FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2632

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 9, 1988

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA RJC For RJC 6-9-88
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: APPARENT EXCESSIVE CONTRIBUTIONS TO FEDERAL CANDIDATES

In accordance with the Commission vote on June 7, 1988, the attached matter is being referred to your office for further review.

Should you have any questions, please contact Michael Greaney or Alex Boniewicz at 376-5320.

Attachment as stated

Exhibit A: Apparent Excessive Contributions to Federal Candidates

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Apparent Excessive Contributions to Federal Candidates

The Act, at 2 U.S.C. § 441a(a)(2)(A), prohibits a multicandidate political committee from making contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000. Further, the Act, at 2 U.S.C. § 441a(a)(8), requires that for the purposes of the limitations imposed by this section, all contributions made by a person [defined at 2 U.S.C. § 431(11) to include a committee], either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The Regulations, at 11 C.F.R. § 110.6(b), define earmarked to mean a designation, instruction, or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or any part of a contribution being made to or expended on behalf of a clearly identified candidate or authorized committee.

The Audit staff reviewed all contributions made by the Committee to Federal candidates and other political committees. With respect to two particular 1986 Senatorial candidates, the Committee made direct contributions of $5,000 to each candidate during November and December 1985 for their respective primary elections. The Committee also made direct contributions of $5,000 to each during September and October 1986 with respect to their general elections.

In addition, the Audit staff reviewed documentation that indicated that Committee contributions of $2,500 to each of two State party committees on October 24, 1986 appeared to be earmarked to the particular candidates referred to above.

The Audit staff's review of the disclosure reports filed by the involved Senatorial candidates and the party committees determined that the cover letter, for one of the contributions to a party committee, was addressed to an individual, who appears to have been employed by the respective Senatorial candidate's committee at the time the contribution was made. The individual's relationship to the party committee could not be ascertained. It should also be noted that this cover letter also made reference to a 1986 House candidate who received a total of $500 in contributions from the Committee with respect to the General Election. The other cover letter was addressed to the attention of two individuals. The first individual listed appears to have been employed by the respective State party

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committee at the time of the contribution, but who, in addition, appears to have been a former employee of the Senatorial candidate's committee. The other individual could not be directly associated with either committee.

At the exit conference, the Committee Treasurer agreed that the cover letters for these contributions appeared to indicate earmarking, and that one letter appeared to be more clearly indicative of earmarking than the other letter. The Treasurer indicated he would have more control over the enthusiasm as expressed in the letters in the future to prevent excessive contributions.

In the interim report, the Audit staff recommended that the Committee either supply additional documentation demonstrating that the noted contributions were not excessive; or seek refunds of the excessive portions ($2,500 each) from the two State party committees providing evidence of such refunds for review by the Audit staff.

On March 3, 1988, the Committee submitted a partial response indicating they were in the process of contacting the two involved state party committees to request refunds. Copies of the letters sent by the Committee were provided as part of this response.

On April 7, 1988, the Committee provided copies of the responses received from the two state party committees. Both committees indicate the funds were used for activities related to the entire Democratic Party ticket.

Recommendation

In accordance with the Commission vote on June 7, 1988, this matter is being referred to the Office of General Counsel.

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR # 2632
Staff Assigned: B. Kramer

SOURCE: INTERNALLY GENERATED

RESPONDENTS: St. Louisians for Better Government and Bunny Goldwasser, as treasurer
Idaho State Democratic Party Federal Account and Sharon Nielson, as treasurer
John Evans for Senate Committee and Marvin Lentini, as treasurer

RELEVANT STATUTE: 2 U.S.C. § 441a(a)(2)(A)
2 U.S.C. § 441a(a)(8)
2 U.S.C. § 441a(f)
11 C.F.R. § 110.6(c)

INTERNAL REPORTS CHECKED: Referral Materials
Public Record

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The Audit Division referred the St. Louisians for Better Government ("the Better Government Committee") to the Office of the General Counsel for a possible violation of 2 U.S.C. § 441a(a)(2)(A). Attachment 1. The matter concerns apparent earmarked contributions to two 1986 Senatorial candidates which, when aggregated with the Better Government Committee's direct contributions to these candidates, appear to exceed the $5,000 contribution limit imposed on contributions from multicandidate committees. 2 U.S.C. § 441a(a)(2)(A) and 2 U.S.C. § 441a(a)(8).

II. FACTUAL AND LEGAL ANALYSIS

A. The Facts

The facts presented in the audit referral are these: The Better Government Committee made direct contributions of $5,000

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each to two 1986 Senatorial candidates, John Evans and Senator Tom Daschle, during November and December 1985 for their respective primary election campaigns. The Better Government Committee also made direct contributions of $5,000 to each of these candidates during September and October 1986 with respect to their general election campaigns.

In addition, the Better Government Committee made contributions of $2,500 to each of two state party committees on October 24, 1986. The cover letters accompanying these contributions indicated, in the auditors' view, earmarking to the two candidates referenced above.

The cover letter submitted with the Better Government Committee's contribution to the Idaho State Democratic Party Federal Account ("the Idaho State Committee") begins "We are pleased to enclose a check for $2500.00 to help in the election of John Evans to the United States Senate." Attachments at 4. The letter is addressed to the attention of two individuals. According to the audit referral, one of the individuals listed was employed by the Idaho State Committee at the time of the contribution but had been a former employee of John Evan's senatorial campaign committee.

The cover letter submitted with the Better Government Committee's other contribution of $2,500 states that the contribution is being made to the South Dakota Democratic Majority Program Federal Account ("the Democratic Majority Committee"). The letter continues: "Please convey our best

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wishes to Tom [Daschle] in his difficult senatorial race and hopefully he will carry Tim Johnson into his old congressional seat." Attachments at 5. The letter is addressed to an individual whom, according to the audit referral, was employed by Senator Daschle's senatorial campaign committee at the time of the contribution. The individual's relationship to the party committee has not been ascertained.

During the pendancy of the audit, the cover letters were brought to the attention of the Better Government Committee's treasurer. The treasurer agreed, at that time, that the cover letters submitted with the contributions appeared to indicate earmarking. Consequently, in the interim audit report, the Audit staff recommended that the Better Government Committee either supply additional documentation demonstrating that the noted contributions were not excessive or seek refunds of the excessive portions ($2,500 each) from the two state party committees.

On April 7, 1988, the Better Government Committee provided copies of letters received from the two state party committees. Both party committees indicated in their letters that the funds donated by the Better Government Committee were used for activities related to getting out the vote benefitting the entire Democratic Party ticket, and not to promote the election of any individual candidate. Attachments at 7 and 8.

In addition, this Office has reviewed the public record to gather facts concerning the reporting of the transactions between the Better Government Committee and the two State party

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committees. The public record reveals that the Better Government Committee filed a Post General Election Report disclosing direct contributions of $2,500 each to the Idaho State Committee and the Democratic Majority Committee on October 24, 1986. Attachments at 10. The Democratic Majority Committee reported the receipt of a direct contribution of $2,500 from the Better Government Committee on October 30, 1988. Attachments at 13. Within this same reporting period the Democratic Majority Committee lists disbursements for operating expenses, printing, ad buys and commercials. Attachments at 14 and 15. In a letter to the Commission dated February 12, 1987, the Democratic Majority Committee clarified that the expenditures for printing, ad buys and commercials were for state party advertising and get-out-the-vote efforts. The letter further stated that no expenditures were made on behalf of specifically identified candidates. Attachments at 17.

The Idaho State Committee similarly disclosed in its Post General Election Report the receipt of a direct contribution of $2,500 from the Better Government Committee on October 31, 1986. Attachments at 20. The Idaho State Committee's Post General Election Report and its Year End Report itemize all expenditures made within the reporting periods covered by these reports (10/16/86-12/31/86). All but six expenditures made subsequent to the receipt of the Better Government Committee's $2,500 contribution constituted administrative expenses (i.e., salaries, withholding taxes). Attachments at 21 and 25. The remaining six

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expenditures consisted of the following: a coordinated party expenditure of $12,252 on behalf of candidate John Evans for an "Election Day Mailgram"; three expenditures totalling $3,726 to Election Computer Services for computer lists; and two expenditures totalling $1,943 to Syms-York for printing. Attachments at 22 and 25. The expenditure for the "Election Day Mailgram" may relate to get-out-the-vote activities on behalf of John Evans. The expenditures for computer lists and printing might also relate to get out the vote activities. There is nothing in the reports that would indicate that these expenditures were made to benefit the entire Democratic party ticket.

B. Analysis

The threshold issue is whether the contributions to the two state party committees were "earmarked" for Senatorial candidates John Evans and Senator Tom Daschle. Section 441a(a)(8) of the Act provides that "earmarked" contributions made through a conduit shall be considered as having been made by the original contributor. Earmarking is defined in 11 C.F.R. § 110.6(b):

> (b) For purposes of this section, earmarked means a designation, instruction, or encumbrance (including those which are direct, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

In this case the existence of earmarking is apparent with regard to the Better Government Committee's contribution to the Idaho State Committee (Evans). Whereas, the Better Government

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Committee's contribution to the Democratic Majority Committee (Daschle) does not exhibit earmarking as defined above.

The Better Government Committee's statement contained in their letter to the Idaho State Committee constituted, at a minimum, the kind of "implied instruction" contemplated in 11 C.F.R. § 110.6(b) which caused "any part of [their] contribution [to be] expended on behalf of a clearly identified candidate or a candidate's authorized committee." In this case the earmarking statement was, "[W]e are pleased to enclose a check for $2,500 to help in the election of John Evans to the United States Senate." In contrast, the Better Government Committee's letter submitted with their contribution to the Democratic Majority Committee does not, on its face, exhibit earmarking. The letter does not provide the express or implied instruction of 11 C.F.R. § 110.6(b) that Senator Daschle should ultimately receive the benefit of their contribution. The letter in fact states that the contribution is being made to the South Dakota Democratic Majority Program Federal Account. Although it refers to the Daschle campaign, it also mentions a House candidate's campaign. The letter does not contain a specific designation of the amount to be used for or contributed to either candidate. The fact that the letter was addressed to an individual who was employed by Senator Daschle's campaign at the time of the contribution might suggest earmarking, but it is not conclusive particularly since the individual's relationship to the party committee has not been ascertained.

The more conclusive evidence is the consistency between the Democratic Majority Committee's response to the Better Government

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Committee regarding the ultimate use to which the contribution was put and its reporting of expenditures made subsequent to its receipt of the $2,500 contribution from the Better Government Committee. The Democratic Majority Committee stated that the funds donated by the Better Government Committee were used for activities related to getting out the vote benefiting the entire Democratic Party ticket and not to promote the election of any individual candidate. The Democratic Majority Committee's reports and statements on the public record provide supporting evidence of this. The fact that the Better Government Committee's funds were not expended on behalf of Senator Daschle corroborates our earlier conclusion that the language contained in their forwarding letter does not constitute earmarking within the meaning of 11 C.F.R. § 110.6(b).

In contrast, the public record does not support the identical claim made by the Idaho State Committee. To the contrary, its reports reflect that subsequent to receiving the $2,500 check from the Better Government Committee, it made a coordinated § 441a(d) expenditure on behalf of candidate John Evans. Nowhere in its reports is there any indication that it made expenditures for get-out-the-vote activities on behalf of the entire Democratic Party ticket.

