEC pursuant to §102 of the FECA...." As the General Counsel notes, the opinion concludes that §438(a)(4) would not survive a constitutional challenge. The General Counsel does not dispute this conclusion.

Assuming that a violation of §438(a)(4) occurred at all, the opinion letter of August 11, 1986 does not warrant a further assertion that such a violation was "knowing and willful" under §437g(a)(5)(B).

First, the letter purports to respond to a hypothetical proposed course of action. It does not permit one to conclude that Respondents had knowledge that the particular list here in question had been compiled from a prohibited source.

Second, the insistence that Respondents were "knowing and willful" lawbreakers, even though they were armed with an opinion from a reputable law firm that the statutory provision in question would be found unconstitutional, is highly troubling, given the statutory scheme.

It has been recognized that Congress, in enacting the FECA, had serious misgivings about the constitutionality of certain of its provisions. See, Athens Lumber Company, Inc. v. Federal Election Commission, 689 F.2d 1006, 1009 (D.C. Cir.

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support in the record.

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1982); on rehearing, 718 F.2d 363 (D.C. Cir. 1983); cert. denied, 465 U.S. 1092, 104 S.Ct. 1580, 80 L.Ed.2d 114 (1984). Accordingly, Congress encouraged affected persons to challenge the constitutionality of the FECA in court and made special provisions to facilitate such challenges. 2 U.S.C. §437h. Here, the Respondents' conduct had the desirable effect of eliciting the Commission's position with respect to the applicability of §438(a)(4) to such conduct, after which the Respondents promptly refrained from further similar activities. This has set the stage for Respondents to seek a declaratory judgment regarding the constitutionality of §438(a)(4). Such an action is being filed today in the United States District Court for the District of Columbia.

Thus, this is a test case of the type that was specifically envisioned by Congress. Clearly, Congress did not intend to "raise the ante" for persons seeking to challenge the constitutionality of specific provisions of the Act by authorizing the Commission to declare such persons to be "knowing and willful" violators. At least as a matter of prosecutorial discretion, such a position is wholely inappropriate.

At this juncture, the only appropriate course for the Commission to take is to stay all administrative proceedings herein pending the disposition of the declaratory judgment action. If the action is successful, the administrative case

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can be dropped. If the action is unsuccessful, then the conciliation process can be pursued.

Respectfully submitted,

David M. Kopstein
DROSS & LEVENSTEIN
1825 Eye Street, N.W.
Suite 1201
Washington, D.C. 20006
(202) 296-7032

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 1990, a copy of the foregoing document was served by messenger upon:

Lawrence M. Noble, Esquire
Dan Blessington, Esquire
Office of the General Counsel
999 E St., N.W.
Washington, D.C. 20463

David M. Kopstein

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333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
312/407-0700

April 6, 1987

Sandra Robinson, Esquire
Office General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2307 - American Citizens for Political Action
Robert Dolan, as Treasurer

Dear Ms. Robinson:

American Citizens for Political Action ("ACPA") and Robert Dolan, as treasurer, respectfully submit this response to the Commission's finding of reason to believe. Attached to this response are the answers to the questions which accompanied the reason to believe finding. This response demonstrates that the Commission should take no further action and close the file against the respondents.

I. ACPA's Conduct was Permissible

Over the past election cycle, ACPA has developed an extensive mailing list and has used the proceeds from the use of the lists to make expenditures on behalf of candidates who are sympathetic to its political philosophy. ACPA's contributor base is essential to its ability to carry out its political aims. As part of that process, ACPA arranged through its treasurer, Robert Dolan, to obtain additional names for its mailing list when it heard of the Washington On-Line ("WOL") service. WOL is a computer service which provides the names and addresses of contributors. Consequently, on May 22, 1986, Mr. Dolan through his company, International Funding Institute, contracted with WOL for services. The names were brokered to ACPA by a company called The Best Lists ("TBL"). Finally, the names which are the subject of this matter, identified by codes AQTX2, AQVX1 and AQ.OX, were put into use on October 20, and 24, 1986, and

EXHIBIT "A"

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November 24, 1986, respectively. Each mailing contained approximately 5,000 names (see answer to Question 5 for exact numbers).

ACPA used the information originally obtained from WOL with the understanding that it was permissible. The WOL contract provides no warning that the use of the materials is prohibited. Furthermore, Mr. Dolan sought a legal opinion concerning the use of the service and was assured of its legality.

However, ACPA and Mr. Dolan do not wish to engage in conduct that may be viewed as illegal. It is for that reason, that ACPA has discontinued the use of the names obtained from WOL. Although in taking such action, the respondents do not waive their constitutional rights -- rights which are bottomed on legal precedent which overwhelmingly substantiates the legality of the respondents' conduct. However, even putting these weighty constitutional concerns aside, based on prior Commission action the Commission should take no further action in this matter.

II. Prior Commission Action

In MUR 1869 the Commission dismissed allegations filed by the Americans for Democratic Action ("ADA") against the American Democratic Political Action Committee ("ADPAC"). In that matter, the Commission did not attempt to ascertain whether ADPAC obtained names from a source which may have copied ADA's contributors from the public record. This was true even though there was some evidence suggesting that ADA names may have come from the FEC reports. Although the ADA did not support their allegations with the use of pseudonyms, they did claim that their contributor names were not made available to the public except through the FEC record and did show that ADPAC in fact solicited their contributors. In response ADPAC denied the allegations and described their solicitation practices as follows:

> ADPAC utilizes prospect lists, for the telephone bank and direct mail programs, which are rented from list managers and brokers who, in turn, rent and manage lists owned by candidates

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> and organizations. In those rental arrangements, ADPAC is not provided with nor otherwise aware of the original owner's identity; lists are referred to solely as Active Liberal Donors, Democratic Activists . . . and other generic terms.

In the present case the mechanics of the list acquisition and use process were similar. However, in MUR 1869 every presumption weighed in favor of the respondent. The Commission concluded that the respondent did not obtain the names from a source that may have copied the information from the public record and found no reason to believe a violation occurred without an investigation. In the present case, the respondent should be entitled to the same treatment. It is true that in the present MUR, the Commission has evidence that the names were copied from the public record by WOL. The culpability of the user of the list, however, should be treated in a manner consistent with MUR 1869.

III. ACPA's Conduct was Constitutional

While an agency is not empowered to declare the statute it administers unconstitutional, the agency is charged with responsibility of finding a construction of the statute which avoids the constitutional question. See Crowell v. Benson, 285 U.S. 22, 62 (1932). This argument is particularly compelling when as in the present case, the constitutional infirmity of 2 U.S.C. § 438(a)(4) looms so large. Prior restraint of the activity in question can be justified only on the basis of a compelling governmental interest. The legislative history to § 438(a)(4) suggests that the governmental concern in placing the sale or use restriction on the public information was the privacy of the individual contributor. However, the restriction on the use of names for solicitation purposes is not the type of governmental interest that has been held to justify such a restraint. Such a restriction may be sustained only under the most compelling circumstances, which do not exist in this case. See Metromedia, Inc. v. San Diego, 453 U.S. 490 (1981). In that case the Court invalidated a billboard restriction that applied only to noncommercial advertisements and not commercial ones. The Court

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in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Counsel, Inc., 425 U.S. 748, 761 (1976), stressed that speech is protected under the First Amendment "even though it is carried in a form that is 'sold' for profit". See Buckley v. Valeo, 424 U.S. 1, 35-59 (1976); New York Times Co. v. Sullivan, 376 U.S. 254, 266 (1964).

In Ryan v. Kirkpatrick, 669 S.W.2d 215 (Mo. 1984), the Supreme Court of Missouri concluded that a Missouri statute which is almost identical to § 438(a)(4) was unconstitutional. The court noted the only conceivable justification for a sale or use restriction on public information is an invasion of privacy. However, the Supreme Court has already addressed this issue and concluded that such a potential invasion of privacy does not constitute a sufficient state interest to infringe protected speech. Consolidated Edison v. Public Service Commission, 447 U.S. 530, 542-45, n. 11 (1980) (the Court stated that "the customer of Consolidated Edison may escape exposure to objectionable material simply by transferring the bill insert from the envelope to the wastebasket"). See Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 633 (the Court concluded that door-to-door solicitation, which is much more of an intrusion than receiving mail, does not constitute a sufficient invasion of privacy to justify banning such practice). The Missouri court in Ryan described as follows the alternatives a person has if he does not want to be solicited:

> There are ample revetments of defense to repel unwanted forays by fund seekers. Offended addressees of campaign solicitations may, of course, ignore them. And notice may be given to the Post Office Department to halt further mailings. [citations omitted].

669 S.W. at 219.

These inconveniences pale when weighed against the First Amendment rights of the political speech in issue in this matter.

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IV. Conclusion

The respondents did not copy any information from the public record, they merely used information purchased from a third party. To find a violation in this attenuated circumstance flies in the face of the established principal that the Commission should construe the statute to avoid raising constitutional issues. To construe § 438(a)(4) as a violation under the facts of this case contravenes that principal and squarely confronts the respondents' constitutional rights. Moreover, as a practical matter, the Commission has already achieved greater relief than could be achieved through a protracted proceeding. Not only do the respondents believe that they would ultimately prevail if the Commission were to challenge this matter through the courts, but even if the constitutionality of the provision were upheld, and the respondents continued to use the list through the pendency of such proceedings, the complainants and the Commission would have won a Pyrrhic victory.

The assessment of a penalty and an injunction against using such lists several months or years from now would do the complainants no good. Thus, the complainants and the FEC have achieved the most effective relief that could be obtained in such a matter, the immediate cessation of the use of lists. Thus, unlike the usual situation where "corrective action" is taken such as a respondent returning an illegal contribution or amending a reporting violation, substantive relief has already been achieved with little or no damage to the complainants or the public.

Therefore, it is respectfully requested that the Commission take no further action, (which will leave the reason to believe finding intact) and that the Commission impose no further penalty.

Very truly yours,

Kenneth A. Gross

Attachment

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SKADDEN, ARPS, SLATE, MEAGHER & FLOM

1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2107

202 371-7000

TELEX 904343
SKARSLAW WASH
TELECOPIER
202 393-5760

DIRECT DIAL
202 371-

919 THIRD AVENUE
NEW YORK, NEW YORK 10022
212 735-3000

ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108
(617) 573-4800

ONE RODNEY SQUARE
WILMINGTON, DELAWARE 19801
(302) 651-3000

300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
213 687-5000

333 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60606
(312) 407-0700

8 FLOOR, HIBIYA CENTRAL BUILDING
1-2-9 HIBIYA, SHINBASHI
MINATO-KU, TOKYO 105, JAPAN
011-81-3-588-3850

May 13, 1988

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
Attn: Sandra Robinson, Esq.

Re: MUR 2361
International Funding Institute, Inc.

Dear Mr. Noble:

This letter is in response to the Federal Election Commission's ("FEC" or the "Commission") finding of reason to believe that the International Funding Institute, Inc. ("IFI") violated 2 U.S.C. § 438(a)(4). Attached to this response are responses to the Commission's request for documents.

IFI, a Virginia corporation, contracted with Washington On-Line ("WOL") for computer services which provided the names and addresses of contributors. IFI denies, however, that the contract it entered into with WOL contained a provision which stated that the source of the information was from the Commission's public record. IFI merely put the names in a form that made it suitable for brokering.

For the same reasons set forth in the responses of American Citizens for Political Action ("ACPA"), IFI believes it did not violate the law. It is inconceivable that IFI is subject to punitive action for using names of individuals which are in the public domain. Particularly when there is little doubt that those contributors were aware that their names would be disclosed, as a matter of law, on the public record. Even if such conduct constitutes a technical violation of the law, there are several mitigating factors that the Commission should take into consideration in assessing this matter.

EXHIBIT "B"

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1. IFI ceased the alleged conduct as soon as the use of the names were called into question.

2. IFI made very limited use of the names. (Those mailings were described in ACPA's response.)

3. IFI suffered financial losses as result of the WOL contract.

4. IFI obtained a formal written legal opinion from a major law firm (not the firm presently representing IFI) which assured it of the legality of its conduct. Based on that opinion, IFI undertook the activity in question.

5. IFI has fully cooperated in this investigation.

6. If the Commission decides to pursue this matter further, IFI requests pre-probable cause conciliation.

Since IFI used the WOL names on a limited basis, incurred a substantial loss after expenses, and voluntarily discontinued the use of list, it urges the Commission to take no further action against it. Alternatively, if the Commission intends to pursue this matter further, IFI requests that it enter into pre-probable cause conciliation pursuant to 11 C.F.R. § 111.18(d).

Sincerely,

Kenneth A. Gross

Attachments

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FEDERAL ELECTION COMMISSION
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90 MAR 26 PM 4:07

SENSITIVE
EXECUTIVE SESSION
APR 3 1990

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
International Funding Institute, Inc.	)	
	)	MUR 2361
American Citizens for Political Action and Robert E. Dolan, as treasurer	)	

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

On February 26, 1987, the Federal Election Commission ("the Commission") found reason to believe American Citizens for Political Action and Robert E. Dolan, as treasurer, ("ACPA") violated 2 U.S.C. § 438(a)(4) with regard to the allegations in the complaint in MUR 2307. On July 14, 1987, the Commission again found reason to believe ACPA violated 2 U.S.C. § 438(a)(4). On that same date, the Commission merged MUR 2307 and MUR 2346 with MUR 2361. On April 6, 1988, the Commission found reason to believe the International Funding Institute, Inc., ("IFI") violated 2 U.S.C. § 438(a)(4).

Following an investigation and attempts to conciliate this matter with ACPA and IFI prior to a finding of probable cause to believe, the Office of the General Counsel mailed briefs to ACPA and IFI on February 9, 1990, in which the General Counsel recommended findings of probable cause to believe ACPA and IFI knowingly and willfully violated 2 U.S.C. § 438(a)(4).

On March 9, 1990, counsel for ACPA and IFI filed a response brief. Also, on that same date, counsel for ACPA and IFI filed a civil suit in the United States District Court for the District

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of Columbia on behalf of Robert E. Dolan against the Commission, in which Dolan challenged the constitutionality of 2 U.S.C. § 438(a)(4). The suit asks that the question be certified to the United States Court of Appeals.

II. ANALYSIS

An analysis of the issues and the basis for the General Counsel's probable cause recommendations are set out in the General Counsel's briefs to ACPA and IFI, dated February 9, 1990, which are incorporated by reference in this report.

Counsel finds fault with the knowing and willful recommendation in the General Counsel's briefs. Counsel argues that Congress had misgivings about the constitutionality of various provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and therefore encouraged persons to challenge its consitutionality and made special provisions to facilitate such challenges. He further notes that IFI had obtained a legal opinion that concluded Section 438(a)(4) would not survive a constitutional challenge. He posits:

> Here, the Respondents' conduct had the desirable effect of eliciting the Commission's position with respect to the applicability of §438(a)(4) to such conduct, after which the Respondents promptly refrained from further similar acitivities. This has set the stage for Respondents to seek a declaratory judgment regarding the constitutionality of §438(a)(4). Such an action is being filed today in the United States District Court for the District of Columbia.
>
> Thus, this is a test case of the type that was specifically envisioned by Congress. Clearly, Congress did not intend to "raise the ante" for persons seeking to challenge the constitutionality of specific provisions of the Act by authorizing the Commission to declare such persons to be "knowing and willful" violators. At least as a matter of prosecutorial discretion, such a position is wholely inappropriate.

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This Office does not agree. The discussion in the briefs to ACPA and IFI provide a basis for the knowing and willful portion of the recommendation, notwithstanding counsel's arguments that this was part of a plan to create a test case. That constitutional issues are implicated does not obviate the knowing and willful nature of the violation here.

Counsel for ACPA and IFI, in the response brief, also requests that the Commission stay any probable cause determination until after a ruling on the constitutional challenge in the separate civil suit. The Office recommends that the Commission reject this request. Instead, this Office concludes that the preferable approach would be to find probable cause and offer a conciliation agreement to ACPA and IFI and to file a civil suit, if conciliation cannot be reached within 30 days. This approach would permit a more comprehensive resolution of the questions regarding the constitutionality of the statute and ACPA's and IFI's alleged violations of it.

Accordingly, this Office recommends that the Commission find probable cause to believe that the International Funding Institute, Inc., and American Citizens for Political Action and Robert E. Dolan, as treasurer, knowingly and willfully violated 2 U.S.C. § 438(a)(4).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

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IV. RECOMMENDATIONS

1. Find probable cause to believe that International Funding Institute, Inc. knowingly and willfully violated 2 U.S.C. § 438(a)(4).

2. Find probable cause to believe that American Citizens for Political Action and Robert E. Dolan, as treasurer, knowingly and willfully violated 2 U.S.C. § 438(a)(4).

2. Approve the attached conciliation agreements and letters.

3/26/90
Date

Lawrence M. Noble
General Counsel

Attachments:
1. Conciliation Agreements (2)
2. Letters (1)

Staff assigned: Daniel J. Blessington

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
International Funding Institute, Inc.	)	
	)	MUR 2361
American Citizens for Political Action and Robert E. Dolan, as treasurer	)	
	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of April 3, 1990, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 2361:

1. Find probable cause to believe that International Funding Institute, Inc. knowingly and willfully violated 2 U.S.C. § 438(a)(4).

2. Find probable cause to believe that American Citizens for Political Action and Robert E. Dolan, as treasurer, knowingly and willfully violated 2 U.S.C. § 438(a)(4).

(continued)

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3. Approve the conciliation agreements and letters attached to the General Counsel's report dated March 26, 1990 and the Addendum dated April 2, 1990.

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

Attest:

4-5-90
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 9, 1990

David M. Kopstein
Dross & Levenstein
1825 Eye Street, N.W.
Suite 1201
Washington, D.C. 20006

RE: MUR 2361
International Funding
Institute, Inc.
American Citizens for
Political Action and
Robert E. Dolan, as treasurer

Dear Mr. Kopstein:

On April 3, 1990, the Federal Election Commission found that there is probable cause to believe your clients knowingly and willfully violated 2 U.S.C. § 438(a)(4), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the sale or use of names copied from reports filed with the Commission for solicitation purposes or for commercial purposes."

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved 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 accept the agreement. Please make your check for the civil penalty payable to the Federal Election Commission.

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If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Daniel J. Blessington, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

9704384239

OGC 5863

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2107
(202) 371-7000

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(202) 371- 7170

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WILMINGTON

April 6, 1990

HAND DELIVERED

Daniel J. Blessington, Esquire
Federal Election Commission
999 E Street, N.W., 6th Floor
Washington, D.C. 20463

Re: MUR 2361, Legi-Tech, Inc.

Dear Mr. Blessington:

This is to confirm our conversation today in which I informed you that Legi-Tech, Inc. had asked me to respond on its behalf to the Commission in connection with the captioned MUR. (Douglas A. Rediker will be working with me on Legi-Tech's behalf.) In that call, I also requested that we be permitted to file our response to the General Counsel's brief on or before May 4, 1990.

Although the General Counsel's brief was dated February 9, I have been unable to locate a copy of the brief (other than the copy you provided on Tuesday). Moreover, I did not receive your March 9 letter to Mr. Terrence Leahy of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo until April 2. As I told you, the letter was forwarded to me because I was a partner on the matter at Mintz, Levin. Neither Mr. Leahy nor I are at Mintz, Levin any longer.

As the attached photo copied envelopes show, your March 9 letter, providing us 10 days to respond, was mailed from the FEC on March 20. (It was delivered to Mintz, Levin on March 27, forwarded to Mr. Leahy at his home and then forwarded to me here, where it arrived on Monday.)

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OFFICE OF GENERAL COUNSEL

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Again, I appreciate your cooperation regarding this matter and I look forward to hearing from you on our request.

Sincerely,

Thomas J. Casey

Thomas J. Casey

Enclosures

cc: Douglas A. Rediker, Esquire

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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PM
20 MAR
1990

Begin an Adventure at Giant Prop
Collect Stamps

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Federal Election Commission
617

Terrence J. Leahy, Esquire
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
1825 Eye Street, N.W.
Washington, D.C. 20006

CERTIFIED
#438970

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SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address.
2. ☐ Restricted Delivery.

3. Article Addressed to:

Terrence J. Leahy, Esquire
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
1825 Eye Street, N.W.
Washington, D.C. 20006

4. Article Number
438970

Type of Service:
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature – Addressee
X

6. Signature – Agent
X

7. Date of Delivery
3/27/90

8. Addressee's Address *(ONLY if requested and fee paid)*

PS Form 3811, Feb. 1986 MUR 2361 Blessington DOMESTIC RETURN RECEIPT

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Lorley
4820 Magnolia
Chevy Chase MD 20815

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Mr. Tom Casey
Skadden, Arps
1440 New York Ave NW
Washington, DC 20005

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 11, 1990

Thomas J. Casey, Esquire
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

RE: MUR 2361
Legi-Tech, Inc.

Dear Mr. Casey:

This is in response to your letter dated April 6, 1990, requesting an extension of time until May 4, 1990 to respond to the General Counsel's brief in this matter. After considering the unusual circumstances described in your letter, and in conversations with Mr. Blessington of this Office, I have granted the requested extension. Accordingly, your response is due by the close of business on May 4, 1990.

If you have any questions, please contact Mr. Blessington at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

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SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 NEW YORK AVENUE, N.W.
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May 3, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 MAY -3 PM 3:05

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

Re: MUR 2361

Dear Mr. Noble:

This letter responds to your letter to Terrence J. Leahy of February 9, 1990, to which you attached the General Counsel's recommendation that the Commission find probable cause to believe that respondent Legi-Tech, Inc.("Legi-Tech") violated 2 U.S.C. §438(a)(4) and 11 C.F.R. §104.15. For the reasons set forth below, Legi-Tech believes that the recommendation of the General Counsel should be rejected by the Commission, and instead, a finding that no further action be taken be made.*

Background

This most recent recommendation by the General Counsel is the latest in an over five year investigation which has yet to yield any facts which would support a finding that any violation of the Federal Election Campaign Act (the "Act") by Legi-Tech occurred.

Having submitted extensive pleadings and correspondence in response to the Commission's findings in MUR 2094, which dealt with virtually the same issues and facts as those presented in MUR 2361, Legi-Tech refers

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* By letter dated April 11, 1990, Legi-Tech was granted an extension of time to respond to the General Counsel's brief until May 4, 1990.

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the Commission to those filings for a statement of facts and complete legal analysis of the issues before it.* This letter is intended to briefly recount to the Commission the most salient points raised in those earlier pleadings.

As a threshold matter, Legi-Tech reasserts its earlier position that the Commission has exceeded its authority by consolidating MUR 2094 with MUR 2361, and initiating a new investigation. Having (erroneously) found, in MUR 2094, probable cause to believe that Legi-Tech violated the same statutory provision that is the subject of MUR 2361, the Commission must necessarily have terminated its investigation of Legi-Tech's activities. 11 C.F.R. §111.16. Moreover, since the almost three year investigation of MUR 2361 (in addition to the two years of MUR 2094) has not uncovered, much less alleged, any new factual assertions as to the conduct of Legi-Tech, we strongly urge the Commission to take no further action against Legi-Tech. There was no basis for its finding of probable cause three years ago, and, there is no basis for it now.** In fact, the only new fact, conspicuously

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* Specifically, Respondent refers to submissions filed on November 15, 1985, February 6, 1986, June 23, 1986, October 22, 1986, March 17, 1987 and August 31, 1987.

** The General Counsel's February 9, 1990 brief is no more than a recapitulation of is earlier submissions in MUR 2094, with the addition of approximately three pages of new factual assertions. See General Counsel's Brief at 9-12. These three pages are comprised exclusively of allegations of conduct on the part of other respondents in the MUR. There is not a single allegation of any specific conduct on the part of Legi-Tech, or any of its affiliated entities. It is the responsibility of the FEC, not Legi-Tech, to monitor illegal uses of contributor information. Legi-Tech cannot be responsible for uses of this information by others when, as here, Legi-Tech's service contains the same warnings to users regarding prohibited uses as do the FEC's own databases.

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absent from the General Counsel's recommendation, is that the service provided by Legi-Tech which forms the basis for the investigation in both MUR 2094 and 2361 was discontinued in 1988. Thus, there is even less reason for pursuing this matter now than there was three years ago.

Argument

The following is a recitation of Legi-Tech's previously briefed position in response to the assertions of the General Counsel and the Commission.

The Statute and Regulation, As Applied To Legi-Tech, Are Unconstitutional

If the Commission construes Section 438(a)(4) of the Act and Commission regulation 104.15 as recommended by the General Counsel, it will inevitably result in a judicial declaration that the sale and use restriction of Section 438(a)(4) is unconstitutional. A similar state statute was declared unconstitutional in Ryan v. Kirkpatrick, 699 S.W.2d 215 (Mo. 1984) (en banc).*

• The constitutional analysis to be applied in this case is clear: The sale or use restriction bars publication of a particular type of political speech. Such prior restraint can be justified only in extraordinary circumstances and only on the basis of a compelling government interest. Here, the restriction is especially hard to justify because the nature of the speech being restricted is so purely political. The only interest which can be advanced in upholding the statute is the need to protect campaign contributors from harassment by solicitors who may misuse information obtained from FEC reports. Regulations which are intended to prevent mere

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* As stated by the court in Ryan, "[b]y placing the information in the public domain, the state must have presumed that the right of privacy gives way to the public interest in this information. Certainly the right of privacy vanishes with the required public disclosure of the requisite information." 699 S.W.2d at 218-19.

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public annoyance with those exercising First Amendment rights have frequently been held invalid. The release of names and addresses is not the type of government interest which has been held to justify prior restraint. Moreover, the statute does not advance that interest because the information contained in the FEC reports is already freely available to the public.

• The sale or use provision is also hopelessly vague and overbroad. Especially in the area of First Amendment rights, such statutory vagueness and overbreadth compels a finding that the statute is unconstitutional.

• The General Counsel's recommendation simply ignores the fundamental judicial principal that statutes and regulations should be interpreted to avoid constitutional infirmities, and that constitutional issues should be avoided whenever possible. See Lowe v. Securities and Exchange Comm'n, 472 U.S. 181, 105 S.Ct. 2557, 2572 (1985); United States v. Clark, 445 U.S. 23, 27 (1980). Legi-Tech's activities served to advance the Commission's primary mission -- disclosure of campaign-related information vital to the political process. Its activities are completely protected by the Constitution.

Legi-Tech is Entitled to Protection
As A Member Of The Press

Despite past admonitions by the courts to the Commission to tread lightly when it investigates the activities of the press, the General Counsel asserts that Legi-Tech, a subsidiary of the diversified media company McClatchy Newspapers, does not qualify for the exemption from the commercial sale or use provision found in 11 C.F.R. §104.15, which protects the use of information obtained from publicly disclosed FEC reports in "newspapers, magazines, books, or other similar communications." This is clearly an erroneous misapplication of the regulation.