Based on the foregoing, it is the view of this Office that the Better Government Committee's contribution to the Democratic Majority Committee counts towards its contribution limit to the party committee. Hence, this Office recommends a finding of no

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reason to believe the Better Government Committee made an excessive contribution to Senator Tom Daschle, in violation of 2 U.S.C. § 441a(a)(2)(A). It is also our view that the Better Government Committee's contribution to the Idaho State Committee constituted an earmarked contribution to candidate John Evans which, when aggregated with the Better Government Committee's direct contributions to the candidate, exceeds the contribution limits of 2 U.S.C. § 441a(a)(2)(A). 1/ Accordingly, this Office also recommends a finding of reason to believe the Better Government Committee made an excessive contribution to the John Evans for Senate Committee, in violation of 2 U.S.C. § 441a(a)(2)(A).

Additionally, the Office of the General Counsel recommends that the Commission find reason to believe the Idaho State Committee violated 11 C.F.R. § 110.6(c), a provision of the

1/ In MUR 377, In re Citizens for John V. Tunney, the Commission considered the issue of whether the contributors' limit to a candidate is affected, as opposed to their limit to a party committee, in the instance where they had responded to a party committee's solicitation to retire the debts of a particular candidate. The General Counsel's report concluded that the earmarking provisions should apply to the § 441a(d) expenditures in question since the contributors knew from reading the solicitation letter that their money would be used to support a particular candidate. However, the General Counsel recommended that the Commission find no reasonable cause to believe that a violation of the Act had occurred since the issue was unclear and strong counterarguments could be made against applying the earmarking section under these circumstances.

In MUR 377 it was the party committee, as the conduit, and not the contributors themselves, who exercised control over the choice of the intended recipient. This case is factually distinguishable in that the Better Government Committee has exercised control over the choice of the intended recipient and the party committee is following through on the instructions (whether express or implied) of the Committee.

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Commission's regulations requiring the intermediary or conduit of an earmarked contribution to report the original source and intended recipient of the contribution to the Commission and to the intended recipient. As shown infra, the Idaho State Committee failed to disclose to the Commission in its Post General Election Report that candidate John Evans was the intended recipient of the $2,500 they received from the Better Government Committee. The absence of this public disclosure suggests that the Idaho State Committee may have similarly failed to inform the John Evans campaign that they were the intended recipients of the $2,500 contribution received from the Better Government.

It is the further recommendation of this Office that the Commission take no action at this time against the John Evans for Senate Committee concerning a possible violation of 2 U.S.C. § 441a(f) with regard to its acceptance of an excessive contribution from the Better Government Committee. Section 441a(f) prohibits a candidate or political committee from "knowingly" accepting any contribution in violation of the Act's contribution limits. The use of the word "knowingly" as interpreted by the Commission in various enforcement matters implies that the person must have knowledge of the facts of the situation which brings the contribution within the prohibitions of the statute. In this case, it is unknown whether the John Evans for Senate Committee was informed by the Idaho State Committee of the original source of funds being expended on their

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behalf in accordance with 11 C.F.R. § 110.6(c). For purposes of developing the facts, this Office proposes to send questions to the Idaho State Committee.

III. RECOMMENDATIONS

1. Find reason to believe the St. Louisians for Better Government and Bunny Goldwasser, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) by making an excessive contribution to candidate John Evans.

2. Find no reason to believe that the St. Louisians for Better Government and Bunny Goldwasser, as treasurer, made an excessive contribution to candidate Tom Daschle, in violation of 2 U.S.C. § 441a(a)(2)(A).

3. Find reason to believe the Idaho State Democratic Party Federal Account and Sharon Nielson, as treasurer, violated 11 C.F.R. § 110.6(c).

4. Take no action at this time against the John Evans for Senate Committee and Marvin Lentini, as treasurer, in regard to this matter.

5. Approve the attached letter and Factual and Legal Analysis.

Lawrence M. Noble
General Counsel

10/12/88
Date

BY: Lois G. Lerner
Associate General Counsel

Attachments
1. Referral Materials
2. Public Records Materials
3. Proposed letters and Factual and Legal Analyses

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	
St. Louisians for Better Government and Bunny Goldwasser, as treasurer	)	MUR 2632
Idaho State Democratic Party Federal Account and Sharon Nielson, as treasurer	)	
John Evans for Senate Committee and Marvin Lentini, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 17, 1988, the Commission decided by a vote of 5-0 to take the following actions in MUR 2632:

1. Find reason to believe the St. Louisians for Better Government and Bunny Goldwasser, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) by making an excessive contribution to candidate John Evans.

2. Find no reason to believe that the St. Louisians for Better Government and Bunny Goldwasser, as treasurer, made an excessive contribution to candidate Tom Daschle, in violation of 2 U.S.C. § 441a(a)(2)(A).

3. Find reason to believe the Idaho State Democratic Party Federal Account and Sharon Nielson, as treasurer, violated 11 C.F.R. § 110.6(c).

(Continued)

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4. Take no action at this time against the John Evans for Senate Committee and Marvin Lentini, as treasurer, in regard to this matter, as recommended in the First General Counsel's report signed October 12, 1988.

5. Approve the letter and Factual and Legal Analysis, as recommended in the First General Counsel's report signed October 12, 1988.

Commissioners Aikens, Elliott, Josefiak, McGarry, and Thomas voted affirmatively for the decision; Commissioner McDonald did not cast a vote.

Attest:

Oct 17, 1988
Date

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

Received in the Office of Commission Secretary: Wed., 10-12-88, 3:32
Circulated on 48 hour tally basis: Thurs., 10-13-88, 11:00
Deadline for vote: Mon., 10-17-88, 11:00

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 19, 1988

Ms. Bunny Goldwasser, Treasurer
St. Louisians for Better Government
1015 Locust St.
Suite 600
St. Louis, MO 63101

RE: MUR 2632
St. Louisians for Better Government and Bunny Goldwasser, as treasurer

Dear Ms. Goldwasser:

On October 17, 1988, the Federal Election Commission found that there is reason to believe St. Louisians for Better Government ("Committee") and you, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), by making an excessive contribution to Senate candidate John Evans. 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 Committee and you, as treasurer. 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 within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer , 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

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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 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 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 Beverly Kramer, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Thomas J. Josefiak
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

Respondents: St. Louisians for Better Government and Bunny Goldwasser, as treasurer

The Audit Division referred the St. Louisians for Better Government ("the Better Government Committee") to the Office of the General Counsel for a possible violation of 2 U.S.C. § 441a(a)(2)(A). The matter concerns apparent earmarked contributions to two 1986 Senatorial candidates which, when aggregated with the Better Government Committee's direct contributions to these candidates, appear to exceed the $5,000 contribution limit imposed on contributions from multicandidate committees. 2 U.S.C. § 441a(a)(2)(A) and 2 U.S.C. § 441a(a)(8).

The facts presented in the audit referral are these: The Better Government Committee made direct contributions of $5,000 each to two 1986 Senatorial candidates, John Evans and Senator Tom Daschle, during November and December 1985 for their respective primary election campaigns. The Better Government Committee also made direct contributions of $5,000 to each of these candidates during September and October 1986 with respect to their general election campaigns.

In addition, the Better Government Committee made contributions of $2,500 to each of two state party committees on October 24, 1986. The cover letters accompanying these contributions indicated, in the auditors' view, earmarking to the two candidates referenced above.

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The cover letter submitted with the Better Government Committee's contribution to the Idaho State Democratic Party Federal Account ("the Idaho State Committee") begins "We are pleased to enclose a check for $2500.00 to help in the election of John Evans to the United States Senate." The letter is addressed to the attention of two individuals. According to the audit referral, one of the individuals listed was employed by the Idaho State Committee at the time of the contribution but had been a former employee of John Evan's senatorial campaign committee.

The cover letter submitted with the Better Government Committee's other contribution of $2,500 states that the contribution is being made to the South Dakota Democratic Majority Program Federal Account ("the Democratic Majority Committee"). The letter continues: "Please convey our best wishes to Tom [Daschle] in his difficult senatorial race and hopefully he will carry Tim Johnson into his old congressional seat." The letter is addressed to an individual whom, according to the audit referral, was employed by Senator Daschle's senatorial campaign committee at the time of the contribution. The individual's relationship to the party committee has not been ascertained.

During the pendancy of the audit, the cover letters were brought to the attention of the Better Government Committee's treasurer. The treasurer agreed, at that time, that the cover

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letters submitted with the contributions appeared to indicate earmarking. Consequently, in the interim audit report, the Audit staff recommended that the Better Government Committee either supply additional documentation demonstrating that the noted contributions were not excessive or seek refunds of the excessive portions ($2,500 each) from the two state party committees.

On April 7, 1988, the Better Government Committee provided copies of letters received from the two state party committees. Both party committees indicated in their letters that the funds donated by the Better Government Committee were used for activities related to getting out the vote benefitting the entire Democratic Party ticket, and not to promote the election of any individual candidate.

In addition, this Office has reviewed the public record to gather facts concerning the reporting of the transactions between the Better Government Committee and the two State party committees. The public record reveals that the Better Government Committee filed a Post General Election Report disclosing direct contributions of $2,500 each to the Idaho State Committee and the Democratic Majority Committee on October 24, 1986. The Democratic Majority Committee reported the receipt of a direct contribution of $2,500 from the Better Government Committee on October 30, 1988. Within this same reporting period the Democratic Majority Committee lists disbursements for operating expenses, printing, ad buys and commercials. In a letter to the Commission dated February 12, 1987, the Democratic Majority

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Committee clarified that the expenditures for printing, ad buys and commercials were for state party advertising and get-out-the-vote efforts. The letter further stated that no expenditures were made on behalf of specifically identified candidates.

The Idaho State Committee similarly disclosed in its Post General Election Report the receipt of a direct contribution of $2,500 from the Better Government Committee on October 31, 1986. The Idaho State Committee's Post General Election Report and its Year End Report itemize all expenditures made within the reporting periods covered by these reports (10/16/86-12/31/86). All but six expenditures made subsequent to the receipt of the Better Government Committee's $2,500 contribution constituted administrative expenses (i.e., salaries, withholding taxes). The remaining six expenditures consisted of the following: a coordinated party expenditure of $12,252 on behalf of candidate John Evans for an "Election Day Mailgram"; three expenditures totalling $3,726 to Election Computer Services for computer lists; and two expenditures totalling $1,943 to Syms-York for printing. The expenditure for the "Election Day Mailgram" may relate to get-out-the-vote activities on behalf of John Evans. The expenditures for computer lists and printing might also relate to get out the vote activities. There is nothing in the reports that would indicate that these expenditures were made to benefit the entire Democratic party ticket.

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Analysis

The threshold issue is whether the contributions to the two state party committees were "earmarked" for Senatorial candidates John Evans and Senator Tom Daschle. Section 441a(a)(8) of the Act provides that "earmarked" contributions made through a conduit shall be considered as having been made by the original contributor. Earmarking is defined in 11 C.F.R. § 110.6(b):

> (b) For purposes of this section, earmarked means a designation, instruction, or encumbrance (including those which are direct, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

In this case the existence of earmarking is apparent with regard to the Better Government Committee's contribution to the Idaho State Committee (Evans). Whereas, the Better Government Committee's contribution to the Democratic Majority Committee (Daschle) does not exhibit earmarking as defined above.