• Legi-Tech's electronic publication activities fully complied with the Act and regulations promulgated thereunder. It is clear from the legislative history of Section 438(a)(4) that it was enacted to prevent

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list brokering. 117 Cong. Rec. S 30058 (1971). In contrast, Legi-Tech's identification of contributors was part of a broader electronic information service directed primarily to: (i) the media; (ii) special interest groups, including lobbyists, law firms, etc.; (iii) the "political establishment", including elected officials, staffs and political parties; and (iv) corporate groups, including defense contractors, think tanks, etc. Under any interpretation, Legi-Tech was never a list broker.

- The service offered by Legi-Tech was intended to disseminate and update as rapidly as possible information which is otherwise publicly available at the FEC. In this sense, it was no different that the Wall Street Journal stock market quotations or USA Today's sports statistics. The Second Circuit specifically noted the existence of "electronic newspapers" which would be entitled to the same treatment as hard-copy newspapers. Legi-Tech v. Keiper, 766 F.2d 728, 732 (2d Cir. 1985).

- Legi-Tech offered far more than simply the FEC's contributor lists to its subscribers. The service also included extensive bill tracking and bill-text tracking services as well as a service which, for example, allowed subscribers to compare legislative records with PAC contributions. The General Counsel's focus on simply one facet of the services offered by Legi-Tech distorts the nature of the services being offered.

- A finding that Legi-Tech falls within the press exemption is compelled by (i) the disclosure purpose of the Act and Congressional intent to avoid abridging activity protected by the First Amendment; (ii) a review of Congressional statements interpreting what is intended by this media exemption, which clearly indicates that services such as those offered by Legi-Tech were intended to be covered;* (iii) review of Supreme Court

---

* As stated by Representative Glenn English, Chairman of the House Subcommittee on Government Information, Justice and Agriculture of the House Committee on Government Operations, in comments related to the adoption of amendments to the Freedom Of Information Act, "a computerized information service that pro-

(Footnote continued)

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and lower court rulings indicates that the "press" should be interpreted more flexibly than the General Counsel proposes; and (iv) the Second Circuit's express recognition in Legi-Tech v. Keiper, 766 F.2d at 738 that Legi-Tech is an "organ of the press".

Conclusion

We strongly urge the Commission to reject the General Counsel's recommendation, and vote to take no further action against Legi-Tech. Not only is Legi-Tech entitled to the exemption specifically provided for in 11 C.F.R. §104.15, but the allegedly violative service was discontinued almost two years ago. It simply does not serve anyone's interest to pursue this matter any further. Moreover, if the Commission adopts the General Counsel's recommendation and restricts the use by members of the electronic media of publicly disclosed information, it will seriously risk a judicial determination that the statute and regulation are unconstitutional.

Please direct any future inquiries or correspondence regarding this matter to the undersigned.

Sincerely,

Thomas J. Casey
Douglas A. Rediker

(Footnote * continued from previous page)
vides subscribers with access to information obtained from the government qualifies as news media because the services further the availability of government information to the public in the same way that a traditional newspaper does. . . . [D]isseminating information is not intended to be a commercial use under the bill." 132 Cong. Rec. H. 9464 (daily ed. Oct. 8, 1986) (Remarks of Rep. English).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 10, 1990

David M. Kopstein
Dross & Levenstein
1825 Eye Street, N.W.
Washington, D.C. 20006

RE: MUR 2361
American Citizens for Political Action and Robert Dolan, as treasurer

Dear Mr. Kopstein:

Let me also remind you that you have yet to respond to our letter of April 9, 1990, enclosing Commission-approved conciliation agreements in settlement of the matter with the aforementioned clients and with the International Funding Institute, Inc. As noted in that letter, the Commission has a duty to attempt to reach conciliation for a minimum period of 30 days. If we do not hear from you by May 16, 1990, we will assume you are not interested in conciliating this matter and will recommend that the Commission seek judicial relief in the United States District Court. Any questions with respect to conciliation should be directed to Daniel J. Blessington of this Office at 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure

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OGC 6237

DROSS & LEVENSTEIN/DISALLE & STAUDINGER
A Federation of Law Firms
1825 EYE STREET, NORTHWEST
SUITE 1201
WASHINGTON, DC 20006
(202) 296-7032
FAX (202) 296-7047

OF COUNSEL
ROSENBLUM & ROSENBLUM
ALEXANDRIA, VIRGINIA

OTHER OFFICES
TEMPLE HILLS, MD (301) 899-3330
WALDORF, MD (301) 870-4447

RECEIVED
FEDERAL ELECTION COMMISSION
90 MAY 15 AM 10:35

May 14, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 MAY 15 AM 11:42

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

Re: MUR 2361
International Funding Institute, Inc.
American Citizens for Political Actions, and
Robert E. Dolan, as treasurer

Dear Mr. Noble:

This letter will respond to your letter of April 9, 1990 proposing a conciliation agreement in settlement of the above-referenced matter.

The respondents feel that your proposal is premature while the question of the constitutionality of 2 U.S.C. §438(a)(4) remains unresolved. As you know, Mr. Dolan has challenged the constitutionality of that provision in Dolan v. Federal Election Commission, C.A. No. 90-0542 (D.D.C.). Precedents indicate that his challenge is well-founded. Expeditious disposition of the litigation is anticipated in accordance with 2 U.S.C. §437h.

The respondents recognize the Commission's mandate to enforce the FECA. At the same time, however, pressuring the respondents to admit to an alleged violation of §438(a)(4) while a serious question has been raised regarding its validity would be contrary to the spirit of the FECA and contrary to the precepts of good government.

If the Commission truly desires to make the conciliation process meaningful, then you should hold your proposal in abeyance pending the disposition of the declaratory judgment action. If the court upholds the constitutionality of §438(a)(4), then the respondents probably would decide to accept your proposal. If, as the respondents anticipate, §438(a)(4) is declared unconstitutional, however, then the matter would be dropped.

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There is no reason why your proposal should be withdrawn (or the terms of any possible settlement made less favorable for the respondents) simply because the respondents prefer to await the outcome of the declaratory judgment action. For you to do so would appear, at best, as a deliberate effort to discourage legitimate constitutional challenges under §437h.

Very truly yours,

DROSS & LEVENSTEIN

By: D. M. Kopstein
David M. Kopstein

cc: Robert E. Dolan

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OGC 6260

RECEIVED
FEDERAL ELECTION COMMISSION
ADMINISTRATIVE DIVISION
90 MAY 15 PM 5:04

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2107
(202) 371-7000

TELEX 904343
SKARSLAW WASH
TELECOPIER
(202) 393-5760
DIRECT DIAL
(202) 371-

BOSTON
CHICAGO
LONDON
LOS ANGELES
NEW YORK
SAN FRANCISCO
TOKYO
WILMINGTON

May 15, 1990

Daniel J. Blessington, Esq.
Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2361

Dear Mr. Blessington:

This letter is submitted in response to your requests at our meeting with you and George Rishel last week.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 MAY 17 PM 3:29

9704384240 5

Court of Appeals Decision

Enclosed is a copy of the decision of the Court of Appeals for the District of Columbia in National Republican Congressional Committee v. Legi-Tech Corp., No. 85-6037, July 15, 1986, in which that court decided to "hold this case in abeyance pending an opportunity for the FEC to interpret the 'commercial purposes' proviso as applied to Legi-Tech's Tracking Service." (See attached opinion at 10.)

Discontinuation of Washington CCTS Service

Until December 31, 1988 Legi-Tech, through its Washington On-Line data base system, provided subscribers with two services: (i) Congressional Bill Tracking System, which contained the full text of legislation, vote tracking, bill tracking, legislative schedules, and so forth and thereby followed legislation through its various stages from introduction to enactment; and (ii) Campaign Contribution Tracking Service ("CCTS"), the service

at issue in this MUR. The services were made available to journalists, political analysts, lobbying firms and other participants in the political process. During 1988, the decision was made to discontinue offering CCTS and by the end of that calendar year, when its contracts then in effect terminated, CCTS was shut down. At present, Legi-Tech's Washington On-Line system only provides subscribers its Congressional Bill Tracking System.

Legi-Tech's functions are now primarily focused on providing subscribers with legislative information at the state level in California and New York. The Washington On-Line service is marketed as an adjunct to these state services. Enclosed is a copy of the current Washington On-Line Congressional Tracking System promotional materials, as well as some sample reports.

It is not the intention of Legi-Tech to renew its CCTS service, or any other service in which Federal Election Commission data is made available to subscribers, in the future.

If you have any further questions, or require any more information, please do not hesitate to let either me or Doug Rediker know.

Very truly yours,

Thomas J. Casey /DAR

Thomas J. Casey

Enclosures

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90 MAY 18 PM 12:21

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

SUBMITTED LATE
EXECUTIVE SESSION
MAY 22 1990
SENSITIVE

May 18, 1990

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: Late Submission in MUR 2361

The Office of the General Counsel requests that the Commission suspend its rules on timely submission of agenda documents in order to consider the late submission of the attached report in MUR 2361 at the Executive Session, Tuesday, May 22, 1990. The court in Dolan v. Federal Election Commission, C.A. No. 90-0542 (D.D.C.) has scheduled a status conference for May 30, 1990. This is the last Commission meeting prior to that date, and we recommend that the Commission consider the attached report prior to the status conference.

Attachment

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
International Funding Institute, Inc.	)	MUR 2361
	)	
American Citizens for Political Action and Robert E. Dolan, as treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On February 26, 1987, the Federal Election Commission ("the Commission") found reason to believe American Citizens for Political Action and Robert E. Dolan, as treasurer ("ACPA") violated 2 U.S.C. § 438(a)(4) with respect to the allegations in the complaint in MUR 2307. On July 14, 1987, the Commission again found reason to believe ACPA violated 2 U.S.C. § 438(a)(4). On that same date, the Commission merged MUR 2307 and MUR 2346 with MUR 2361. On April 6, 1988, the Commission found reason to believe the International Funding Institute, Inc. ("IFI") violated 2 U.S.C. § 438(a)(4).

Following an investigation and attempts to conciliate this matter with ACPA and IFI prior to a finding of probable cause to believe, the Office of the General Counsel mailed briefs to ACPA and IFI on February 9, 1990, in which the General Counsel recommended findings of probable cause to believe ACPA and IFI knowingly and willfully violated 2 U.S.C. § 438(a)(4).

On March 9, 1990, counsel for ACPA and IFI filed a response brief. Also, on that same date, counsel for ACPA and IFI filed a civil suit in the United States District Court for the District

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of Columbia on behalf of Robert E. Dolan against the Commission, in which Dolan challenged the constitutionality of 2 U.S.C. § 438(a)(4). The suit asks that the question be certified to the United States Court of Appeals.

On April 3, 1990, the Commission found probable cause to believe that IFI and ACPA knowingly and willfully violated section 438(a)(4). On April 9, counsel was notified of the Commission's findings, and was provided with proposed conciliation agreements. On May 10, 1990, counsel was informed that this Office would assume his clients were not interested in conciliating the matter and would recommend to the Commission that it seek judicial relief if we did not hear from him by May 16, 1990. In a letter dated May 14, 1990, counsel effectively rejected the proposed agreements, and urged the Commission to suspend conciliation during the pendency of the aforementioned declaratory judgment action. This Office recommends that the Commission reject this approach. As we indicated at the Commission's executive session of April 3, 1990, it is preferable for the Commission to advance to the civil suit stage without delay. Since more than 30 days has passed, and further efforts at conciliation appear fruitless, we recommend that the Commission authorize suit at this time. In our judgment, this course of action will permit a more comprehensive resolution of the questions of the constitutionality of the statute and ACPA's and IFI's alleged violations of it. We also seek approval of the the draft letter, which responds to counsel's implications that the Commission is acting

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inappropriately by pursuing the enforcement proceedings while the declaratory judgment action is pending.

II. RECOMMENDATIONS

1. Authorize the Office of the General Counsel to file a civil suit for relief in the United States District Court against the International Funding Institute, Inc.

2. Authorize the Office of the General Counsel to file a civil suit for relief in the United States District Court against American Citizens for Political Action and Robert E. Dolan, as treasurer.

3. Approve the attached letter.

Date 5/18/90

Lawrence M. Noble
General Counsel

Attachments:
1. Letter of May 14, 1990
2. Proposed letter

Staff assigned: Daniel J. Blessington

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
International Funding Institute, Inc.	)	MUR 2361
American Citizens for Political Action	)	
and Robert E. Dolan, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on May 22, 1990, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 2361:

1. Authorize the Office of the General Counsel to file a civil suit for relief in the United States District Court against the International Funding Institute, Inc.

2. Authorize the Office of the General Counsel to file a civil suit for relief in the United States District Court against American Citizens for Political Action and Robert E. Dolan, as treasurer.

(continued)

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3. Approve the letter attached to the General Counsel's report dated May 18, 1990.

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

Attest:

May 24, 1990
Date

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

9704384241 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 29, 1990

HAND DELIVER

David M. Kopstein
Dross & Levenstein
1825 Eye Street, N.W.
Washington, D.C. 20006

RE: MUR 2361
International Funding
Institute, Inc.
American Citizens for Political
Action and Robert E. Dolan, as
treasurer

Dear Mr. Kopstein:

On April 9, 1990, you were notified that the Federal Election Commission had found probable cause to believe that your clients knowingly and willfully violated 2 U.S.C. § 438(a)(4), a provision of the Federal Election Campaign Act of 1971, as amended. On this same date, you were sent proposed conciliation agreements offered by the Commission in settlement of this matter. Under 2 U.S.C. § 437g(a)(4)(A)(i), the Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into conciliation agreements with respondents. The minimum period of 30 days has passed in this case, and you have effectively rejected both the proposed Commission agreement and the concilation process itself. Therefore, the Commission has authorized the General Counsel to institute a civil action for relief in the United States District Court, a step specifically provided for at section 437g(a)(6)(A) in the event that conciliation efforts are unsuccessful.