The Better Government Committee's statement contained in their letter to the Idaho State Committee constituted, at a minimum, the kind of "implied instruction" contemplated in 11 C.F.R. § 110.6(b) which caused" any part of [their] contribution [to be] expended on behalf of a clearly identified candidate or a candidate's authorized committee." In this case the earmarking statement was, "[W]e are pleased to enclose a

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check for $2,500 to help in the election of John Evans to the United States Senate."

In contrast, the Better Government Committee's letter submitted with their contribution to the Democratic Majority Committee does not, on its face, exhibit earmarking. The letter does not provide the express or implied instruction of 11 C.F.R. § 110.6(b) that Senator Daschle should ultimately receive the benefit of their contribution. The letter in fact states that the contribution is being made to the South Dakota Democratic Majority Program Federal Account. Although it refers to the Daschle campaign, it also mentions a House candidate's campaign. The letter does not contain a specific designation of the amount to be used for or contributed to either candidate. The fact that the letter was addressed to an individual who was employed by Senator Daschle's campaign at the time of the contribution might suggest earmarking, but it is not conclusive particularly since the individual's relationship to the party committee has not been ascertained.

The more conclusive evidence is the consistency between the Democratic Majority Committee's response to the Better Government Committee regarding the ultimate use to which the contribution was put and its reporting of expenditures made subsequent to its receipt of the $2,500 contribution from the Better Government Committee. The Democratic Majority Committee stated that the funds donated by the Better Government Committee were used for activities related to getting out the vote benefiting the entire

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Democratic Party ticket and not to promote the election of any individual candidate. The Democratic Majority Committee's reports and statements on the public record provide supporting evidence of this. The fact that the Better Government Committee's funds were not expended on behalf of Senator Daschle corroborates our earlier conclusion that the language contained in their forwarding letter does not constitute earmarking within the meaning of 11 C.F.R. § 110.6(b).

In contrast, the public record does not support the identical claim made by the Idaho State Committee. To the contrary, its reports reflect that subsequent to receiving the $2,500 check from the Better Government Committee, it made a coordinated § 441a(d) expenditure on behalf of candidate John Evans. Nowhere in its reports is there any indication that it made expenditures for get-out-the-vote activities on behalf of the entire Democratic Party ticket.

Based on the foregoing, it is the view of this Office that the Better Government Committee's contribution to the Democratic Majority Committee counts towards its contribution limit to the party committee. Therefore, there is no reason to believe the Better Government Committee made an excessive contribution to Senator Tom Daschle, in violation of 2 U.S.C. § 441a(a)(2)(A). It is also our view that the Better Government Committee's contribution to the Idaho State Committee constituted an earmarked contribution to candidate John Evans which, when aggregated with the Better Government Committee's direct contributions to the candidate, exceeds the contribution

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limits of 2 U.S.C. § 441a(a)(2)(A). 1/ Accordingly, there is reason to believe the Better Government Committee made an excessive contribution to the John Evans for Senate Committee, in violation of 2 U.S.C. § 441a(a)(2)(A).

1/ In MUR 377, In re Citizens for John V. Tunney, the Commission considered the issue of whether the contributors' limit to a candidate is affected, as opposed to their limit to a party committee, in the instance where they had responded to a party committee's solicitation to retire the debts of a particular candidate. The General Counsel's report concluded that the earmarking provisions should apply to the § 441a(d) expenditures in question since the contributors knew from reading the solicitation letter that their money would be used to support a particular candidate. However, the General Counsel recommended that the Commission find no reasonable cause to believe that a violation of the Act had occurred since the issue was unclear and strong counterarguments could be made against applying the earmarking section under these circumstances.

In MUR 377 it was the party committee, as the conduit, and not the contributors themselves, who exercised control over the choice of the intended recipient. This case is factually distinguishable in that the Better Government Committee has exercised control over the choice of the intended recipient and the party committee is following through on the instructions (whether express or implied) of the Committee.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 19, 1988

Ms. Sharon Nielson, Treasurer
Idaho State Democratic Party - Federal
Account
P.O. Box 445
Boise, Idaho 83701

RE: MUR 2632
Idaho State Democratic Party -
Federal Account and Sharon
Nielson, as treasurer

Dear Ms. Nielson:

On October 17, 1988, the Federal Election Commission found that there is reason to believe Idaho State Democratic Party - Federal Account ("Committee") and you, as treasurer, violated 11 C.F.R. § 110.6(c), a provision of the Commission's Regulations. 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 Committee and you, as treasurer. 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. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, 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

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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 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 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 Beverly Kramer, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Thomas J. Josefiak
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

9104030441

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Idaho State Democratic Party Federal Account and Sharon Nielson, as treasurer

An audit of the St. Louisians for Better Government ("the Better Government Committee") indicates a failure by the Idaho State Democratic Party Federal Account ("the Idaho State Committee") to report the original source and intended recipient of an earmarked contribution, in violation of 11 C.F.R. § 110.6(c).

The facts presented are these: The Better Government Committee made a contribution of $2,500 to the Idaho State Committee on October 24, 1986. The cover letter accompanying this contribution indicated, in the auditors' view, earmarking to 1986 Senate candidate John Evans. The cover letter submitted with the Better Government Committee's contribution to the Idaho State Committee begins "We are pleased to enclose a check for $2500.00 to help in the election of John Evans to the United States Senate." The letter is addressed to the attention of two individuals. One of the individuals listed was employed by the Idaho State Committee at the time of the contribution but had been a former employee of John Evan's senatorial campaign committee.

During the pendancy of the audit, the cover letter was brought to the attention of the Better Government Committee's treasurer. The treasurer agreed, at that time, that the cover letter submitted with the contribution appeared to indicate earmarking. Subsequently, on April 7, 1988, the Better Government Committee provided a copy of a letter received from

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the Idaho State Committee. The Idaho State Committee indicated in their letter that the funds donated by the Better Government Committee were used for activities related to getting out the vote benefitting the entire Democratic Party ticket, and not to promote the election of any individual candidate.

A review of the public record reveals that the Better Government Committee filed a Post General Election Report disclosing a direct contribution of $2,500 to the Idaho State Committee on October 24, 1986. The Idaho State Committee disclosed in its Post General Election Report the receipt of a direct contribution of $2,500 from the Better Government Committee on October 31, 1986. The Idaho State Committee's Post General Election Report and its Year End Report itemize all expenditures made within the reporting periods covered by these reports (10/16/86-12/31/86). All but six expenditures made subsequent to the receipt of the Better Government Committee's $2,500 contribution constituted administrative expenses (i.e., salaries, withholding taxes). The remaining six expenditures consisted of the following: a coordinated party expenditure of $12,252 on behalf of candidate John Evans for an "Election Day Mailgram"; three expenditures totalling $3,726 to Election Computer Services for computer lists; and two expenditures totalling $1,943 to Syms-York for printing. The expenditure for the "Election Day Mailgram" may relate to get-out-the-vote activities on behalf of John Evans. The expenditures for

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computer lists and printing might also relate to get-out-the-vote activities. There is nothing in the reports that would indicate that these expenditures were made to benefit the entire Democratic party ticket.

Analysis

The threshold issue is whether the contribution to the Idaho State Committee was "earmarked" for Senatorial candidate John Evans. Section 110.6(c), of the Commission's Regulations requires the intermediary or conduit of an earmarked contribution to report the original source and intended recipient of the contribution to the Commission and to the intended recipient. Earmarking is defined in 11 C.F.R. § 110.6(b):

> (b) For purposes of this section, earmarked means a designation, instruction, or encumbrance (including those which are direct, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

In this case the existence of earmarking is apparent with regard to the Better Government Committee's contribution to the Idaho State Committee (Evans). The Better Government Committee's statement contained in their letter to the Idaho State Committee constituted, at a minimum, the kind of "implied instruction" contemplated in 11 C.F.R. § 110.6(b) which caused "any part of [their] contribution [to be] expended on behalf of a clearly identified candidate or a candidate's authorized committee." In

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this case the earmarking statement was, "[W]e are pleased to enclose a check for $2,500 to help in the election of John Evans to the United States Senate."

Although the Idaho State Committee has claimed that the funds received from the Better Government Committee were used for get-out-the-vote activity benefitting the entire Democratic party ticket and not any individual candidate, the public record does not provide supporting evidence of this. To the contrary, the Idaho State Committee's reports reflect that subsequent to receiving the $2,500 check from the Better Government Committee, it made a coordinated § 441a(d) expenditure on behalf of candidate John Evans. Nowhere in its reports is there any indication that it made expenditures for get-out-the-vote activities on behalf of the entire Democratic Party ticket.

Based on the foregoing, it is the view of this Office that the Better Government Committee's contribution to the Idaho State Committee constituted an earmarked contribution to candidate John Evans. Insofar as the Idaho State Committee failed to report to the Commission in its Post General Election Report the intended recipient of the $2,500 earmarked contribution from the Better Government Committee, there is reason to believe that the Idaho State Committee and Sharon Nielson, as treasurer, violated 11 C.F.R. § 110.6(c).

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QUESTIONS

TO: The Idaho State Democratic Party - Federal Account and Sharon Nielson, as treasurer (herein "the Committee")

State whether there was any communication between the Committee and the John Evans Senatorial Campaign concerning the $2500 contribution forwarded to the Committee on or about October 31, 1986 by the St. Louisians for Better Government. If so:

1. State the date and the substance of each communication.

2. Identify the persons involved in the communications (provide the full name of the person and his or her relationship to the Committee and/or the John Evans Campaign).

3. Provide a copy of all writings (e.g. letters, written memoranda) concerning the communications.

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DGC 812

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

88 OCT 28 PM 1:06

Saint Louisians For Better Government

October 25, 1988

RECEIVED
FEDERAL ELECTION COMMISSION

88 OCT 28 PM 3:36

Beverly Kramer
Office of General Counsel
999 E Street N.W.
Washington, D.C. 20463

Re: St. Louisians For Better Government

Dear Beverly:

I am in receipt of the letter regarding MUR 2632. I am in the process of gathering all the information regarding this letter and at this time I am requesting an extension of time in order to do so.

Your kind cooperation is very much appreciated.

Sincerely,

Bunny R. Goldwasser

Bunny R. Goldwasser

BRG:ck

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 7, 1988

Ms. Bunny Goldwasser, Treasurer
St. Louisians for Better Government
1015 Locust St., Suite 600
St. Louis, MO 63101

RE: MUR 2632
St. Louisians for Better Government and Bunny Goldwasser, as Treasurer

Dear Ms. Goldwasser:

This is in response to your letter dated October 25, 1988, which we received on October 28, 1988, requesting an extension to respond to the Commission's notice in connection with its finding of reason to believe St. Louisians for Better Government and you, as treasurer violated the Act. After considering the circumstances presented in your letter, I have granted an extension of twenty (20) days. Accordingly, your response is due by the close of business on November 28, 1988.

If you have any questions, please contact Beverly Kramer, the staff member assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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Saint Louisians For Better Government

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
88 NOV 28 AM 11:01

November 22, 1988

Beverly Kramer
Office of General Counsel
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Re: St. Louisians For Better Government

Dear Beverly:

Enclosed please find letter from Michael Litwack, past President and a letter from Dr. Carl Lyss explaining their actions. If there is anything else you need, please do not hesitate to contact me.

Thank you for your very kind cooperation.

Sincerely,

Bunny

Bunny R. Goldwasser, CLU, ChFC

BRG:ck

Enclosures

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Saint Louisians For Better Government

November 22, 1988

Beverly Kramer
Office of General Counsel
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Re: St. Louisians For Better Government

Dear Beverly:

In regard to the funds forwarded to the Idaho Democratic Party campaign by St. Louisians for Better Government, it is my honest recollection that the sole intent of those funds were to aide in getting out the vote and not for any specific candidate.

I had requested Dr. Lyss to forward the check, as I was leaving town, and therefore did not review the letter he sent with the check. He has assured me that the reference to Govenor Evans was strictly a personal aside or wishing the Governor good luck, and not infering the money was to be directed to the Governor's campaign fund.

We regret the confusion. It was not our Pac's intent to circumvent the system, but rather an error in judgement in wording the letter.

Thank you for your consideration.

Sincerely,

Michael Litwack

Michael Litwack
Past President 1985-1986

DOC# 1196

Mon 2632

Internal Medicine Consultants, Inc.

CARL A. LYSS, M.D. ■ *GASTROENTEROLOGY*
HERBERT B. ZIMMERMAN, M.D. ■ *CARDIOLOGY—PULMONARY DISEASES*
ROBERT L. KAUFMAN, M.D. ■ *MEDICAL GENETICS*
Suite 299, Jewish Hospital Medical Offices—456 N. New Ballas Road—St. Louis, Mo. 63141
Telephone (314) 569-1090

November 22, 1988

Ms. Beverly Kramer
Office of General Counsel
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Re: St. Louisians For Better Government

Dear Ms. Kramer:

Concerning my letter that was sent with the check to the Idaho Democratic Party campaign by St. Louisians for Better Government. I did not mean this check to be used for Governor Evans personally. My reference to Governor Evans was strictly a personal good luck and the funds to be used to help get out the vote, and not infering the money was to be used direct to the Governor's campaign fund. I sincerely regret the confusion.

Thank you for your kind cooperation.

Sincerely,

Carl A. Lyss

Dr. Carl A. Lyss

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 2, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Joe Berenter
Idaho State Democratic Party-Federal Account
P.O. Box 445
Boise, Idaho 83701

RE: MUR 2632
Idaho State Democratic Party-Federal Account and Sharon Nielson, as treasurer

Dear Mr. Berenter:

On October 19, 1988, you were notified that the Federal Election Commission, on October 17, 1988, found reason to believe the Idaho State Democratic Party-Federal Account (the "Committee") and Sharon Nielson, the former treasurer, violated 11 C.F.R. § 110.6(c), a provision of the Commission Regulations. Enclosed please find the material that was sent to the Committee on October 19, 1988. Under the Federal Election Campaign Act of 1971, as amended, you have an opportunity to demonstrate that no action should be taken against the Committee and you as treasurer.

A review of our files indicate that to date, you have not responded to the Commission's findings. Unless we receive a response from you within ten days, this Office will proceed to the next stage of the enforcement process.

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Should you have any questions, please contact Frania Monarski, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

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RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

89 JUL 13 PM 4:45

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2632
Idaho State Democratic Party-Federal Account and Joe Berenter[1], as treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On October 17, 1988, the Commission found reason to believe that the Idaho State Democratic Party-Federal Account (the "Committee") and its treasurer violated 11 C.F.R. § 110.6(c) by failing to report the original source and the intended recipient of an earmarked contribution. On October 19, 1988, this Office notified the Committee of the Commission's finding and forwarded written questions to the Committee at that time. On June 2, 1989, this Office sent a reminder letter to the Committee via certified mail. On June 14, 1989, this Office received the return receipt, however, the Committee has still failed to respond to the Commission's finding and submit answers to the questions. Therefore, this Office recommends that the Commission authorize the attached subpoena and order to the Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer.

II. RECOMMENDATIONS

1. Authorize the attached subpoena and order to the Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer.

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1. On September 2, 1988, the Committee filed an amended Statement of Organization replacing its former treasurer, Sharon Nielson, with Joe Berenter.

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2. Approve the attached letter.

Lawrence M. Noble
General Counsel

Date 7/12/89

BY: Lois G. Lerner
Associate General Counsel

Attachments
1. Subpoena/Order
2. Letter

Staff Assigned: Frania Monarski

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer	)	MUR 2632

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 18, 1989, the Commission decided by a vote of 6-0 to take the following actions in MUR 2632:

1. Authorize the subpoena and order to the Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer, as recommended in the General Counsel's report dated July 12, 1989.

2. Approve the letter attached to the General Counsel's report dated July 12, 1989.

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

Attest:

7-19-89
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 27, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joe Berenter, Treasurer
Idaho State Democratic Party-Federal Account
P.O. Box 445
Boise, ID 83701

RE: MUR 2632
Idaho State Democratic
Party-Federal Account and
Joe Berenter, as treasurer

Dear Mr. Berenter:

On October 19, 1988, you were notified that the Federal Election Commission had found reason to believe the Idaho State Democratic Party-Federal Account and you, as treasurer, violated 11 C.F.R. § 110.6(c), a provision of the Commission Regulations.

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

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena and order. It is required that you submit all answers to questions under oath within 15 days of your receipt of this subpoena and order.

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If you have any questions, please contact Frania Monarski, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Subpoena and Order
Interrogatories and Request for Production of Documents

91040333458

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	MUR 2632
	)	

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Joe Berenter, Treasurer
Idaho State Democratic Party-Federal Account
P.O. Box 445
Boise, ID 83701

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 15 days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 24th day of July, 1989.

Danny L. McDonald
Danny L. McDonald, Chairman
Federal Election Commission

ATTEST:

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

Attachments
Document Request
Questions

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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.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory 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.

Unless otherwise indicated, the discovery request shall refer to the time period from September 1, 1986 to January 1, 1987.

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 the 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

On or about October 31, 1986, St. Louisians for Better Government forwarded a $2,500 contribution to the Idaho State Democratic Party-Federal Account (the "Committee").

1. State whether there was any communication between the Committee and the John Evans Senatorial Campaign concerning the $2,500 contribution by the St. Louisians for Better Government.

2. State the date and the substance of each communication.

3. Identify the persons involved in the communications. Provide the full name of each person and his or her relationship to the Committee and/or the John Evans campaign.

4. Provide copies of all documents (e.g. letters, written memoranda) concerning the communications described above.

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FEDERAL ELECTION COMMISSION
SECRETARIAT

89 NOV 22 PM 4:12

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

EXECUTIVE SESSION

NOV 28 1989

In the Matter of	)	
	)	
Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer	)	MUR 2632

GENERAL COUNSEL'S REPORT

I. Background

This matter was generated through a referral from the Audit Division. On October 17, 1988, the Commission found reason to believe that the Idaho State Democratic Party-Federal Account (the "Committee") and its treasurer violated 11 C.F.R. § 110.6(c) by failing to report the original source and the intended recipient of an earmarked contribution. On October 19, 1988, this Office notified the Committee of the Commission's finding and forwarded written questions to the Committee at that time. On June 2, 1989, this Office sent a reminder letter to the Committee via certified mail. On June 14, 1989, this Office received the return receipt, however, the Committee failed to submit answers to the questions. On July 18, 1989, the Commission authorized a subpoena and order to the Committee. The Committee received the subpoena and order on August 7, 1989. On several occasions, staff from this Office spoke to Connelly Ward, a representative of the Committee, who agreed to submit answers to the questions. At this time, however, the Committee has failed to respond to the Commission's subpoena and order.

II. Request for Authorization of Subpoena Enforcement

The investigation in this matter cannot be concluded without the answers to the questions submitted to the Committee. On

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October 24, 1986, St. Louisians for Better Government made a $2,500 contribution to the Committee. In a cover letter accompanying the check, the Committee notes that "[w]e are pleased to enclose a check for $2,500.00 to help in the election of John Evans to the United States Senate." The letter was addressed to Betty Arens and Barney Gottstein. According to the Audit Referral material, Betty Arens was formerly employed by the Evans' campaign committee.

In addition, the Committee, in its 1986 Post-General Election Report, disclosed the receipt of the contribution from the St. Louisians for Better Government on October 31, 1986. The Committee itemized all expenditures between October 16, 1986 and December 31, 1986 in its 1986 Post-General Report and its 1986 Year End Report. All but six expenditures made subsequent to the receipt of the $2,500 contribution from St. Louisians for Better Government constituted administrative expenses (i.e. salaries, withholding taxes). The remaining six expenditures included: a coordinated party expenditure of $12,252 on behalf of candidate John Evans for an "Election Day Mailgram;" three expenditures totaling $3,726 to Election Computer Services for computer lists; and two expenditures totaling $1,943 to Syms-York for Printing. The expenditure for the "Election Day Mailgram" may relate to get-out-the-vote activities on behalf of John Evans. The expenditures for computer lists and printing might also relate to get-out-the-vote activities. There is nothing in the reports that would indicate that these expenditures were made to benefit the entire Democratic Ticket. Accordingly, the receipt of the

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responses to the questions directed to the Committee is necessary to resolve questions concerning the circumstances surrounding the contribution from St. Louisians for Better Government.

According to 2 U.S.C. § 437d(b), the Commission may petition the United States District Court in case of a refusal to obey a subpoena or order issued by the Commission. Based on the foregoing analysis, this Office recommends that the Commission authorize this Office to institute civil actions to enforce the Commission's subpoena and order to the Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer.

III. Recommendations

1. Authorize the General Counsel to institute a civil action pursuant to 2 U.S.C. § 437(d) to enforce the subpoena and order to the Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer.

2. Approve the attached letter.

11-22-89
Date

LMNoble (JG2)
Lawrence M. Noble
Treasurer

Attachment
Proposed Letter

Staff Person: Frania Monarski

91040830456

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2632
Idaho State Democratic Party-	)	
Federal Account and Joe Berenter	)	
as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on November 28, 1989, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 2632:

1. Authorize the General Counsel to institute a civil action pursuant to 2 U.S.C. § 437(d) to enforce the subpoena and order to the Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer.

2. Approve the letter attached to the General Counsel's report dated November 22, 1989.

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

Attest:

11-29-89
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 4, 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joe Berenter, Treasurer
Idaho State Democratic Party-Federal Account
P.O. Box 445
Boise, ID 83701

RE: MUR 2632
Idaho State Democratic
Party-Federal Account and
Joe Berenter, as treasurer

Dear Mr. Berenter:

On October 19, 1988, you were notified that the Federal Election Commission found reason to believe that the Idaho State Democratic Party-Federal Account and you, as treasurer, violated 11 C.F.R. § 110.6(c), a provision of the Commission Regulations. Pursuant to its investigation of this matter, the Commission issued an order and subpoena to you to provide answers to interrogatories and to provide documents relating to those interrogatories. The subpoena and order were received by you on August 7, 1989.

To date you have not responded to the subpoena and order. As a result of your failure to respond to the discovery request, the Commission has authorized the Office of the General Counsel to institute a civil action for relief in the United States District Court to enforce the subpoena and order.

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Should you have any questions, or should you wish to settle this issue prior to suit, please contact Ivan Rivera, Assistant General Counsel, at (202) 376-8200, within five days of your receipt of this letter.

Sincerely,

Lawrence M. Noble

2104083304569

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
89 DEC -4 AM 9:06

Conley Ward
GIVENS, PURSLEY, WEBB & HUNTLEY
277 North Sixth Street, Suite 200
P. O. Box 2720
Boise, ID 83701
(208) 342-6571

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
89 DEC -4 PM 12:38

In The Matter of	)	
	)	MUR 2632
	)	
	)	

ANSWERS TO INTERROGATORIES AND RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

COMES NOW the Idaho State Democratic Party-Federal Account, by and through the Chairman of the Idaho State Democratic Party, and answer the Interrogatories and respond to the Request for Production of Documents, as follows:

INTERROGATORY NO. 1. State whether there was any communication between the Committee and the John Evans Senatorial Campaign concerning the $2,500 contribution by the St. Louisians for Better Government.