In your letter of May 14, 1990, you urged the Commission to suspend the conciliation process mandated by law, pending the disposition of the challenge to the constitutionality of 2 U.S.C. § 438(a)(4) brought under 2 U.S.C. § 437h in Dolan v. Federal Election Commission, C.A. No. 90-0542 (D.D.C.). As noted, the Commission has concluded that further efforts at conciliation would be fruitless. The Commission would also like to correct some apparent misapprehensions as to its actions, suggested by

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your letter. By sending you proposed conciliation agreements, the Commission was not attempting to pressure your clients into admitting violations to the provision now being challenged in the United States District Court. Rather the Commission was attempting to conciliate the matter after finding probable cause to believe, as contemplated by section 437g(a)(4)(A)(i). Moreover, by authorizing suit, the Commission is not attempting to discourage legitimate constitutional challenges brought under section 437h. The Supreme Court has ruled that actions brought under sections 437g and 437h may proceed in the district court at the same time. California Medical Association v. Federal Election Commission, 453 U.S. 182 (1980). The Commission has decided that pursuing its enforcement action in district court is the proper way to proceed in this case.

If you have any questions, please direct them to Robert Bonham, III, Acting Assistant General Counsel, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

9704384241 4

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 JUN 22 PM 3:13

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2361
Legi-Tech, Inc.	)	

JUL 10 1990
EXECUTIVE SESSION
SENSITIVE

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

This matter was generated by a complaint filed by the National Republican Congressional Committee ("NRCC") against Legi-Tech, Inc. ("Respondent"). The complaint alleged that Respondent copied information from the Commission's public records, and used that information for commercial purposes through its computerized Campaign Contribution Tracking System ("CCTS"). On January 2, 1986, the Commission found reason to believe Respondent violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15, and instituted an investigation into this matter (MUR 2094). On May 22, 1986, the Commission found probable cause to believe that Respondent had violated the Act and Commission regulations.

On July 14, 1987, the Commission made another finding of reason to believe that Respondent violated 2 U.S.C. § 438(a)(4). This new finding was based on information obtained during the Commission's investigation in MUR 2361. On this same date, the Commission merged MUR 2094 with MUR 2361.

Following further investigation, the Office of the General Counsel mailed briefs to Respondent's counsel on February 9, 1990, in which the General Counsel recommended findings of probable cause to believe that Respondent violated 2 U.S.C. § 438(a)(4) and

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11 C.F.R. § 104.15.[1]

On May 3, 1990, counsel submitted a response to the General Counsel's brief that summarized its legal arguments previously made in response to the brief in MUR 2094. Specifically, the response urged the Commission to reject the General Counsel's position, and instead take no further action against Legi-Tech.

II. ANALYSIS

An analysis of the issues and the basis for the General Counsel's recommendations are set forth in the brief sent out on February 9, 1990. It is incorporated by reference in this report. Three areas discussed by counsel, however, are addressed briefly here.

First, counsel raises a number of issues regarding the constitutionality of section 438(a)(4), including its previous assertion that Legi-Tech is entitled to protection as a member of the press with respect to its sale and use of Commission information. Counsel predicts a judicial declaration that section 438(a)(4) is unconstitutional if the Commission follows the recommendations of this Office. While it is appropriate for the Commission to carefully consider the First Amendment implications of this case, see NRCC v. Legi-Tech Corp., 795 F.2d 190 (D.C. Cir. 1986) (Wright, J., concurring), federal agencies such as the Commission lack the power to pass on the constitutionality of a statute where it concludes that Congress intended to proscribe the conduct in question. Johnson v. Robison, 415 U.S. 361, 368

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1. Prior to the merger, a General Counsel's brief was sent to Respondent's counsel in MUR 2094. Counsel filed a response brief.

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(1974). As we have indicated in our brief, the conduct engaged in by Respondent appears to be the type of activity that Congress sought to proscribe when it enacted section 438(a)(4). Moreover, the constitutional issues involving this provision are already before the courts in FEC v. Political Contributions Data, Inc., No. 89 Civ. 5238 (S.D.N.Y.) and in Dolan v. FEC, C.A. No. 90-0542 (D.D.C.), the latter case involving one of the subscribers to Respondent's CCTS service.

Second, counsel reasserts its position that the Commission has exceeded its authority by merging MURs 2094 and 2361, arguing that the Commission was required to terminate its investigation of Legi-Tech once it had found probable cause to believe in the earlier matter. Despite counsel's assertion, there is no provision in the statute or regulations that imposes such a stricture on the Commission. Moreover, it has been held that the Commission may merge its enforcement cases for administrative purposes. Spannaus v. FEC, 641 F. Supp. 2 (S.D.N.Y. 1986). Counsel also complains that the investigation since the merger yielded no new factual assertions regarding Respondent's conduct. As recounted in the latest brief, however, the post-merger investigation did produce additional facts concerning the use of the CCTS service by one of its subscribers, the International Funding Institute. These facts are relevant in assessing Respondent's conduct.

Third, counsel notes that the CCTS service is no longer being offered, and in a letter received subsequent to the response, has indicated that it is not Respondent's intention to

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renew the service or any other service in which Commission data is made available to subscribers. Inasmuch as the CCTS service has been terminated, counsel argues, there is little reason for the Commission to pursue the matter further. However, the fact that the offending activity has been discontinued does not negate the violation of the Act that has already occurred. Moreover, the statement of counsel that Respondent does not now intend to resume the activity falls short of an assurance that it will not engage in this type of prohibited conduct in the future.

For the foregoing reasons, the Office of the General Counsel recommends that the Commission find probable cause to believe that Legi-Tech, Inc. violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

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IV. RECOMMENDATIONS

1. Find probable cause to believe that Legi-Tech, Inc. violated 2 U.S.C. § 438(a)(4).

2. Find probable cause to believe that Legi-Tech, Inc. violated 11 C.F.R. § 104.15.

3. Approve the attached conciliation agreement and the appropriate letter.

6/22/90
Date

Lawrence M. Noble
General Counsel

Attachments
1. Response to Brief
2. Letter of May 15, 1990
3. Conciliation Agreement

9704384241 9

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2361
Legi-Tech, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 10, 1990, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 2361:

1. Find probable cause to believe that Legi-Tech, Inc. violated 2 U.S.C. § 438(a)(4).

2. Find probable cause to believe that Legi-Tech, Inc. violated 11 C.F.R. § 104.15.

3. Approve the conciliation agreement and letter as recommended in the General Counsel's report dated June 22, 1990.

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

Attest:

7-10-90
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 12, 1990

Thomas J. Casey, Esquire
Skadden, Arps, Slate, Meagher and Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

RE: MUR 2361
Legi-Tech, Inc.

Dear Mr. Casey:

On July 10, 1990, the Federal Election Commission found probable cause to believe that your client, Legi-Tech, Inc., violated 2 U.S.C. § 438 (a)(4), a provision of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 104.15 of the Commission's regulations. These findings were made in connection with the commercial use of information copied from Commission records.

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved 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 accept the agreement. Please make your check for the civil penalty payable to the Federal Election Commission.

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If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact George Rishel, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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DGC 6898

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUL 10 AM 7:28

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
1440 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-2107

FAX (202) 393-5760
DIRECT DIAL
(202) 371-

(202) 371-7000

BOSTON
CHICAGO
HONG KONG
LONDON
LOS ANGELES
NEW YORK
SYDNEY
SAN FRANCISCO
TOKYO
WILMINGTON

July 9, 1990

BY HAND

Daniel J. Blessington, Esq.
Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2361

Dear Mr. Blessington:

Enclosed herewith are copies of (1) advertising material for "UPI PACsFacts", and (2) a recent article from Roll Call entitled "At FEC, Reporters Are Finally Getting Their PC's On-Line". Both of these submissions reinforce our claim that Respondent Legi-Tech, a subsidary of McClatchy Newspapers, in providing the Computerized Campaign Tracking Service ("CCTS") as part of its Washington-On-Line service, was offering a tool which served the public interest in disclosure of campaign finance data -- a demand which has now been satisfied by such organizations as United Press International, the New York Times, the Wall Street Journal, the Washington Post and the Los Angeles Times, as well as the Federal Election Commission itself.

As noted by the Roll Call article, "[w]hile a few pioneers began using computers to manipulate FEC data in the 1980's, campaign experts say that within the last year or so the use of computer analyses by journalists has spread dramatically. . . ." The article continues by attributing comments to the FEC's Scott Moxley, who states that the reasons for these developments include greater press sophistication about computers and their application to campaign finance journalism, and the FEC's own advances in computerization. Mr. Moxley is quoted as saying "[e]verybody's very excited about it. . . [w]e think it's going to keep growing and growing."

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Given the fact that Legi-Tech voluntarily terminated this service and no longer offers it, we, again, request that the Commission forego further enforcement activity in a matter that involves Legi-Tech merely being ahead of its time in serving as one of the "pioneers" of computerization of campaign finance data. This seems particularly appropriate where substantially the same service is now provided by the FEC itself, as well as many of this country's major news organizations.

The present-day use by journalists of exactly the same kind of data-base which was offered by Legi-Tech only reinforces our belief that there would be serious First Amendment ramifications to any further action against Legi-Tech in this matter. Moreover, the FEC's encouragement of, and participation in, providing such computerized disclosure stands in sharp, and inexplicable, contrast to the General Counsel's recommendation of a finding of probable cause that a violation of §438(a)(4) of the FECA and C.F.R. §104.15. of the Commission's Regulations by Legi-Tech occured.

The continuing possibility that Legi-Tech could be required to expend resources to defend the legality of a business it no longer offers, but the FEC and others does, seems grossly unfair. For this reason, and for those set forth in our previous submissions, we once again strongly urge the Commission to vote to dismiss this action or take no further action against Legi-Tech in this matter.

Very truly yours,

Thomas J. Casey

Thomas J. Casey
Douglas A. Rediker

Enclosures

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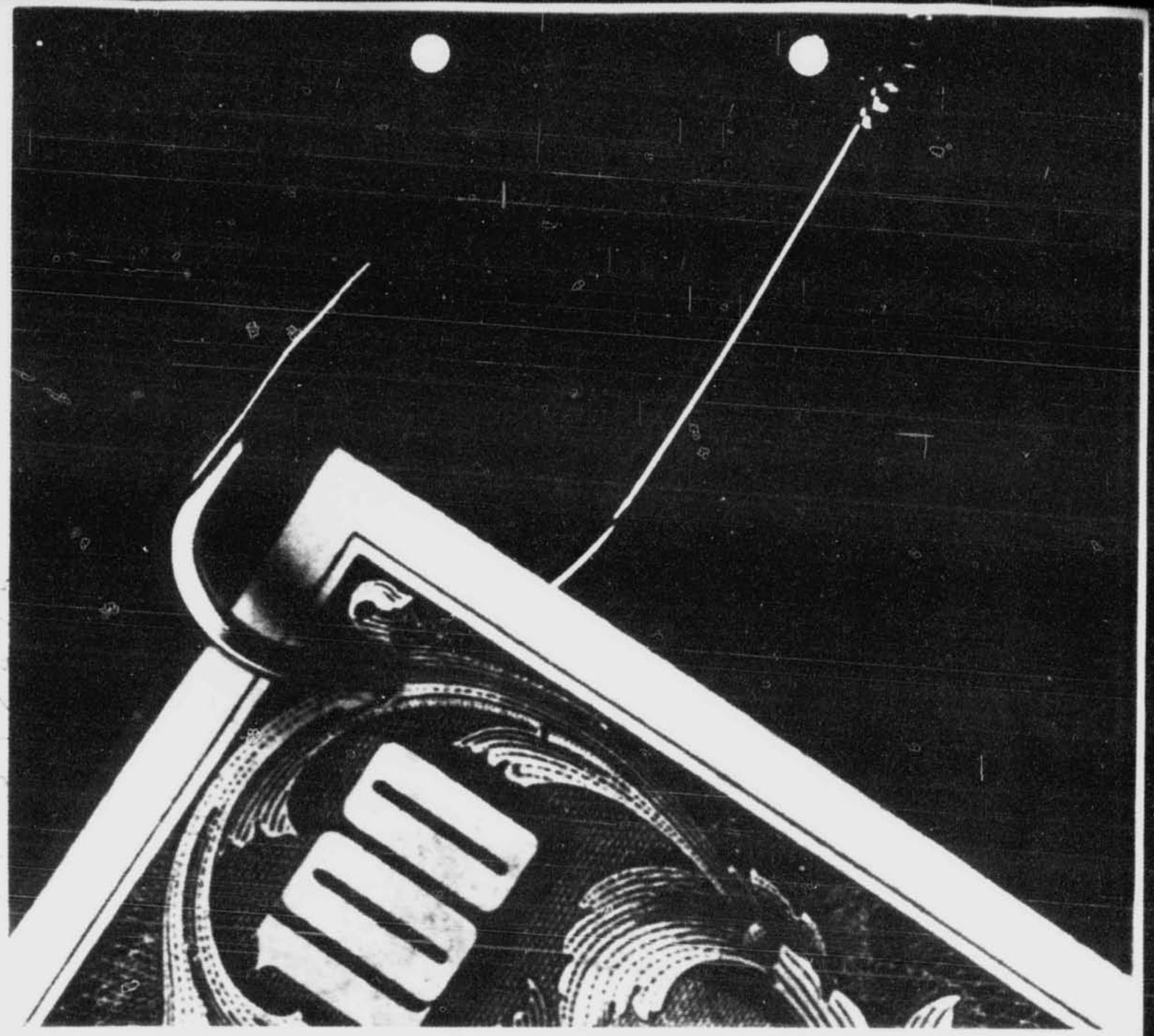

UPI PACSFACTS WILL
TELL YOU WHO'S
REELING IN THE DOUGH.