RESPONSE TO INTERROGATORY NO. 1: The Idaho State Democratic Party-Federal Account ("Committee") is not aware of any communications between the Committee and the John Evans Senatorial Campaign concerning the contribution by the St. Louisians for Better Government ("St. Louisians"), other than those described and documented in Response Nos. 2 and 4.

INTERROGATORY NO. 2. State the date and the substance of each communication.

RESPONSE TO INTERROGATORY NO. 2: In approximately the first week of

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October, 1986, a representative of St. Louisians telephoned Idaho State Democratic Party headquarters and talked to Betty Ahrens, then Treasurer of the Committee. The caller inquired regarding the use of funds donated to the Committee. Ms. Ahrens stated that donations to the Committee would be used on behalf of all three statewide federal candidates and would specifically not be earmarked for the John Evans campaign. Shortly thereafter the Committee received the letter and check referred to in the Response to Interrogatory No. 4, below.

INTERROGATORY NO. 3. Identify the persons involved in the communications. Provide the full name of each person and his or her relationship to the Committee and/or the John Evans campaign.

RESPONSE TO INTERROGATORY NO 3: Betty Ahrens was at the time Treasurer of the Committee. She was also employed partime in the John Evans campaign.

INTERROGATORY/REQUEST NO. 4. Provide copies of all documents (e.g. letters, written memoranda) concerning the communications described above.

RESPONSE TO INTERROGATORY/REQUEST NO. 4. The only written documents consist of the attached letter and check from St. Louisians.

THE UNDERSIGNED swears that the statements made herein are true and correct to the best of his information and belief.

Conley Ward

Conley Ward
CHAIRMAN, IDAHO DEMOCRATIC PARTY

91040330471

CERTIFICATE OF SERVICE

I hereby certify that the attached Answers to Interrogatories were served on the Federal Election Commission on this 28th day of November, 1989, by U. S. Mail, postage prepaid, addressed to:

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

Conley Ward

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Saint Louisians For Better Government

October 24, 1986
721 S. Central
St. Louis, Missouri 63105

Idaho State Democratic Party Federal Account
710 North 6th Street
Boise, Idaho 83702
ATTN: Betty Arens
Barney Gottstein

We are pleased to enclose a check for $2500.00 to help in the election of John Evans to the United States Senate.

As you know, our pack supports those candidates who believe that a strong Israel is in the best interest of the United States.

Please convey our best wishes to the governor.

Sincerely yours,

Carl A. Lyss

CAL:dh

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SECRETARIAT

89 DEC 12 PM 12:50

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2632
Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer	)	

GENERAL COUNSEL'S REPORT

On November 28, 1989, the Commission authorized this Office to institute a civil action pursuant to 2 U.S.C. § 437d(b) to enforce the subpoena and order against the Idaho State Democratic Party-Federal Account (the "Committee") and Joe Berenter, as treasurer. The letter notifying the Committee of this suit was sent out by certified mail on December 4, 1989. Conley Ward, the Chairman of the Committee, submitted answers to the Commission's interrogatories on December 4, 1989. Accordingly, this Office will not institute a civil action to enforce the subpoena and order. After a review of the Committee's answers to the interrogatories, this Office will report to the Commission with the appropriate recommendations.

Lawrence M. Noble
General Counsel

12/11/89
Date

By: [signature]
Lois G. Lerner
Associate General Counsel

Staff assigned: Frania Monarski

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RECEIVED
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SECRETARIAT

90 FEB -1 PM 12:14

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
St. Louisians for Better Government and Bernard Pasternak, as treasurer	)	MUR 2632
	)	
Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Pursuant to 2 U.S.C. § 438(b), the Audit Division conducted an audit of the St. Louisians for Better Government ("St. Louisians"). On October 17, 1988, the Commission found reason to believe that St. Louisians and its treasurer[1] violated 2 U.S.C. § 441a(a)(2)(A) by making an excessive contribution to the 1986 Senate campaign of John Evans. The Commission also found reason to believe that the Idaho State Democratic Party-Federal Account (the "Idaho Democratic Party") and its treasurer[2] violated 11 C.F.R. § 110.6(c) by failing to report the original source and the intended recipient of an earmarked contribution.[3]

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1. The current treasurer of St. Louisians for Better Government is Bernard Pasternak.

2. The current treasurer of the Idaho State Democratic Party-Federal Account is Joe Berenter.

3. In this matter, on October 17, 1988, the Commission found no reason to believe that St. Louisians for Better Government and its treasurer made an excessive contribution to Tom Daschle in violation of 2 U.S.C. § 441a(a)(2)(A). The St. Louisians made a $2,500 contribution to South Dakota Democratic Majority Program Federal Account. This contribution was accompanied with a letter that stated "Please convey our best wishes to Tom in his difficult senatorial race and hopefully he will carry Tim Johnson into his old congressional seat." The Commission determined that this statement, on its face, did not exhibit earmarking because it did not provide the express or implied

St. Louisians submitted a response to the Commission's findings on November 28, 1988. After the issuance of a subpoena by the Commission, the Idaho Democratic Party submitted answers to the Commission's interrogatories on December 4, 1989.

II. ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that a multicandidate committee may make up to $5,000 in contributions to any candidate or his or her authorized committee in each election. 2 U.S.C. § 441a(a)(2)(A). The Act further provides that contributions made by a person that are earmarked or otherwise directed through an intermediary or conduit to a candidate shall be treated as contributions from that person to the candidate. 2 U.S.C. § 441a(a)(8). Moreover, the intermediary or conduit must report the original source and the intended recipient of the contribution to the Commission, the Clerk of the House of Representatives, or the Secretary of the Senate, as appropriate, and to the intended recipient. 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c). Commission Regulations define "earmarking" as:

> a designation, instruction, or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b).

(Footnote 3 continued from previous page)
instruction that Senator Daschle should ultimately receive the benefit of the contribution.

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The Commission has determined that the earmarking provisions of the Act apply to contributions made by individuals to a state party committee which are designated to be used for coordinated party expenditures on behalf of a particular federal candidate. Therefore, even though the funds are not directly forwarded to the the candidate's committee, the contributions are considered earmarked to that candidate and subject to the limitations of the Act. The Commission has also found that the earmarking provisions of the Act are applicable where individuals have contributed to a state party committee knowing that the state party committee would use the contributions to pay for the debts of the candidate's committee. See MUR 377 and MUR 752.

St. Louisians made direct contributions of $5,000 to the 1986 Senatorial campaign of John Evans on December 8, 1985 and October 9, 1986 for the primary and general elections. St. Louisians also made a $2,500 contribution to the Idaho Democratic Party on October 24, 1986. In a cover letter accompanying the check, St. Louisians note that "[w]e are pleased to enclose a check for $2,500.00 to help in the election of John Evans to the United States Senate....Please convey our best wishes to the governor." The letter was addressed to Betty Ahrens and Barney Gottstein. According to the Audit Referral material, Betty Ahrens was formerly employed by the Evans' campaign committee.

In addition, the Idaho Democratic Party, in its 1986 Post-General Election Report, disclosed the receipt of the contribution from St. Louisians on October 31, 1986. The Idaho Democratic Party itemized all expenditures between October 16,

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1986 and December 31, 1986 in its 1986 Post-General Election Report and its 1986 Year End Report. All but six expenditures made subsequent to the receipt of the $2,500 contribution from St. Louisians constituted administrative expenses (i.e. salaries, withholding taxes). The remaining six expenditures included a coordinated party expenditure of $12,252 on behalf of John Evans for an "Election Day Mailgram;" three expenditures totaling $3,726 to Election Computer services for computer lists; and two expenditures totaling $1,943 to Syms-York for printing.

The Idaho Democratic Party, in response to the Commission's interrogatories, states that in October 1986, a representative from St. Louisians telephoned the Idaho Democratic Party and spoke to Betty Ahrens, then treasurer of the Idaho Democratic Party. Ahrens informed St. Louisians that contributions received by the Idaho Democratic Party would be used on behalf of all three federal candidates and would specifically not be earmarked for the John Evans campaign. Shortly thereafter the Idaho Democratic Party received the letter and the contribution in question from St. Louisians. At this same time, Ahrens was also employed on a part-time basis for the John Evans campaign. The Idaho Democratic Party further notes that it is not aware of any other conversations between the Idaho Democratic Party and the John Evans Senatorial campaign concerning the contribution by St. Louisians. Moreover, in response to the Audit Division's inquiry, St. Louisians submitted a letter from the Idaho Democratic Party stating that the $2,500 contribution was not specifically used for John Evans, but was used in its State Party

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Works Program for the get out the vote drive "which benefited all the federal candidates."

In response to the Commission's findings, St. Louisians submitted letters from Michael Litwack, past President of St. Louisians and Dr. Carl Lyss. Litwack states that it is "his honest recollection" that the sole intent of the funds were to aid in getting out the vote in Idaho and not for any specific candidate. Dr. Lyss forwarded the check to the Idaho Democratic Party because Litwack was out of town. Lyss states that his reference to Governor Evans was "strictly a personal good luck" and was not meant to infer that the funds were to be used directly for the Evans' campaign. Lyss further notes that the money was to be used to help get out the vote.

The Audit Division also examined a $2,500 contribution from St. Louisians to the South Dakota Democratic Majority Program Federal Account ("South Dakota Democratic Party"). As noted earlier, on October 17, 1988, the Commission found no reason to believe that St. Louisians and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) by making an excessive contribution to Tom Daschle. St. Louisians made $5,000 contributions to Senator Tom Daschle's 1986 primary and general election campaigns. St. Louisians also contributed $2,500 to the South Dakota Democratic Party and included a letter which stated in part "Please convey our best wishes to Tom [Daschle] in his difficult senatorial race and hopefully he will carry Tim Johnson into his old congressional seat."

The South Dakota Democratic Party reported the receipt of the

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contribution from St. Louisians on October 30, 1986. During this reporting period, the South Dakota Democratic Party reported disbursements for operating expenses, printing, ad buys and commercials. In a letter to the Commission dated February 12, 1987, the South Dakota Democratic Party clarified that the expenditures for printing, ad buys and commercials were for state party advertising and get out the vote efforts. The South Dakota Democratic Party also indicated that no expenditures were made on behalf of specifically identified candidates.

Based on the additional information received through the investigation of this matter, it appears that the $2,500 contribution from St. Louisians to the Idaho Democratic Party is indistinguishable from the $2,500 contribution to the South Dakota Democratic Party. In the present matter, St. Louisians also submitted a letter from the Idaho Democratic Party dated March 29, 1988 which stated that the $2,500 contribution was used in its State Party Works Program for its get out the vote program which benefited all the federal candidates in the state. The Idaho Democratic Party, in this letter, further state that the contribution was not specifically used for John Evans. Moreover, in its response, the Idaho Democratic Party states that it informed St. Louisians that the contribution would not be used for the John Evans campaign. Furthermore, although the Idaho Democratic Party did make a coordinated party expenditure on behalf of John Evans after it received the St. Louisians' contribution, the Idaho Democratic Party had funds from other sources as well at that time. In addition, St. Louisians also

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submitted letters from two representatives stating that they did not intend that the contribution be used solely to further the election of John Evans. Although the statement in the cover letter accompanying the $2,500 check referring to John Evans looks like earmarking, St. Louisians and the Idaho Democratic Party submitted statements denying that the contribution was earmarked for Evans. Based on the foregoing information, there appears to be doubt as to whether the $2,500 contribution from St. Louisians to the Idaho Democratic Party was earmarked for the John Evans campaign or used solely for Evans' behalf.