UPI WIRE INTO
THE FUTURE.

Press Gallery

By Glenn R. Simpson and Craig Winneker

At FEC, Reporters Are Finally Getting Their PCs On-Line

More and more political journalists are learning to exploit the universe of possibilities the computer revolution is bringing to campaign finance reporting.

Four of the country's top newspapers, the **New York Times**, the **Wall Street Journal**, the **Washington Post**, and the **Los Angeles Times**, now perform sophisticated computer analyses of campaign finance data, as do a host of smaller papers. The phrase, "according to a computer analysis of Federal Election Commission data," is entering the attribution lexicon.

The results of this high-tech number crunching can be impressive. The L.A. Times recently conducted a computer search of contributions made in the 1987-88 election cycle by more than 100 of the richest and most powerful people.

At least ten of those studied, including corporate raider **Ronald Perelman** and swan-diving developer **Donald Trump**, exceeded the legal contribution limit of $25,000 in total donations during the cycle, reporters **Sara Fritz and Dwight Morris** found in April. A recent piece revealed for the first time the extensive contribution activity of small defense contractors.

While a few pioneers began using computers to manipulate FEC data in the 1980s, campaign experts say that within the last year or so the use of computer analyses by journalists has spread dramatically — a phenomenon attributable in no small part to the savings and loan disaster.

There were 3,950 contributions made to federal candidates by residents of the five Beverly Hills zip codes.

There are two key developments, according to the FEC's **Scott Moxley**.

The first is that the press as a whole is becoming more sophisticated about applying computers to campaign finance journalism. It has long been possible for a large media organization to buy from the FEC a set of magnetic tapes containing all federal election data for a given cycle, but the reporters have been slow to learn how to manipulate the information with these computers. That seems to be changing.

The second is that the FEC itself has made impressive strides in its own mainframe computer capabilities. The Digital Equipment Corp. machines at the FEC have possibilities limited only by the imagination. The press office and public records staff give reporters assistance with major projects.

Even better, a paper anywhere in the country can now have access to FEC records via telephone line. According to Moxley, the charge for using the "direct access" line to the FEC computers is only $25 an hour. This low fee lets small papers with small budgets do studies with only a personal computer and a modem.

"Everybody's very excited about it," says Moxley. "We think it's going to keep growing and growing."

These developments seem likely to have a major impact on this year's campaigns, as journalists seek to trace for their readers the flow of political mother's milk.

Ironically, just as reporters get more sophisticated, organizations have begun offering to act as "helper programmers," performing such analyses for a fee. **United Press International**, for instance, recently set up a division that will act as a sort of Nexis of campaign finance (Nexis, for this matter, now lets journalists plug into honoraria figures on its line).

What kinds of things can the FEC do? One basic study that every paper should conduct is an analysis of exactly how much money comes from outside a candidate's district or state — a crude but potentially important indicator of where a candidate is getting his or her support.

This year, there has been focus on out-of-state contributions, in part because they're being targeted for reform and in part because the issue seems to resonate with voters.

More sophisticated analyses can be conducted by last name, date, amount, occupation, zip code, city, or state. Thus, notes Moxley, a reporter who knows what day a fundraiser is held can use the computer to see who was giving to whom on that day.

Or, just for the heck of it, say PG were to check on those crazy-rich movie stars in Beverly Hills; Moxley could inform us in less than a minute that 3,950 contributions to federal candidates in the last election cycle were from individuals who reside in five Beverly Hills zip codes: 90209, 90210, 90211, 90212, and 90213.

Want to know how many Americans gave more than $20,000 in individual contributions in the last election? It's 3,471. Comparing the donations of one state to another? Texans made 29,196 contributions last year; Mississippians made 3,927.

Using direct access, a reporter can also create geographic or Congressional committee-specific files of data that can be updated periodically. All FEC press releases are added to the database as well. These contain conveniently aggregated figures for PAC categories, parties, and candidates.

But the computers, for all their usefulness, cannot yet replace paper records: They don't tell you what a candidate is spending money on, and what candidates do with their money can be as important as where they get it.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 7, 1990

Thomas J. Casey, Esquire
Skadden, Arps, Slate, Meagher and Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

RE: MUR 2361
Legi-Tech, Inc.

Dear Mr. Casey:

On July 12, 1990, you were notified that the Federal Election Commission found probable cause to believe that Legi-Tech, Inc. violated 2 U.S.C. § 438(a)(4). On that same date, you were sent a conciliation agreement offered by the Commission in settlement of this matter.

Please note that pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), the conciliation period in this matter may not extend for more than 90 days, but may cease after 30 days. Insofar as more than 30 days have elapsed without a response from you, the Office of the General Counsel will recommend that the Commission authorize the filing of a civil suit unless we receive a response from you with 15 days of your receipt of this letter.

Should you have any questions, please contact George F. Rishel, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE
OCT 23 1990
EXECUTIVE SESSION

In the Matter of	)	
	)	MUR 2361
Legi-Tech, Inc.	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On July 10, 1990, the Commission found probable cause to believe that Legi-Tech, Inc., violated 2 U.S.C. § 438(a)(4). The Commission also approved a proposed conciliation agreement that included an admission of the violation and a proposed civil penalty On August 14, 1990, counsel for Legi-Tech submitted a proposed counteroffer. Staff of this Office met with counsel on Tuesday, September 5, 1990, to discuss the possibility of conciliating this matter. Based on this counteroffer and meeting as well as telephone discussions with co-counsel for Legi-Tech, this Office recommends that the Commission reject the counteroffer and authorize the filing of a civil suit.

II. DISCUSSION

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Therefore, in view of the gap between our position and the Respondent's, we conclude that the best course at this point is to recommend that the Commission reject the counteroffer from counsel for Legi-Tech and authorize the filing of a civil suit.

III. RECOMMENDATIONS

1. Reject the counteroffer of Legi-Tech, Inc.

2. Authorize the Office of the General Counsel to file a civil suit for relief in United States District Court against Legi-Tech, Inc.

3. Approve the appropriate letter.

10/11/90
Date

Lawrence M. Noble
General Counsel

Attachments
Respondent's counteroffer

Staff Assigned: George F. Rishel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2361
Legi-Tech, Inc.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on October 23, 1990, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 2361:

1. Reject the counteroffer of Legi-Tech, Inc.

2. Authorize the Office of the General Counsel to file a civil suit for relief in United States District Court against Legi-Tech, Inc.

3. Approve the appropriate letter as recommended in the General Counsel's report dated October 11, 1990.

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

Attest:

10-23-90
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 26, 1990

Thomas J. Casey, Esquire
Skadden, Arps, Slate, Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005-2107

RE: MUR 2361
Legi-Tech, Inc.

Dear Mr. Casey:

You were previously notified that on July 10, 1990, the Federal Election Commission found probable cause to believe that your client violated 2 U.S.C. § 438(a)(4), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the captioned matter.

This letter is to confirm the Federal Election Commission's receipt of the counter-proposed conciliation agreement you submitted on behalf of Legi-Tech, Inc. on August 14, 1990. The Commission has reviewed and rejected the counterproposal.

As a result of our inability to settle this matter through conciliation within the allowable time period, the Commission has authorized the General Counsel to institute a civil action for relief in the United States District Court.

Should you have any questions, or should you wish to settle this matter prior to suit, please contact David M. FitzGerald, Assistant General Counsel, at (202) 376-8200, within five days of your receipt of this letter.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION,
Plaintiff,

v.

LEGI-TECH, INC., Defendant.

Civil Action No. 91-0213 (JHG).

United States District Court,
District of Columbia.

May 30, 1997.

Federal Election Commission (FEC) brought civil enforcement proceeding against computerized database service which provided subscribers with FEC information and allegedly used such information illegally. Proceeding was dismissed based on intervening Court of Appeals case holding that composition of FEC was unconstitutional and that FEC was thus not authorized to bring enforcement actions. FEC appealed. The Court of Appeals, 75 F.3d 704, reversed. On cross-motions for summary judgment, the District Court, Joyce Hens Green, J., held that: (1) sale of subscriptions to campaign contribution tracking system database violated Federal Election Campaign Act (FECA) section generally prohibiting commercial use of FEC contribution information, and (2) section did not violate First Amendment free speech guarantee.

Plaintiff's motion granted; defendant's motion denied.

1. Elections ⇐317.5

Federal Election Commission's (FEC) construction of Federal Election Campaign Act (FECA) section generally prohibiting commercial use of FEC contribution information, if reasonable, was entitled to deference in civil enforcement proceeding against computerized database service, as FECA was ambiguous with respect to whether commercial activity of service was protected. Federal Election Campaign Act of 1971, § 311(a)(4), 2 U.S.C.A. § 438(a)(4).

2. Elections ⇐317.4

As reasonably interpreted by Federal Election Commission (FEC), Federal Election Campaign Act (FECA) section generally prohibiting commercial use of FEC contribution information or use of information to solicit contributions, and section's implementing regulation, allow publisher to use names and addresses from reports filed with FEC when it is incidental to sale of larger publication, such as to provide leads for news articles included in newspaper sold commercially, but do not permit use of individual contributor names when intended use of contributor information is not merely incident to sales but is primary focus of activity. Federal Election Campaign Act of 1971, § 311(a)(4), 2 U.S.C.A. § 438(a)(4); 11 C.F.R. § 104.15.

3. Elections ⇐317.4

Sales of subscriptions to campaign contribution tracking system database were for commercial purpose, and thus violated Federal Election Campaign Act (FECA) section generally prohibiting commercial use of Federal Election Commission (FEC) contribution information or use of information to solicit contributions; database could not fairly be characterized as communication that was similar to exempt communications of newspaper, magazine, or book, as database was nothing more than computerized list of campaign contribution information copied from FEC files, and sale of contributor information was only purpose of database. Federal Election Campaign Act of 1971, § 311(a)(4), 2 U.S.C.A. § 438(a)(4); 11 C.F.R. § 104.15.

4. Constitutional Law ⇐48(1)

While courts are to construe statutes to avoid constitutional conflicts where possible, such mandate cannot include ignoring plain text that might pose a conflict.

5. Elections ⇐317.4

Campaign contribution tracking system database of computerized database service was not exempt from Federal Election Campaign Act (FECA) section generally prohibiting commercial use of Federal Election Commission (FEC) contribution information or use of information to solicit contributions, even though service's parent corporation was diversified media company; what mattered was not who owned service or nature of that

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owner's business, but principal purpose and type of communication in which campaign contribution information was used. Federal Election Campaign Act of 1971, § 311(a)(4), 2 U.S.C.A. § 438(a)(4); 11 C.F.R. § 104.15.

6. Elections ⇐317.4

Corporation that is "organ of the press," or otherwise in newspaper or multimedia business, is not entitled to compile Federal Election Commission (FEC) campaign contribution lists for primary purpose of commercial sale of that information. Federal Election Campaign Act of 1971, § 311(a)(4), 2 U.S.C.A. § 438(a)(4); 11 C.F.R. § 104.15.

7. Constitutional Law ⇐90(3)

Under intermediate scrutiny standard, statute survives First Amendment challenge if restriction furthers important or substantial government interest unrelated to suppression of expression and is no greater than is necessary or essential to protection of particular governmental interest involved. U.S.C.A. Const.Amend. 1.

8. Constitutional Law ⇐90.2

Intermediate scrutiny applied to First Amendment free speech challenge to Federal Election Campaign Act (FECA) section generally prohibiting commercial use of Federal Election Commission (FEC) contribution information or use of information to solicit contributions, as FECA requires disclosure of information for particular purpose and prohibits use of that information for other purposes. U.S.C.A. Const.Amend. 1; Federal Election Campaign Act of 1971, §§ 304(b)(3), 311(a)(4), 2 U.S.C.A. §§ 434(b)(3), 438(a)(4); 11 C.F.R. § 104.15.

9. Constitutional Law ⇐90.2
Elections ⇐317.4

Federal Election Commission's (FEC) interpretation of Federal Election Campaign Act (FECA) section generally prohibiting commercial use of FEC contribution information, as precluding sales of subscriptions to campaign contribution tracking system database, did not violate First Amendment free speech guarantee; section minimizes adverse effects of FECA's disclosure requirements, protects political committees' intellectual property, and preserves level of political discourse, and scope of restriction is no greater than necessary to protect substantial governmental interests. U.S.C.A. Const.Amend. 1; Federal Election Campaign Act of 1971, § 311(a)(4), 2 U.S.C.A. § 438(a)(4); 11 C.F.R. § 104.15.

10. Constitutional Law ⇐90.2

Fact that information made public is later reproduced in format constituting speech does not automatically mean that Congress has forfeited all of its power to regulate the commercial use of that information. U.S.C.A. Const.Amend. 1.

11. Elections ⇐317.4

Computerized database service that was subject to Federal Election Commission (FEC) enforcement proceeding arising from sales of subscriptions to campaign contribution tracking system database had no claim of right to benefit of compelled disclosure of information apart from measure in which concomitant use restriction was found. U.S.C.A. Const.Amend. 1; Federal Election Campaign Act of 1971, § 311(a)(4), 2 U.S.C.A. § 438(a)(4); 11 C.F.R. § 104.15.

12. Penalties ⇐3

Appropriateness of civil penalty is not undermined due to lack of scienter provision where one can be implied.

Robert William Bonham, III, Lawrence Mark Noble, Richard Blair Bader, Stephen E. Hershkowitz, Federal Election Com'n, Washington, DC, V. Colleen Miller, U.S. Dept. of Justice, Civil Rights Div., Washington, DC, for Federal Election Com'n.