Therefore, this Office recommends that the Commission take no further action against St. Louisians for Better Government and Bernard Pasternak, as treasurer. This Office also recommends that the Commission take no further action with regard to the Idaho Democratic Party-Federal Account and Joe Berenter, its treasurer, in this matter.

III. RECOMMENDATIONS

1. Take no further action against St. Louisians for Better Government and Bernard Pasternak, as treasurer.

2. Take no further action against the Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer.

3. Close the file.

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4. Approve the attached letters.

Lawrence M. Noble
General Counsel

1-31-90
Date

BY: Lois G. Lerner
Associate General Counsel

Attachments
1. Response of the St. Louisians for Better Government
2. Response of the Idaho State Democratic Party
3. Letters (2)

Staff assigned: Frania Monarski

9104083043 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS
COMMISSION SECRETARY

DATE: FEBRUARY 8, 1990

SUBJECT: MUR 2632 - GENERAL COUNSEL'S REPORT DATED JANUARY 31, 1990

The above-captioned document was circulated to the Commission on Thursday, February 1, 1990 at 4:00 p.m.

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

Commissioner Aikens	XXX
Commissioner Elliott	XXX
Commissioner Josefiak	XXX
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda for Tuesday, February 13, 1990.

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 2632
St. Louisians for Better Government and Bernard Pasternak, as treasurer	)	
	)	
Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on February 13, 1990, do hereby certify that the Commission decided by a vote of 4-0 to return the January 31, 1990 report on MUR 2632 to the Office of General Counsel for further review.

Commissioners Elliott, Josefiak, McGarry, and Thomas voted affirmatively for the decision; Commissioners Aikens and McDonald were not present at the time of the vote.

Attest:

2-13-90
Date

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

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FEDERAL ELECTION COMMISSION
SECRETARIAT

90 APR -2 AM 11:46

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
St. Louisians for Better Government and Bernard Pasternak, as treasurer	)	MUR 2632
	)	
Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Pursuant to 2 U.S.C. § 438(b), the Audit Division conducted an audit of the St. Louisians for Better Government ("St. Louisians"). On October 17, 1988, the Commission found reason to believe that St. Louisians and its treasurer[1] violated 2 U.S.C. § 441a(a)(2)(A) by making an excessive contribution to the 1986 Senate campaign of John Evans. The Commission also found reason to believe that the Idaho State Democratic Party-Federal Account (the "Idaho Democratic Party") and its treasurer[2] violated 11 C.F.R. § 110.6(c) by failing to report the original source and the intended recipient of an earmarked contribution.

On October 19, 1988, this Office notified the Idaho Democratic Party of the Commission's finding and forwarded written questions to the Idaho Democratic Party at that time. On June 2, 1989, this Office sent a reminder letter to the Idaho Democratic Party via certified mail. On June 14, 1989, this Office received the return receipt, however, the Committee failed

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1. Bernard Pasternak is the current treasurer of St. Louisians for Better Government.

2. Joe Berenter is the current treasurer of the Idaho Democratic Party.

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to submit answers to the questions. On July 18, 1989, the Commission authorized a subpoena and order to the Idaho Democratic Party. The Idaho Democratic Party received the subpoena and order on August 7, 1989, however, failed to submit a response to the Commission's interrogatories. On November 28, 1989, the Commission authorized this Office to institute a civil action pursuant to 2 U.S.C. § 437(d) to enforce the subpoena and order against the Idaho Democratic Party. The letter informing the Idaho Democratic Party of this suit was sent out by certified mail on December 4, 1989. Conley Ward, the Chairman of the Idaho Democratic Party, submitted answers to the Commission's interrogatories on December 4, 1989. Accordingly, this Office did not file suit in this matter. St. Louisians submitted a response to the Commission's findings on November 28, 1988.

On February 13, 1990, the Commission returned to this Office a report recommending that the Commission take no further action against St. Louisians and the Idaho Democratic Party in this matter. The Commission noted that the response submitted by the Idaho Democratic Party included a copy of a check from N.A.C.P.A.C. which had a notation indicating that it was for "Gov. John Evans - Senate campaign." This contribution appears to be earmarked, however, the Committee, in its 1986 Post-General Election Report, reported this receipt as a contribution to the Idaho Democratic Party. The Idaho Democratic Party also reported

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contributions from the following political action committees:

PAC	AMOUNT	DATE
ATLA PAC	$5,000	10/23/86
Citizens Organized PAC	$5,000	10/27/86
Desert Caucus	$5,000	10/23/86
Florida Congressional Committee	$4,000	10/28/86
National PAC	$5,000	10/23/86

Accordingly, this Office recommends that the Commission approve additional discovery to determine whether the contributions noted above were earmarked for the Evans campaign. In light of the Idaho Democratic Party's delayed response to the Commission's initial interrogatories, this Office recommends that the Commission approve a subpoena and order with additional interrogatories to be sent to the Idaho Democratic Party in furtherance of the investigation of this matter.

II. RECOMMENDATIONS

1. Approve the attached subpoena and order to the Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer.

2. Approve the attached letter.

Lawrence M. Noble
General Counsel

Date 3/30/90

By: Lois G. Lerner
Associate General Counsel

Attachments
1. Subpoena/Order
2. Letter

Staff assigned: Frania Monarski

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
St. Louisians for Better Government and Bernard Pasternak, as treasurer	)	MUR 2632
	)	
Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 4, 1990, the Commission decided by a vote of 5-0 to take the following actions in MUR 2632:

1. Approve the subpoena and order to the Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer, as recommended in the General Counsel's report dated March 30, 1990.

2. Approve the letter, as recommended in the General Counsel's report dated March 30, 1990.

Commissioners Aikens, Elliott, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioner Thomas did not cast a vote.

Attest:

4-4-90
Date

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

Received in the Secretariat: Monday, April 2, 1990 11:45 a.m.
Circulated to the Commission: Monday, April 2, 1990 4:00 p.m.
Deadline for vote: Wednesday, April 4, 1990 4:00 p.m.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

April 9, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joe Berenter, Treasurer
Idaho State Democratic Party-Federal Account
P.O. Box 445
Boise, ID 83701

RE: MUR 2632
Idaho State Democratic
Party-Federal Account and
Joe Berenter, as treasurer

Dear Mr. Berenter:

On October 19, 1988, you were notified that the Federal Election Commission had found reason to believe the Idaho State Democratic Party-Federal Account and you, as treasurer, violated 11 C.F.R. § 110.6(c), a provision of the Commission Regulations.

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

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena and order. It is required that you submit all answers to questions under oath within 15 days of your receipt of this subpoena and order.

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If you have any questions, please contact Frania Monarski, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Subpoena and Order
Interrogatories and
Request for Production of Documents

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	MUR 2632
	)	

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Joe Berenter, Treasurer
Idaho State Democratic Party-Federal Account
P.O. Box 445
Boise, ID 83701

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 15 days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set her hand in Washington, D.C. on this Fifth day of April, 1990.

Lee Ann Elliott
Lee Ann Elliott, Chairman
Federal Election Commission

ATTEST:

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

Attachments
Document Request
Questions

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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.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory 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.

Unless otherwise indicated, the discovery request shall refer to the time period from September 1986 to January 1, 1987.

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 the 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

In its 1986 Post-General Election Report, the Idaho State Democratic Party-Federal Account (the "Committee") reported contributions from the following political action committees:

PAC	AMOUNT	DATE
ATLA PAC	$5,000	10/23/86
Citizens Organized PAC	$5,000	10/27/86
Desert Caucus	$5,000	10/23/86
Florida Congressional Committee	$4,000	10/28/86
N.A.C.P.A.C.	$3,000	10/31/86
National PAC	$5,000	10/23/86

1. Provide copies of the contribution checks noted above.

2. Provide copies of any correspondence that accompanied the contributions noted above.

3. State whether there were any communications between the Committee and the political action committees noted above concerning their contributions.

   a. State the date and substance of each communication.

   b. Identify the persons involved in the communications. Provide the full name of each person and his or her relationship to the Committee or the political action committee.

4. State whether there were any communications between the Committee and the John Evans Senatorial campaign concerning these contributions.

   a. State the date and substance of each communication.

   b. Identify the persons involved in the communications. Provide the full name of each person and his or her relationship to the Committee or the political action committee.

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5. Provide copies of all documents (e.g. letters, written memoranda) concerning the communications described above.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 30, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joe Berenter, Treasurer
Idaho State Democratic Party-Federal Account
P.O. Box 445
Boise, ID 83701

RE: MUR 2632
Idaho State Democratic
Party-Federal Account and
Joe Berenter, as treasurer

Dear Mr. Berenter:

On October 19, 1988, you were notified the Federal Election Commission found reason to believe the Idaho State Democratic Party-Federal Account and you, as treasurer, had violated 11 C.F.R. § 110.6(c), a provision of the Commission Regulations.

Pursuant to its investigation of this matter, the Commission, on April 9, 1990, issued a subpoena and order requiring you to provide information which will assist the Commission in carrying out its statutory duty of supervising compliance with the Federal Election Campaign Act of 1971, as amended. The responses to this subpoena and order were due fifteen days from the date of your receipt of the notification. To date, no response has been received.

If we do not receive a response to the subpoena and order within 10 days of your receipt of this letter, the Office of the General Counsel will recommend that the Commission authorize suit under 2 U.S.C. § 437d to enforce the subpoena and order.

2104030498

Should you have any questions, please contact Frania Monarski, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

21040330499

OGC 6295

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
90 MAY 21 AM 10:28

IDAHO STATE DEMOCRATIC PARTY

P.O. Box 445
Boise, Idaho
83701
Phone (208) 336-1815

MUR 2632

CONLEY WARD, Chair
Boise

ANNA WILSON, Vice-Chair
Wallace

JOE BERENTER
Treasurer
Caldwell

DIANE JOSEPHY-PEAVEY
National Commetteewoman
Ketchum

JOHN GREENFIELD
National Commiteeman
Boise

BRUCE SWEENEY
Senate Minority Leader
Lewiston

JIM STOICHEFF
House Minority Leader
Sandpoint

PAT REILLY
Boise

MARTI CALABRETTA
Osburn

CAMILO LOPEZ
Caldwell

CAROL KRIZ
Boise

EDIE TRACY
Soda Springs

WALLY WRIGHT
Pocatello

MARCY GOULD
Boise

GENE SULLIVAN
Fairfield

MARGARET BERGIN, Pres.
Idaho Young Democrats
Boise

EDGAR MALEPEAI, Chair
Association of County Chairs
Pocatello

May 16, 1990

Frania Monarski, Attorney
Federal Election Commission
Washington, D. C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 MAY 21 PM 4:34

Dear Ms. Monarski:

As requested in our telephone conversation today and in the Request for Production of Documents, I am sending you copies of the checks received by the Idaho State Democratic Party from the Citizens Organized Political Action Committee, the Florida Congressional Committee, and the N.A.C.P.A.C. in 1986.

After searching all of the records at the State Party, these are the only records that can be found that relate to the Request for Documents in your letter of April 9, 1990.

Also, as I stated in our conversation, I was not employed by the State Party in 1986, nor was Joe Berenter the treasurer or Conley Ward the chairman of the State Party and therefore we have no knowledge of any communications between the Committee and the John Evans Senatorial Campaign concerning these contributions.

If more information is needed, please let me know.

Sincerely,

Marsha Woods

Marsha Woods
Bookkeeper

Remember to check your income tax form for "Tax Check-Off" for Democratic Party. Thank you

IDAHO FIRST NATIONAL BANK
COUNCIL OFFICE
P.O. Box 8
Council, Idaho 83612

Bank

TO THE CREDIT OF

IDAHO DEMOCRATIC PARTY
P. O. BOX 445
BOISE, ID 83701

HOLD FOR UNCOLLECTED FUNDS MAY BE PLACED ON CHECKS OR SIMILAR INSTRUMENTS YOU DEPOSIT. ANY DELAY WILL NOT EXCEED THE PERIOD OF TIME PERMITTED BY LAW

DATE	10/31/86
CURRENCY	
COIN	
CHECKS (LIST SEPARATELY) 1	NACPAC 3000
2	St. Louisans 2500
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
TOTAL FROM OTHER SIDE	
TOTAL	
TOTAL ITEMS	2
TOTAL DEPOSIT	5,500
RECEIVED BY	—

⑈120001692623⑈

531 (0286)

196

N.A.C.P.A.C.
3050 BISCAYNE BLVD., SUITE 800
MIAMI, FL 33137

63-1031
670

10/24 1986

PAY TO THE ORDER OF Idaho State Federal Acct. - Democratic Party $3000 xx/100

Three thousand and xx/100 DOLLARS

PLAZA BANK of MIAMI
P.O. BOX 69-3515
MIAMI, FLORIDA 33169

FOR Gov. John Evans - Senate Campaign

⑈000196⑈ ⑆067010318⑆ 0113015133⑈08

465

ST. LOUISANS FOR
BETTER GOVERNMENT

10/24 1986

80-1693/810

PAY TO THE ORDER OF Idaho State Democratic Party - Fact account $2500.00

Twenty-five hundred and no/100 DOLLARS

LANDMARK BANK
OF LADUE
8866 LADUE RD
LADUE MISSOURI 63124

MEMO

⑆081016932⑆ 80000824 5⑈ 0465

DEPOSIT SLIP

The Bank

IDAHO FIRST NATIONAL BANK
COUNCIL OFFICE
P.O. Box 8
Council, Idaho 83612

TO THE CREDIT OF

IDAHO DEMOCRATIC PARTY
P. O. BOX 445
BOISE, ID 83701

DATE 10/30/86

CURRENCY

COIN

CHECKS (LIST SEPARATELY) 1 Co PAC 5000

TOTAL ITEMS 1

TOTAL DEPOSIT 5000

TOTAL FROM OTHER SIDE

TOTAL

⑈120001692623⑈

CITIZENS ORGANIZED 1-83
POLITICAL ACTION COMMITTEE
1800 AVENUE OF THE STARS, NO. 900
LOS ANGELES, CA 90067

269

October 6 86 90-7177/32

PAY TO THE ORDER OF Idaho State Democratic Party-Fed.Acct $5,000.00

Five Thousand and 00/100 ---------- DOLLARS

1ST NATIONWIDE SAVINGS A Federal Savings and Loan Association
1800 AVENUE OF THE STARS LOS ANGELES CA 90067-4294

MEMO

Barbara Anne Hernberg

⑆322271779⑆0269 ⑈121 4030858⑈

DEPOSITED WITH

Idaho first The Bank

IDAHO FIRST NATIONAL BANK
HEAD OFFICE
Boise, Idaho 83727

TO THE CREDIT OF

IDAHO DEMOCRATIC PARTY
FEDERAL ACCOUNT
P. O. BOX 445
BOISE, IDAHO 83701

ALL ITEMS ARE RECEIVED BY THIS BANK FOR PURPOSES OF COLLECTION AND ARE SUBJECT TO THE UNIFORM COMMERCIAL CODE. ALL CREDITS FOR ITEMS ARE PROVISIONAL UNTIL COLLECTED

DATE 10/28 1986
CURRENCY
COIN
CHECKS (LIST SEPARATELY) Fla Cong 4000 —
TOTAL FROM OTHER SIDE
PLEASE RE-ENTER TOTAL HERE TOTAL
4000 —
RECEIVED BY

⑆124100019⑆ 01 05839 8⑈

9104033 0503

207

FLORIDA CONGRESSIONAL COMMITTEE

63-808/670 10

10.8.86 19

PAY TO THE ORDER OF Idaho State Democratic Party-Federal Account $ 4000.00

Four Thousand and 00/100 DOLLARS

American Bank of Hollywood
3131 W. HALLANDALE BEACH BLVD.
PEMBROKE PARK, FLORIDA 33023

Troy B. Raffel
Harvey Friedman

FOR

⑈000207⑈ ⑆067008087⑆ 1000037063⑈06

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 JUL 10 PM 4:30

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer	)	MUR 2632
	)	
National Action Committee - NACPAC and Stephen Bittel as treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Pursuant to 2 U.S.C. § 438(b), the Audit Division conducted an audit of the St. Louisians for Better Government ("St. Louisians"). On October 17, 1988, the Commission found reason to believe that St. Louisians and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) by making an excessive contribution to the 1986 Senate campaign of John Evans.[1] On that same date the Commission also found reason to believe that the Idaho State Democratic Party-Federal Account (the "Idaho Democratic Party") and its treasurer[2] violated 11 C.F.R. § 110.6(c) by failing to report the original source and the intended recipient of an earmarked contribution concerning the Evans campaign.

After the issuance of a subpoena, the Idaho Democratic Party submitted answers to the Commission's interrogatories on December 4, 1989. On February 13, 1990, the Commission returned

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1. A separate brief is being prepared by this Office regarding the findings against St. Louisians.

2. The current treasurer of the Idaho State Democratic Party-Federal Account is Joe Berenter.

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to this Office a report recommending that the Commission take no further action against the Idaho Democratic Party and the St. Louisians in this matter. A subpoena to produce documents and an order to submit written answers was issued by the Commission on April 9, 1990, to the Idaho Democratic Party. Answers and documents submitted by the Idaho Democratic Party were received by the Commission on May 21, 1990.

II. ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that a multicandidate committee may make up to $5,000 in contributions to any candidate or his or her authorized committee in each election. 2 U.S.C. § 441a(a)(2)(A). The Act further provides that contributions made by a person that are earmarked or otherwise directed through an intermediary or conduit to a candidate shall be treated as contributions from that person to the candidate. 2 U.S.C. § 441a(a)(8). Moreover, the intermediary or conduit must report the original source and the intended recipient of the contribution to the Commission, the Clerk of the House of Representatives, or the Secretary of the Senate, as appropriate, and to the intended recipient. 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

Commission regulations define "earmarking" as:

> a designation, instruction, or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b).

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The Commission has determined that the earmarking provisions of the Act apply to contributions made by individuals to a state party committee which are designated to be used for coordinated party expenditures on behalf of a particular federal candidate. Therefore, even though the funds are not directly forwarded to the candidate or his or her committee, the contributions are considered earmarked to that candidate and subject to the limitations of the Act. The Commission has also found that the earmarking provisions of the Act are applicable where individuals have contributed to a state party committee knowing that the state party committee would use the contributions to pay for the debts of the candidate's committee. See MUR 377 and MUR 752.

Commission regulations in effect in 1986 provided that contributions made after the primary election, if not designated in writing at the time of the contribution as being for the primary election, will be treated as if designated for the general election. 11 C.F.R. § 110.1(a)(2).

Finally, Commission regulations also provide that a person may contribute directly to a candidate or his or her authorized committee with respect to a particular election, and then also contribute to a political committee which has supported or anticipates supporting that same candidate in that same election so long as the political committee is not the candidate's principal or authorized campaign committee, the contributor does not retain control over the funds, and the contributor does not give with the knowledge that a substantial portion will be

contributed to or expended on behalf of that candidate for that same election. 11 C.F.R. § 110.1(h).

A. THE IDAHO DEMOCRATIC PARTY VIOLATED 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c) BY FAILING TO PROPERLY REPORT AN EARMARKED CONTRIBUTION FROM THE ST. LOUISIANS.

St. Louisians made direct contributions of $5,000 on December 8, 1985 and October 9, 1986 to the 1986 Senatorial campaign of John Evans for the primary and general elections. In addition, St. Louisians also made a $2,500 contribution to the Idaho Democratic Party on October 24, 1986. In the cover letter accompanying the check, the St. Louisians note: "[w]e are pleased to enclose a check for $2,500 to help in the election of John Evans to the United States Senate....Please convey our best wishes to the governor." Attachment 1. The letter was addressed to Betty Ahrens and Barney Gottstein of the Idaho Democratic Party. According to the Audit Referral material, Betty Ahrens was also employed part-time by the Evans' campaign committee at the time.

The Idaho Democratic Party disclosed the receipt of the $2,500 contribution from the St. Louisians on October 31, 1986 in its 1986 Post-General Election Report. The 1986 Post-General Election Report covered the period from October 16 through November 24, 1986, including the election of November 4, 1986. This report shows that after the contribution from St. Louisians was posted on October 31st, the Idaho Democratic Party made operating expenditures in the amount $2,171.95, consisting of

salaries and tax payments. Additionally, this report discloses coordinated party expenditures totaling $15,852.45 made on behalf of the Evans campaign, consisting of $12,252.45 for an "Election Day Mailgram" and $3,600.00 for postage of that mailgram. Attachment 6. The 1986 Year-End Report shows that this was the only coordinated party expenditure made by the Idaho Democratic Party during 1986.

On October 17, 1988, the Commission found reason to believe that the Idaho Democratic Party and its treasurer had violated 11 C.F.R. § 110.6(c)[3] by failing to report the original source and the intended recipient of the $2,500 contribution from St. Louisians because the contribution appeared to be earmarked for the Evans Senatorial campaign.

The Idaho Democratic Party, in its responses to the Commission's interrogatories and subpoena to produce written documents, states that in October 1986, a representative from St. Louisians telephoned the Idaho Democratic Party and spoke with Betty Ahrens, then treasurer of the Idaho Democratic Party. Ahrens informed the St. Louisians that contributions received by the Idaho Democratic Party would be used on behalf of all three federal candidates and would not be specifically earmarked for the John Evans campaign. Attachment 1. Shortly thereafter, the

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3.The Commission found reason to believe that the Idaho Democratic Party had violated 11 C.F.R. § 110.6(c). The statutory cite which authorizes that regulation, 2 U.S.C. § 441a(a)(8), was inadvertently omitted from the report and the finding of reason to believe. This omission will be remedied in the recommendations portion of this report.

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Idaho Democratic Party received the letter and contribution in question from St. Louisians. During this period of time, Betty Ahrens was also employed on a part-time basis by the Evans campaign. The Idaho Democratic Party further states that it is not aware of any conversations between the Idaho Democratic Party and the Evans Senatorial campaign concerning the St. Louisians' contribution. Moreover, in response to the Audit Division's inquiry, St. Louisians submitted to the Commission a letter from the Idaho Democratic Party stating that the $2,500 contribution was not specifically used for the Evans campaign, but was used in its State Party Works Program for a get out the vote drive "which benefited all the federal candidates." Attachment 2. However, the reports show that most of the funds expended between the time of the St. Louisians' contribution and the election were spent as coordinated party expenditures on behalf of the Evans campaign.