Thomas J. Casey, Skadden, Arps, Slate, Meagher & Flom, L.L.P., Washington, DC, Phillip Howard Rudolph, Julia Ann Dahlberg, Gibson, Dunn & Crutcher, L.L.P., Washington, DC, Rex S. Heinke, Kelli L. Sager, Alicia J. Bentley, Gibson, Dunn & Crutcher, Los Angeles, CA, for Legi-Tech, Inc.

MEMORANDUM OPINION AND ORDER

JOYCE HENS GREEN, District Judge.

Presently pending are the parties' cross-motions for summary judgment. For the

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reasons stated below, Plaintiff Federal Election Commission's ("FEC" or "Commission") motion will be granted, and Defendant Legi-Tech's motion will be denied.[1]

I. Background

The following facts are either not in dispute or are not reasonably disputed. Defendant Legi-Tech is a for-profit California corporation, wholly owned by McClatchy Newspapers, Inc., a diversified media company. Operating under the trade name of "Washington On-Line," Legi-Tech opened an office in Washington, D.C., in 1985 and began marketing databases of legislative and other information regarding the United States Congress. From October 1, 1985 until December 31, 1988, Legi-Tech sold access to four databases: the Bill Text Tracking System, the Congressional Bill Track System, the Congressional Vote Tracking System, and the Campaign Contribution Tracking System ("CCTS"). The CCTS is the database at issue in this suit.

Under the Federal Election Campaign Act of 1971 ("FECA" or the "Act"), political committees are required to report the "identification" of each person who makes contributions to the reporting committee within a calendar year in an aggregate amount in excess of $200, together with the date and amount of each such contribution. *See* 2 U.S.C. § 434(b)(3). In the case of an individual contributor, the term "identification" is defined to mean the individual's name, mailing address, occupation, and the name of the individual's employer. *Id.* § 431(13)(A). *See generally Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976).

Another provision of the statute requires the FEC to make all such reports and statements filed with the Commission "available for public inspection, and copying, at the expense of the person requesting such copying" within 48 hours of the FEC's receipt of those documents. While § 438(a)(4) provides the public with access to this information, it also limits how that information may be used:

> information copied from such reports or statements *may not be sold or used by any person for the purpose of soliciting contributions or for any commercial purposes*, other than using the name and address of any political committee to solicit contributions from such committee.

2 U.S.C. § 438(a)(4) (emphasis added).

Through its CCTS, Legi-Tech provided subscribers with information regarding contributors and their contributions, including the contributors' telephone numbers and street addresses, beginning with the 1983-1984 election cycle. Except for the contributors' telephone numbers, which were obtained from an outside vendor, the information was copied directly from the disclosure reports on file with the Commission, entered into the CCTS database and sold to Legi-Tech's CCTS customers through subscriptions providing access to the database.[2]

When Legi-Tech developed the CCTS, it was aware that the sale of individual contributor information obtained from the FEC's files was "probing the edges of the law." FEC Ex. 43 at 1. Legi-Tech planned to "challenge the various federal laws against commercial use of this information" as a central part of its marketing strategy, hoping that "[t]he ensuing controversy regarding the campaign contribution laws and our open disregard for them will provide for an extremely quick market identification." *Id.* at 2. Simply put, Legi-Tech invited this suit as a central component of its marketing strategy:

> [I]t is important to recognize the extent of the controversy Legi-Tech will be involved [in] with campaign contributions. We would expect to be sued by the government almost immediately after we begin selling the service. The suit will draw immediate attention to the firm and what we are doing. None of this attention will

1. Neither party requested an oral hearing on these motions. *Cf.* Defendant's Legi-Tech's Notice of Motion and Motion for Summary Judgment at 1 n.* Whether to hold a hearing is a decision committed to the Court's discretion. *See* Local Rule 108(f). In this case, a hearing is unnecessary to resolve the cross-motions for summary judgment.

2. In 1986 or 1987, Legi-Tech ceased including the street addresses and telephone numbers of contributors.

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be negative. I think we can expect the press to immediately understand the issues as First Amendment based and will be rather supportive of us. Therefore, it is in Legi-Tech's commercial interest to encourage the government to take swift action against us.

Id. at 10.

Legi-Tech marketed the CCTS to potential customers by direct mail and by advertisements in newspapers, magazines and through radio "spots." With the assistance of an advertising and market research firm, Legi-Tech defined a target market for the CCTS consisting of four major groups: the media, corporate groups, special interest groups and the political establishments. The promotional literature mailed to its prospective CCTS customers contained a statement that "[i]t is a violation of federal law to sell or use information copied from [FEC] reports for the 'purpose of soliciting contributions from other than political committee.'" FEC Ex. 3.

Legi-Tech entered into written agreements with its customers in which they agreed to pay either fixed amounts for unlimited access to the CCTS during predetermined periods of time or a combination of hourly rates. At least 51 persons purchased access to the CCTS. Of 42 customers who purchased access to the CCTS alone, Legi-Tech received at least $273,869.87. *See* FEC Ex. 42.

The agreements with CCTS customers contained the following statement:

> information contained in the Campaign Contribution Tracking System has been copied by [Legi-Tech] from reports filed with the Federal Election Commission. It is a violation of federal law to sell or use information copied from such reports for the purpose of soliciting contributions from other than political committees.

FEC Exs. 7–8.

Additionally, when CCTS customers would log onto the CCTS system, a standard information screen appeared on their computer monitors which included the following sentence: "Any information copied from FEC reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes."

Despite these statements, at the time it entered into or renewed customer agreements providing access to the CCTS database, Legi-Tech had actual or constructive knowledge that at least some of its customers planned to use or had already used the CCTS information to solicit funds from contributors. For example, Legi-Tech was advised, and its staff memorialized in internal memoranda, that the International Brotherhood of Teamsters used the CCTS as part of its contribution solicitation program.[3] The

3. FEC Ex. 12. The memorandum produced during discovery by Legi-Tech and which memorializes a meeting between Legi-Tech staff and Teamsters personnel includes the following:

> Eric [of WOL] stopped in to see Greg [and Colleen of the Teamsters].
>
> * * * * * *
>
> Teamsters generally follows company PACs and individuals within the companies. They monitor chapters monthly and they try to establish patterns on contributions from the[ir] companies and chapters. *If they see the possibility of getting more contributions from a company, then they will start a grass-roots campaign.*
>
> * * * * * *
>
> Colleen's suggestions:
>
> * * * * * *
>
> 3) itemize Line 21 Refunds. Without this itemized it reduces the accuracy of the info. such as if someone returns a check, it will still show up on the expenditures. This can be of great significance because it could put them over the maximum amount of contributions.
>
> * * * * * *
>
> Colleen asked that Eric check some info for her. Both Colleen and Greg were very nice and could not stress enough how much they rely on WOL for all their information. *They said that lawsuits could result against them if suggestion # 3 ins't (sic) implemented.*

FEC Ex. 12 (emphasis added).

While admitting that this memorandum represents the notes of former Legi-Tech employees, *see* Legi-Tech's Evidentiary Objections at 5 [attached to Docket No. 34], Legi-Tech contends that FEC Exhibit 12 is inadmissible hearsay. However, Legi-Tech has overlooked the fact that even if such memoranda are not admissible to prove that the Teamsters did what is said (i.e., for the truth of the matter asserted), they would be admissible to show what Legi-Tech and its agents believed (i.e., as evidence of state of mind): that the Teamsters were using the CCTS

Teamsters used the CCTS to monitor contributions by its membership and, when it perceived "the possibility of getting more contributions" from certain of its members, it would solicit contributions from those members.

Legi-Tech was also aware that other CCTS customers used the CCTS for soliciting contributions. At the time that it sold CCTS access to the Freedom Policy Foundation (under the name "National Endowment for the Preservation of Liberty"), it knew that this organization had used CCTS information in the past for soliciting contributions.[4] And, despite knowing that the Democratic Congressional Campaign Committee ("DCCC") planned to use CCTS information to monitor contributions and solicit the same from contributors who had not exhausted their contribution limits, Legi-Tech twice renewed its contract with the DCCC.[5] Legi-Tech renewed its agreement with the National Association of Independent Schools under similar circumstances.[6]

One of Legi-Tech's CCTS customers, the International Funding Institute, Inc. ("IFI"), used the CCTS information to create and market a solicitation list. IFI, a political and managerial consulting firm that engaged in fundraising, advertising, public relations, marketing and other commercial activities, subscribed to the CCTS in May of 1986. One mailing list, entitled "Active Republican Donors," was compiled exclusively from information provided to IFI through its subscription to the CCTS database.[7] During September of 1986, IFI marketed the "Active Republican Donors" list to at least five different organizations, at least four of which used the information to solicit contributions. One such organization was the American Citizens for Political Action, Inc. ("ACPA").[8]

to monitor and then solicit contributions. *See* Fed.R.Evid. 803(3). Alternative bases for admission would appear to include Fed.R.Evid. 803(6) (business record); 801(d)(1) (admission by a party through its agents); 801(d)(2) (admission against interests); 803(1) (present sense impression); 803(5) (recorded recollection) and 802(24) (statements having special guarantees of trustworthiness).

4. FEC Ex. 20. Exhibit 20, a Legi-Tech employee's notes dated Nov. 9, 1987, reflect: "Gavlae told me that this Org. use[d] to be under th.. name National Endowment and that they still owe money. Also they were using their info to solicte (sic) people." Legi-Tech's objections to the admissibility of this exhibit are meritless. *See supra* n. 3.

5. FEC Exs. 13–14. A report of a training session conducted on April 16, 1987, by Legi-Tech personnel, states, in relevant part:

> A major use for the DCCC will be to look up contributors for a particular election cycle and see if they have exhaused (sic) their limit amount to any candidate so that *if not, they can be approached for a further contribution pledge* to one of their affiliated members.

Ex. 14 (emphasis added).

Legi-Tech's objections to the admissibility of this exhibit are meritless. *See supra* n. 3.

6. FEC Exs. 15–16. This exhibit is a report of a CCTS training session conducted on June 19, 1987, by Legi-Tech employees. In relevant part, the memorandum provides:

> NAIS would benefit most using Contributor Tracking. *They are primarily interested in obtaining names through our data base which could at later dates be used as sources for them to get contributions for their independent schools organization.* For example, they will look at a federal candidate who attended an independent school and look to them for a contribution, in turn they will look at those individuals who contributed to that candidate also use them as prime sources.

Ex. 16 (emphasis added).

Legi-Tech's objections to the admissibility of Exhibit 16 are meritless. *See supra* n. 3.

7. The names and addresses of the contributors on the CCTS database from which IFI developed its mailing list included the names and addresses of contributors to the National Republican Congressional Committee ("NRCC"). Among the contributors reported by the NRCC, and thus copied by Legi-Tech and included in the CCTS database, were pseudonyms used to "salt" or "seed" the lists to detect unlawful use. Under 2 U.S.C. § 438(a)(4), political committees are authorized to include up to ten pseudonyms for this purpose. *See FEC v. Political Contributions Data, Inc.*, 943 F.2d 190, 193 (2nd Cir.1991).

8. In 1990, after satisfying the procedural requirements of the Act, the FEC filed suit against both IFI and ACPA in the United States District Court for the District of Columbia. After an unsuccessful interlocutory challenge to the constitutionality of 2 U.S.C. § 438(a)(4) and the FEC's implementing regulations in 11 C.F.R. § 104.15, *see FEC v. International Funding Institute, et al.*, 969 F.2d 1110 (D.C.Cir.) (en banc) *cert. denied*, 506 U.S. 1001, 113 S.Ct. 605, 121 L.Ed.2d 540 (1992), IFI and ACPA were held to have knowingly and willfully violated the Act. *FEC v. International Funding Institute, et al.*, 1993 WL 79507 *3 (RCL) (D.D.C. Mar.11, 1993).

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On October 24, 1985, the NRCC filed an administrative complaint against Legi-Tech pursuant to 2 U.S.C. § 437g(a)(1), alleging that Legi-Tech had violated the Act.[9] The NRCC is a political committee whose "primary activity is fundraising" and whose "principal business asset is its list of donors, created through an expensive and laborious process of targeting and soliciting likely contributors." *National Republican Congressional Committee v. Legi-Tech Corp.*, 795 F.2d 190, 191 (D.C.Cir.1986).

Following the procedural requirements of the Act, the FEC found reason to believe that Legi-Tech had violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15, and it commenced an investigation. The Commission later found probable cause to believe that Legi-Tech had violated the Act, and it engaged in efforts to correct the violations through conciliation negotiations with Legi-Tech. When those efforts failed, the FEC filed the instant civil enforcement suit in this Court pursuant to 2 U.S.C. § 437g(a)(6).[10]

In its Complaint, the FEC seeks declaratory and injunctive relief as well as a civil penalty of five thousand dollars for each violation of 2 U.S.C. § 438(a)(4) by Defendant Legi-Tech. *See* Compl. at 5 (citing 2 U.S.C. § 437g(a)(6)(B)). The FEC alleges that through the CCTS, Legi-Tech "sold or used information copied from reports filed with the Commission for commercial purposes, in violation of the Act, 2 U.S.C. § 438(a)(4)." *Id.* ¶ 18. Discovery is closed, and the parties' cross-motions for summary judgment are ripe.

II. Discussion

The principal questions raised by the parties' cross-motions and the facts presented here are simply whether Legi-Tech's sale of subscriptions to the CCTS data base were for a commercial purpose within the meaning of the Act, as implemented through the agency's implementing regulations at 11 C.F.R. § 105.15(c); and, if so, whether that interpretation squares with the First Amendment.

A. The standard of review.

Summary judgment is appropriate when there is "no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). "The inquiry performed is the threshold inquiry of determining whether there is a need for trial—whether, in other words, there are any genuine issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986). In considering a motion for summary judgment, the "evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in [its] favor." *Id.* at 255, 106 S.Ct. at 2513–14. At the same time, however, Rule 56 places a burden on the nonmoving party to "go beyond the pleadings and by [its] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986).

B. The statutory challenge.

Under the Act, the FEC is required to make reports and statements filed with it available for public inspection "except that any information copied from such reports or

9. This administrative complaint was designated as Matter Under Review ("MUR") 2094 and later merged with MUR numbers 2307, 2346 and 2361, which were filed against ACPA, IFI and others.

10. This suit was initially stayed due to the pendency of *FEC v. International Funding Institute, Inc.*, 969 F.2d 1110 (D.C.Cir.) (en banc), *cert. denied*, 506 U.S. 1001, 113 S.Ct. 605, 121 L.Ed.2d 540 (1992). *See* Order of Mar. 19, 1991 [Docket No. 6]. After the D.C. Circuit handed down *IFI*, the stay was lifted and the parties filed cross-motions for summary judgment. However, before ruling on the cross-motions, the Court granted Legi-Tech's motion to dismiss based on *FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C.Cir.1993), *cert. dismissed*, 513 U.S. 88, 115 S.Ct. 537, 130 L.Ed.2d 439 (1994). On appeal, the Court of Appeals distinguished *NRA Political Victory Fund*, reversing the grant of Legi-Tech's motion to dismiss and remanding for appropriate proceedings. *FEC v. Legi-Tech, Inc.*, 75 F.3d 704 (D.C.Cir.1996). The parties then renewed their cross-motions for summary judgment, which are now ripe for resolution.

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statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes." 2 U.S.C. § 438(a)(4). The FEC has implemented this statutory provision through 11 C.F.R. § 104.15, which, in relevant part, states:

> The use of information, which is copied or otherwise obtained from reports filed under 11 C.F.R. part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.

11 C.F.R. § 104.15(c).

In moving for summary judgment in its favor, Legi-Tech argues that Section 438(a)(4) of the Act is inapplicable to it as an organ of the press. Relying upon a floor colloquy, Legi-Tech states that "[w]hile debating Section 438(a)(4), the Senators expressed significant concern about protecting the [r]ights of the press and made it clear that Section 438(a)(4) does not apply here." Defendant Legi-Tech's Notice of Motion and Motion for Summary Judgment: Supporting Memorandum of Points and Authorities ("Legi-Tech's MSJ") at 11. "This [c]ongressional intent to exempt the media from this restriction was codified into the federal regulations, specifically 11 C.F.R. Section 104.15(c)." *Id.* According to Legi-Tech, this regulatory provision exempts it from the Act because the CCTS is a communication similar to a newspaper, book or magazine, *id.* at 13–18, and the principal purpose of the CCTS was not a commercial purpose in violation of the Act. *Id.* at 19–20.

The FEC views things differently. Through a series of advisory opinions and in the underlying administrative proceedings, it "has concluded that [Legi-Tech's] sale of lists of contributor information for profit ... reflects a 'commercial purpose' within the meaning of the Act." Plaintiff FEC's Memorandum of Points and Authorities in Support of its Motion for Summary Judgment and in Opposition to Defendant Legi-Tech's Summary Judgment Motion ("FEC's MSJ") at 16. "The Commission has also construed its regulation to permit a publisher to use names and addresses from reports filed with the Commission when it is incidental to the sale of a larger publication, such as to provide leads for news articles included in a newspaper sold commercially, but not to permit the use of individual contributor names when the 'intended use of contributor information is not merely incident to the[ ] sales but is the primary focus of [the] activity.'" *Id.* (citing Advisory Op. 1981–38, *reprinted in* 1 Fed. Elec.Camp.Fin.Guide (CCH) ¶ 5624, at 10,791 (Oct. 13, 1981), and quoting Advisory Op. 1986–25, *reprinted in* 2 Fed.Elec.Camp.Fin. Guide (CCH) ¶ 5865, at 11,298 (Aug. 15, 1986)).

According to the FEC, "when the information sold is 'composed primarily, if not exclusively, of individual contributor information and incorporate[s] nearly all of the identification of individual contributors reported to the Commission,' the Commission has concluded that the commercial sale of this contributor information by itself is the primary purpose of the sales." *Id.* (quoting Advisory Op. 1986–25, *supra* ¶ 5865, at 11,299, and citing Advisory Op. 1991–16, *reprinted in* 2 Fed. Elec.Camp.Fin.Guide (CCH) ¶ 6022, at 11,720 (June 18, 1991)). "The logical and foreseeable consequence of the promotion and sale of such lists of contributor information is that the customers involved in politics would purchase the product to obtain names of likely contributors. Such use of names from reports filed with the Commission is directly contrary to the intent of section 438(a)(4).'" *Id.* (quoting Advisory Op. 1991–16, *supra* ¶ 6022, at 11,720). Based on these interpretations, the FEC argues that Legi-Tech's activity of selling subscriptions to the CCTS is more akin to that "of a listbroker" than that "of a newspaper." *Id.* at 18.

[1] Because "FECA is ambiguous with respect to whether commercial activity like Legi-Tech's [Campaign Contribution] Tracking System is protected," *Legi-Tech*, 795 F.2d at 192, the FEC's construction of 2 U.S.C. § 438(a)(4), if reasonable, is entitled to deference. *Id.* at 193 (citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843, 104 S.Ct. 2778, 2781–82, 81 L.Ed.2d 694 (1984), and

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FEC v. Democratic Senatorial Campaign Comm., 454 U.S. 27, 37, 102 S.Ct. 38, 44–45, 70 L.Ed.2d 23 (1981)).[11] Through 11 C.F.R. § 104.15(c), and its advisory opinions, the agency has reasonably filled the gap left by Congress while accommodating the competing policy objectives identified by Congress. *Id.*; *see K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C.Cir.1992) (agency is entitled to "even more deference in its interpretation of its own regulations than in the reading of its statutory mandate").

[2] The state and the FEC's implementing regulation provide for the full disclosure of political contributions, and that regulation generally permits the use and publication of the information. The exception is where the principal purpose of the use of this information is the solicitation of contributions or the commercial sale of the information itself. Accommodating the competing interests of promoting disclosure of campaign contribution information with the protection of private citizens' privacy and the property interests of the political committees, *see IFI*, 969 F.2d at 1116; *Legi-Tech*, 795 F.2d at 191, the FEC has reasonably drawn the line between "newspapers, magazines, books or other similar communications" that reproduce contributor information for the principal purpose of soliciting contributions or selling that information and communications in which the publication of contributor information is incidental and not the primary focus. *See* Advisory Op. 1981–38, *supra* ¶ 5624; Advisory Op. 1986–25, *supra* ¶ 5865; Advisory Op. 1991–16, *supra* ¶ 6022. The FEC's interpretation of the statute and its regulation is reasonable, that regulation is fully consistent with plain text of the statute, *see* 2 U.S.C. § 438(a)(4), and it is completely in accord with other evidence of the underlying congressional intent. *See, e.g.*, 117 Cong.Rec. 30,058 (Aug. 5, 1971), *reprinted in* Legislative History of the Federal Election Campaign Act of 1971, at 582 (GPO 1981) ("only purpose [of the amendment] is to prohibit the lists from being used for commercial purposes") (remarks of Sen. Nelson); *id.* ("the list brokers, under this amendment, would be prohibited from selling the list or using it for commercial solicitation") (remarks of Sen. Bellmon).

[3] In light of the material facts of this case, the FEC's determination that Legi-Tech's CCTS falls on the wrong side of the line drawn by the agency's regulation is not an unreasonable one. First, CCTS cannot fairly be characterized as a communication that is similar to a "newspaper, magazine or book"—communications which are exempt from the prohibition of 2 U.S.C. § 438(a)(4) through the FEC's regulation at 11 C.F.R. § 104.15(c) (the media exemption). While a multi-media corporation can (and many do) provide computerized information that is similar to a newspaper, magazine or book, merely reproducing the campaign contribution information provided to the FEC is, as the FEC recognizes, more akin to that of a list-broker. Legi-Tech's CCTS is nothing more than a computerized list of campaign contribution information copied from FEC files. The CCTS cannot fairly be characterized as an electronic newspaper, magazine, book or similar communication. The Court agrees that "the mere fact that the CCTS provided users with [a] list of contributors on a computer screen rather than on paper is of no significance." FEC's Superseding Reply at 11.

Second, Legi-Tech's CCTS fails the "principal purpose" test. Through the CCTS, Legi-Tech provided its subscribers with information that was copied directly from reports filed with the FEC, except to the extent it supplemented that information with the individual contributors' telephone numbers (making the solicitation of contributions even easier, as demonstrated by the actions of IFI and its customers). Unlike the incidental reporting of contributor information in "news stories, commentaries, or editorials," Advisory Op. 1986–25, *supra* ¶ 5865, at 11,-298, Legi-Tech's sale of contributor information through the CCTS was not only the primary focus of its activity, but, as the FEC points out, it was the CCTS's only purpose.

11. Even were the Court to accept Legi-Tech's argument that the FEC is not entitled to deferential *Chevron* review, the Court would nevertheless uphold the FEC's interpretation of 2 U.S.C. § 438(a)(4).

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Legi-Tech's sale of information through the CCTS posed the precise threat that troubled Congress: while Congress wanted to promote disclosure of campaign contribution information, it also wanted to protect political committees' intellectual property and "political discourse from the adverse effect that the disclosure requirement of the Act would otherwise have." *IFI*, 969 F.2d at 1117.

The authority upon which Legi-Tech relies to the contrary is neither binding nor persuasive. The primary case cited by Legi-Tech in support, *FEC v. Political Contributions Data, Inc.*, 943 F.2d 190 (2nd Cir.1991), narrowly construed Section 438(a)(4) to proscribe only the use of the FEC information for soliciting contributions. That case involved a defendant who, like Legi-Tech here, provided access to a computerized data base of FEC campaign contribution information. However, on substantially different facts than those presented here, the court stated: "Since none of PCD's publications is of the type that could infringe on the contributor's privacy interests, the publications at issue may be sold without violating § 438(a)(4) of the FECA." 943 F.2d at 198.

Even had *Political Contributions Data* involved facts similar to those presented here,[12] the reasoning employed by that court is not persuasive. For example, the opinion appears to have adopted an overbroad interpretation of the scope of the regulation implementing 2 U.S.C. § 438(a)(4):

> Under the FEC's interpretation of the 'principal purpose' requirement, no newspaper could print, for example, a list of contributions made by the top executives of a military contractor who had just received a large government contract (information that would surely be protected by the statute, if not by the first amendment). Nor could that newspaper print a list of larger donors in the congressional districts that its circulations serves. In short, such a reading would plainly be contrary to the broader purposes of the FECA, and would very likely run afoul of the first amendment.

943 F.2d at 197.

As this Court reads the FEC's regulation and its advisory opinions, the agency's interpretation of the statute does nothing of the sort. In fact, the agency expressly provides for the sort of publication described in *Political Contributions Data*, since such publication would be incidental to the primary purpose of a newspaper. *See Legi-Tech*, 795 F.2d at 193. What the agency proscribes is list-making: the copying and selling of campaign contributor and contribution information where the principal purpose is the sale of that information, a transaction akin to list-making and brokering. *Id.*

[4] In attempting to avoid the constitutional issue, the *Political Contributions Data* court read the phrase "or for commercial purposes" out of the statute. While courts are to construe statutes to avoid constitutional conflicts where possible, such a mandate cannot include ignoring plain text that might pose a conflict. *See Edmond v. United States*, — U.S. —, 117 S.Ct. 1573, — L.Ed.2d — (1997) (Scalia, J., Op. for the Court) ("a constitutional question confronted in order to preserve, if possible, a congressional enactment is not a constitutional question confronted unnecessarily").

Moreover, not only does the *Political Contributions Data* opinion appear to conflict with the law of this Circuit regarding the appropriate deference to which the FEC is entitled, *see Legi-Tech*, 795 F.2d at 193-94, but that opinion does not appear to address "the value of a political committee's intellectual property" as one of the governmental interests underlying 2 U.S.C. § 438(a)(4). *Compare Political Contributions Data*, 943 F.2d at 198 *with IFI*, 969 F.2d at 1116-17. For all of these reasons, *Political Contributions Data* does not rescue Legi-Tech from the result reached here.

12. For example, the defendant's reports did not include the contributors' telephone numbers and addresses, as has Legi-Tech's CCTS. *See* 943 F.2d at 197. Additionally, there is no suggestion in *Political Contributions Data* that the defendant knew its customers were using the computer service to solicit contributions or that the defendant invited the FEC's lawsuit as a component of its marketing strategy.

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[5, 6] Also unpersuasive is Legi-Tech's argument that the CCTS is exempt from the Act because Legi-Tech's parent corporation is a diversified media company. What matters is not who owns Legi-Tech or the nature of that owner's businesses, but the principal purpose and type of communication in which the campaign contribution information is used. Even a corporation that is "an organ of the press," *Legi-Tech, Inc. v. Keiper*, 766 F.2d 728, 730 (2nd Cir.1985), or otherwise in the newspaper or multi-media business, is not entitled to compile FEC campaign contribution lists for the primary purpose of a commercial sale of that information. *See Legi-Tech*, 795 F.2d at 193.

C. The constitutional challenge.

Legi-Tech next challenges the FEC's construction of 2 U.S.C. § 438(a)(4), contending that it runs afoul of the First Amendment because it prevents "the dissemination of the truth about political campaigns" and constitutes "a content based restriction on core political speech." Legi-Tech's MSJ at 21.[13] The FEC, pointing out that the D.C. Circuit has already upheld the constitutionality of 2 U.S.C. § 438(a)(4) on its face and as applied to one of Legi-Tech's CCTS customers, *see* FEC's MSJ at 28 (citing *IFI*, 969 F.2d at 1110), argues that the statute strikes an appropriate constitutional balance, leaving "undisturbed a pre-existing barrier to defendant['s] use of" campaign contribution list information. *Id.* at 29 (quoting *IFI*, 969 F.2d at 1113). Like its statutory challenge, Legi-Tech's constitutional attack falls short.

[7, 8] In *IFI*, the Court of Appeals applied intermediate scrutiny to the First Amendment challenge of 2 U.S.C. § 438(a)(4). *See* 969 F.2d at 1116. Under this standard, the statute survives constitutional challenge if "the restriction further[s] 'an important or substantial government interest unrelated to the suppression of expression' and [is] 'no greater than is necessary or essential to the protection of the particular governmental interest involved.'" 969 F.2d at 1114 (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32, 104 S.Ct. 2199, 2207, 81 L.Ed.2d 17 (1984)). This standard applies because "[b]oth in *Seattle Times* and here, the Government compelled disclosure of information for a particular purpose and prohibited use of that information for other purposes; like the newspaper in *Seattle Times*, the defendants here have no claim of right to the benefit of the compelled disclosure apart from the measure in which the concomitant use restrict is found." *Id.* That reasoning applies equally to this case.

[9] Applying the intermediate scrutiny standard blunts the defendant's constitutional argument.[14] As the Court of Appeals found in *IFI*, § 438(a)(4) serves important governmental interests by minimizing the adverse effects of the Act's disclosure requirements. In addition to protecting political committees' intellectual property, *see* 969 F.2d at 1116, the Act preserves the level of political discourse:

> Without the use restriction of § 438(a)(4), innumerable entrepreneurs would, like the

13. Legi-Tech cannot persuasively contend that the statute has constrained the expression of any views or opinions on any public issues. The statute requires disclosure and promotes publication; it only restricts the defendant's attempt to "appropriat[e] to itself the harvest of those who have sown." *San Francisco Arts & Athletics v. United States Olympic Comm.*, 483 U.S. 522, 541, 107 S.Ct. 2971, 2983, 97 L.Ed.2d 427 (1987) (quoting *International News Serv. v. Associated Press*, 248 U.S. 215, 239–40, 39 S.Ct. 68, 72–73, 63 L.Ed. 211 (1918)) (internal quotation omitted, alteration in original).

Legi-Tech's true concern is with the statute's restriction of its attempt to acquire the property of others, not with any restrictions on its political speech. *See IFI*, 969 F.2d at 1119 (Buckley, J., concurring) ("The International Funding Institute ('IFI') seeks the uncompensated use of lists of names and addresses compiled at considerable cost by private parties. The Federal Election Campaign Act, however, recognizes that those lists have economic value, and it protects the reporting committee's exclusive proprietary interest in them by forbidding their use by third parties 'for the purpose of soliciting contributions or for commercial purposes.' 2 U.S.C. § 438(a)(4)."). In this regard, Legi-Tech's situation is not materially different from IFI's or IFI's co-defendants.

14. So would the application of the four-part test of *Central Hudson v. Public Service Comm. of New York*, 447 U.S. 557, 566, 100 S.Ct. 2343, 2351, 65 L.Ed.2d 341 (1980), under these facts. *See Lamphere & Urbaniak v. Colorado*, 21 F.3d 1508 (10th Cir.1994).

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defendants here, be able freely to appropriate to themselves part of the value of the contributor lists compiled by reporting political committees. As a result, such committees would have less incentive to compile the lists in the first place. In other words, if the return on their investment in solicitation would be reduced by others using the resulting lists, political committees would not find it worthwhile to solicit as much as they now do; they would raise less money, spend less money, and correspondingly underwrite less political discourse.

Id. at 1117 (citing *Buckley v. Valeo*, 424 U.S. 1, 19, 96 S.Ct. 612, 635, 46 L.Ed.2d 659 (1976)).

While Legi-Tech attempts to distinguish itself from its customers (i.e., the defendants in *IFI*,) the governmental interests relied upon by the Court of Appeals in *IFI* are fully applicable here. Through the CCTS, Legi-Tech provided the campaign contributor information to its customers in whole and in a form that facilitated use of that information for solicitation purposes. The applicable governmental interests are apparent from the text Congress enacted—text which prohibits the use of this information both for soliciting contributions and for commercial purposes. The reason? Such uses diminish the economic value of the contributor lists belonging to the political committees reporting to the FEC. Prohibiting the commercial trade of this information preserves the value of the political committees' intellectual property as well as their "incentive to compile the lists in the first place." *IFI*, 969 F.2d at 1117.

Moreover, prohibiting the commercial trade of this information preserves the effectiveness of the private campaign financing system by reducing the discouraging effects of compelled disclosure on the willingness of individuals to finance political discourse. *See Buckley v. Valeo*, 424 U.S. at 66–68, 96 S.Ct. at 657–58. Section 438(a)(4) was enacted as a means to encourage citizens to participate in electoral campaigns by assuring them that the disclosure required by § 438(a)(4) of their identities, addresses, contributions, and employers would not result in the addition of their names to lists that could be used for solicitation or exploited commercially.[15] Simply put, the prohibition on list-selling and solicitation contained in the statute (and implemented through the FEC regulation) furthers substantial government interest unrelated to the suppression of expression. And, contrary to Legi-Tech's view, the statute is neither facially overbroad, *IFI*, 969 F.2d at 1118, nor as it has been applied unconstitutionally in this case.[16] The scope of the restriction, in general and as applied here, is no greater than necessary to protect the substantial government interests. *Id.* at 1115 & 1117–18. Giving effect to only the solicitation component of Congress's proscription on solicitation or commercial use would not protect all of the substantial interests that Congress identified, such as the political parties' intellectual property interest. *See id.* at 1118.

15. The statement by Sen. Bellmon makes clear that the protection of personal privacy was important, not as an end in itself, but to encourage participation in the electoral process:

> [T]he purpose of this amendment is to protect the privacy of the generally very public-spirited citizens who may make a contribution to a political campaign or a political party. We all know how much of a business the matter of selling lists and list brokering has become. These names would certainly be prime prospects for all kinds of solicitations, and will open up the citizens who are generous and public spirited enough to support our political activities to all kinds of harassment, and in that way tend to discourage them from helping out as we need to have them do.

117 Cong.Rec. 30,057 (Aug. 5, 1971), *reprinted in Leg. Hist., supra* at 581.

16. The defendant proposes a subjective interpretation involving "misuse" of the information, suggesting that a prohibition only on the solicitation of contributions would fully satisfy the statute's objective. However, this proposal is premised on an overly narrow view of the important governmental interests at stake. Congress was concerned not only with prohibiting solicitation due to the personal privacy interests implicated, but also with the diminution of intellectual property arising from the commercial sale of information reported by the political committees and the potential adverse impact upon the political process (and political speech) resulting when citizens are deterred from participating due to the wholesale list-making adjunct to the commercial sale of such information.

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[10, 11] Legi-Tech's other arguments are similarly rejected. Its reliance upon cases in which the statutes at issue prohibited the press from reporting information released by the government are inapposite. Those cases simply do not command a different result than the decision here. Of course, as Legi-Tech argues, the government cannot completely suppress the dissemination of truthful information, *Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976), anymore than it can restrict the flow of truthful information merely because it believes that exposure to the information itself would be harmful, *Linmark Associates v. Township of Willingboro*, 431 U.S. 85, 97 S.Ct. 1614, 52 L.Ed.2d 155 (1977). *See generally* Lawrence Tribe, American Constitutional Law § 12-15, at 653-54 (1978). But, contrary to Legi-Tech's position, the FEC is not doing so here. The Act, by making information public, which otherwise would not be available, actually promotes and encourages the publication of campaign finance and political contribution information. The mere fact that the information made public is later reproduced in a format constituting speech does not automatically mean that Congress has forfeited all of its power to regulate the commercial use of that information. *See Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456, 98 S.Ct. 1912, 1918-19, 56 L.Ed.2d 444 (1978). Legi-Tech, "like the newspaper in *Seattle Times*, [has] no claim of right to the benefit of the compelled disclosure *apart from the measure in which the concomitant use restriction is found*." *IFI*, 969 F.2d at 1114 (citing *Seattle Times*, 467 U.S. at 33, 104 S.Ct. at 2208) (emphasis added by this Court). The fact that Legi-Tech is not allowed to do all that it wishes in connection with that information, does not make the statute constitutionally infirm. *Id.* at 1115.

Legi-Tech also relies upon a line of cases, including *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 99 S.Ct. 2667, 61 L.Ed.2d 399 (1979); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975); and *The Florida Star v. B.J.F.*, 491 U.S. 524, 109 S.Ct. 2603, 105 L.Ed.2d 443 (1989), for the proposition that the First Amendment shields it from sanctions where it merely publishes truthful information obtained from government records. However, each of those cases involved different statutes and different underlying governmental interests than is involved here. If protecting personal privacy were the only interest implicated by § 438(a)(4), then perhaps these authorities would support Legi-Tech's current attempt "to appropriat[e] to itself the harvest of those who have sown." *IFI*, 969 F.2d at 1117 (quoting *San Francisco Arts & Athletics*, 483 U.S. at 541, 107 S.Ct. at 2983 (quoting *International News Serv. v. Associated Press*, 248 U.S. 215, 239-40, 39 S.Ct. 68, 72-73, 63 L.Ed. 211 (1918)) (alteration in original)).

D. Civil penalties.

[12] Under the authority of 2 U.S.C. § 437g(a)(6)(B),[17] the FEC seeks a civil penalty of $5,000 against Legi-Tech for each violation of 2 U.S.C. § 438(a)(4). While Legi-Tech challenges the constitutionality of such a sanction, the Supreme Court has recognized that civil sanctions can be imposed even for the publication of truthful information that is lawfully obtained. *The Florida Star v. B.J.F.*, 491 U.S. at 537, 109 S.Ct. at 2611. Nor is the appropriateness of a civil penalty undermined due to the lack of a scienter provision where one can be implied. *Posters 'N' Things, Ltd. v. United States*, 511 U.S. 513, 523-25, 114 S.Ct. 1747, 1752-54, 128 L.Ed.2d 539 (1994).

Based on facts that are not, or cannot be, reasonably disputed, Defendant Legi-Tech knowingly violated the Act. *See supra* pp. 525-528. *Compare FEC v. American Int'l Demographic Serv., Inc.*, 629 F.Supp. 317, 320 (E.D.Va.1986) (awarding civil penalty under § 437g(a)(6)(C) for using names of contributors to political organizations for commercial purposes). The Court has de-

17. This provision provides, in relevant part, "the court may grant ... a civil penalty which does not exceed the greater of $5,000 or an amount equal to any contribution or expenditure involved in such violation, upon a proper showing that the person involved has committed ... a violation of this Act."

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termined that four such violations are appropriate for civil penalties. *See supra* pp. ——-—— (describing Legi-Tech's transactions with the International Brotherhood of Teamsters, Freedom Policy Foundation, DCCC and IFI). Accordingly, in addition to injunctive relief, civil penalties totaling $20,000 will be imposed.

III. Conclusion

Accordingly, it is hereby

ORDERED that Legi-Tech's Motion for Summary Judgment is denied; it is

FURTHER ORDERED that the FEC's Motion for Summary Judgment is granted. In accordance with Fed.R.Civ.P. 58, judgment shall be entered separately. The FEC is hereby awarded costs and shall submit its bill of costs in accordance with Local Rule 214; it is

FURTHER ORDERED that the Court finds that, as detailed *supra*, Legi-Tech has violated 2 U.S.C. § 438(a)(4) by selling or using information copied from reports filed with the FEC for commercial purposes in that the sale of such information was the principal purpose and primary focus of Legi-Tech's actions, and Legi-Tech is hereby permanently enjoined from further such violations; and it is

FURTHER ORDERED that in accordance with the factual findings and legal conclusions outlined *supra*, under the authority of 2 U.S.C. § 437g(a)(6)(B), civil penalties are imposed against Defendant Legi-Tech for four (4) violations of 2 U.S.C. § 438(a)(4) totaling $20,000.

IT IS SO ORDERED.

JUDGMENT

In accordance with the Memorandum Opinion and Order issued this date, and pursuant to Fed.R.Civ.P. 58, judgment is hereby entered in favor of Plaintiff Federal Election Commission and against Defendant Legi-Tech, Inc.

IT IS SO ORDERED.

William DIXON, et al., Plaintiffs,

v.

Marion BARRY, Jr., et al., Defendants.

Civil Action No. 74-285 (AER).

United States District Court,
District of Columbia.

June 13, 1997.

In class action brought by mentally ill District of Columbia residents who did not require institutionalization, the District Court, 405 F.Supp. 974, found that patients were entitled to community based mental health care and related services. Class members moved to appoint receiver to enforce court orders and consent decree entered in case over its 22-year history. The District Court, Aubrey E. Robinson, Jr., Senior District Judge, held that appointment of receiver to oversee Commission on Mental Health Services (CMHS) was necessary to implement court orders and was appropriate remedy after 22 years of unsuccessful attempts at compliance.

Motion for appointment of receiver granted.

1. Mental Health ⇐51.20

In class action on behalf of mentally ill persons needing community based treatment and associated services, evidence indicated that targeted class members had not received adequate treatment under goals of Service Development Plan designed to implement portions of consent decree. Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, §§ 2 et seq., 2(b)(1), 24 U.S.C.A. §§ 225 et seq., 225(b)(1); D.C.Code 1981, § 21-501 et seq.

2. Mental Health ⇐51.20

In class action on behalf of mentally ill persons needing community based treatment and associated services, evidence indicated

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FEDERAL ELECTION COMMISSION
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