In response to the Commission's findings, the St. Louisians submitted letters from Michael Litwack, past president of St. Louisians, and from Dr. Carl Lyss. Attachment 3. Litwack states that it is "his honest recollection" that the sole intent of the contribution was to aid in getting out the vote in Idaho and not for any specific candidate. Dr. Lyss forwarded the check and letter to the Idaho Democratic Party because Litwack was out of town at the time. Lyss states that his reference to Governor Evans was "strictly a personal good luck," and was not meant to infer that the funds were to be used directly for the Evans campaign. Lyss further states that the funds were to be used to help get out the vote.

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The letters submitted by Michael Litwack, Carl Lyss and the Idaho Democratic Party do not overcome the appearance that the $2,500 contribution made by the St. Louisians was earmarked for the Evans Senatorial campaign. The letter which accompanied the check at the time the contribution was made states that the funds enclosed are "to help in the election of John Evans to the United States Senate." The Idaho Democratic Party failed to report this as an earmarked contribution to the Evans campaign in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c), which resulted in an excessive contribution to Evans by the St. Louisians. As noted earlier, the Commission has already found reason to believe as to 11 C.F.R. § 110.6(c).

Therefore, this Office recommends that the Commission find reason to believe that the Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer, violated 2 U.S.C. § 441a(a)(8) with respect to the contribution made by the St. Louisians for Better Government.

B. THE NATIONAL ACTION COMMITTEE - NACPAC VIOLATED 2 U.S.C. § 441a(a)(2)(A) BY MAKING AN EXCESSIVE CONTRIBUTION EARMARKED FOR THE EVANS CAMPAIGN; AND THE IDAHO DEMOCRATIC PARTY VIOLATED 2 U.S.C. § 441a(a)(8) AND 11 C.F.R. § 110.6(c) BY FAILING TO PROPERLY REPORT THE EARMARKED CONTRIBUTION.

Based on additional information received through the investigation of this matter and the responses and documents provided by the Idaho Democratic Party, it appears that the National Action Committee - NACPAC ("NACPAC") and its treasurer also made an excessive contribution to the Evans campaign through

the Idaho Democratic Party in violation of 2 U.S.C. § 441a(a)(2)(A) and said contribution was improperly reported by the Idaho Democratic Party in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

NACPAC made a $5,000 contribution directly to the Evans Senatorial campaign on June 26, 1986. This contribution was reported as an itemized contribution on the Evans campaign's 1986 July Quarterly Report. Attachment 4. This contribution was made one month after the Idaho primary election, which occurred on May 27, 1986. Since there is no indication on Evans' quarterly report that the contribution from NACPAC was designated for the primary election, it must be treated as if it was designated for the general election. 11 C.F.R. § 110.1(a)(2). Subsequent to the direct contribution to the Evans campaign, NACPAC made a $3,000 contribution to the Idaho Democratic Party on October 24, 1986. A notation on the face of the check reads "Gov. John Evans - Senate Campaign." Attachment 5. It appears that the notation on this check indicates an intent for the funds to be used on behalf of the Evans campaign, thus constituting earmarking.

The Idaho Democratic Party reported the receipt of the NACPAC contribution on its 1986 Post-General Election Report, dated December 1, 1986. The contribution is itemized, but there is no reference or indication in the report that the contribution was earmarked for the Evans campaign. Attachment 6.

Thus, following the same analysis as that used earlier in this report for the St. Louisians, it appears that NACPAC made an earmarked contribution of $3,000 to the Evans

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campaign through the Idaho Democratic Party. Because NACPAC had already made a $5,000 contribution directly to the Evans campaign for that same election, this results in an excessive contribution by NACPAC in violation of 2 U.S.C. § 441a(a)(2)(A). Additionally, it appears that the Idaho Democratic Party did not properly report this earmarked contribution to the Commission and the Secretary of the Senate, as required by the Act, resulting in another violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

Therefore, this Office recommends that the Commission find reason to believe that the National Action Committee - NACPAC and Stephen Bittel, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A). This Office further recommends that the Commission find reason to believe that the Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer, violated 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c) with respect to the contribution by NACPAC.

Finally, on April 9, 1990, the Commission issued a subpoena and Interrogatories and Request for Production of Documents to the Idaho Democratic Party concerning other possible contributions disclosed by the investigation which might have been earmarked for the Evans campaign or which might have constituted excessive contributions. Specifically, the Interrogatories requested information concerning six contributions made to the Idaho Democratic Party, all in October of 1986. The Idaho Democratic Party submitted its response on May 21, 1990. Attachment 7. In its response, the Idaho

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Democratic Party states that it was only able to obtain copies of the checks used to make four of the six contributions. Two of those checks, one from St. Louisians and the other from NACPAC, had already been reviewed by the General Counsel. The third and fourth checks produced, from the Citizens Organized Political Action Committee and the Florida Congressional Committee, contained no reference on the checks as to their purpose. The Idaho Democratic Party states that it is unable to produce copies of the two other checks, nor does it have any records concerning and communications or connections between these contributions and the Evans campaign.

Without having any further evidence or information concerning the possible earmarking of these contributions, the Office of the General Counsel makes no recommendation as to the four remaining contributions mentioned in the Interrogatories (excluding the NACPAC contribution discussed in this report and the St. Louisians contribution discussed in another brief).

III. RECOMMENDATIONS

1. Find Reason to believe that the Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer, violated 2 U.S.C. § 441a(a)(8) with respect to the St. Louisians for Better Government's contribution.

2. Find reason to believe that the Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer, violated 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c) with respect to the National Action Committee's contribution.

3. Find reason to believe that the National Action Committee - NACPAC and Stephen Bittel, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A).

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4. Approve the attached Factual and Legal Analyses and the appropriate letters.

Lawrence M. Noble
General Counsel

Date 7/10/90

BY: Lois G. Lerner
Associate General Counsel

Attachments
1. Idaho Answers to Interrogatories (December 4, 1989)
2. Letter from Idaho to St. Louisians
3. Letters from Litwack and Lyss
4. 1986 July Quarterly Report - Evans (portion)
5. Copy of NACPAC check
6. Idaho 1986 Post-General Election Report (portion)
7. Idaho Answers to Interrogatories (May 21, 1990)
8. Factual and Legal Analysis (2)

Staff assigned: John Canfield

9104030514

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer;	)	MUR 2632
	)	
National Action Committee - NACPAC and Stephen Bittel, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 13, 1990, the Commission decided by a vote of 6-0 to take the following actions in MUR 2632:

1. Find Reason to believe that the Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer, violated 2 U.S.C. § 441a(a)(8) with respect to the St. Louisians for Better Government's contribution.

2. Find reason to believe that the Idaho State Democratic Party-Federal Account and Joe Berenter, as treasurer, violated 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c) with respect to the National Action Committee's contribution.

3. Find reason to believe that the National Action Committee - NACPAC and Stephen Bittel, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A).

(continued)

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4. Approve the Factual and Legal Analyses and the appropriate letters, as recommended in the General Counsel's Report dated July 10, 1990.

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

Attest:

7-13-90
Date

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

2104083051 6

Received in the Secretariat:	Tuesday,	July 10, 1990	4:30 p.m.
Circulated to the Commission:	Wednesday,	July 11, 1990	11:00 a.m.
Deadline for vote:	Friday,	July 13, 1990	11:00 a.m.

dh

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 17, 1990

National Action Committee - NACPAC
Mr. Stephen Bittel, Treasurer
201 South Biscayne Blvd.; Suite 880
Miami, Florida 33131

RE: MUR 2632
National Action Committee -
NACPAC and Stephen Bittel,
as treasurer

Dear Mr. Bittel:

On July 13, 1990, the Federal Election Commission found that there is reason to believe the National Action Committee - NACPAC and you, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A), 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 National Action Committee - NACPAC and you, as treasurer. 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 within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the National Action Committee - NACPAC and you, as treasurer, 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.

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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 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 John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

John Warren McGarry

John Warren McGarry
Vice Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

9104030518

BEFORE THE FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: **MUR 2632**

National Action Committee -
NACPAC and Stephen Bittel
as treasurer

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that a multicandidate committee may make up to $5,000 in contributions to any candidate or his or her authorized committee in each election. 2 U.S.C. § 441a(a)(2)(A). The Act further provides that contributions made by a person that are earmarked or otherwise directed through an intermediary or conduit to a candidate shall be treated as contributions from that person to the candidate. 2 U.S.C. § 441a(a)(8). Moreover, the intermediary or conduit must report the original source and the intended recipient of the contribution to the Commission, the Clerk of the House of Representatives, or the Secretary of the Senate, as appropriate, and to the intended recipient. 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

Commission regulations define "earmarking" as:

> a designation, instruction, or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b).

The Commission has determined that the earmarking provisions

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of the Act apply to contributions made by individuals to a state party committee which are designated to be used for coordinated party expenditures on behalf of a particular federal candidate. Therefore, even though the funds are not directly forwarded to the candidate or his or her committee, the contributions are considered earmarked to that candidate and subject to the limitations of the Act. The Commission has also found that the earmarking provisions of the Act are applicable where individuals have contributed to a state party committee knowing that the state party committee would use the contributions to pay for the debts of the candidate's committee. See MUR 377 and MUR 752.

Commission regulations in effect in 1986 provided that contributions made after the primary election, if not designated in writing at the time of the contribution as being for the primary election, will be treated as if designated for the general election. 11 C.F.R. § 110.1(a)(2).

Finally, Commission regulations also provide that a person may contribute directly to a candidate or his or her authorized committee with respect to a particular election, and then also contribute to a political committee which has supported or anticipates supporting that same candidate in that same election so long as the political committee is not the candidate's principal or authorized campaign committee, the contributor does not retain control over the funds, and the contributor does not give with the knowledge that a substantial portion will be contributed to or expended on behalf of that candidate for that same election. 11 C.F.R. § 110.1(h).

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THE NATIONAL ACTION COMMITTEE - NACPAC VIOLATED 2 U.S.C. § 441a(2)(A) BY MAKING AN EXCESSIVE CONTRIBUTION EARMARKED FOR THE EVANS CAMPAIGN.

It appears that the National Action Committee (NACPAC) and its treasurer made an excessive contribution to the Evans campaign through the Idaho Democratic Party in violation of 2 U.S.C. § 441a(a)(2)(A).

NACPAC made a $5,000 contribution directly to the Evans Senatorial campaign on June 26, 1986. This contribution was reported as an itemized contribution on the Evans campaign's 1986 July Quarterly Report. This contribution was made one month after the Idaho primary election, which occurred on May 27, 1986. Since there is no indication on Evans' quarterly report that the contribution from NACPAC was designated for the primary election, it must be treated as if it was designated for the general election. 11 C.F.R. § 110.1(a)(2). Subsequent to the direct contribution to the Evans campaign, NACPAC made a $3,000 contribution to the Idaho Democratic Party on October 24, 1986. A notation on the face of the check reads "Gov. John Evans - Senate Campaign". It appears that the notation on this check indicates an intent for the funds to be used on behalf of the Evans campaign, thus constituting earmarking.

The Idaho Democratic Party reported the receipt of the NACPAC contribution on its 1986 Post-General Election Report, dated December 1, 1986. The contribution is itemized, but there is no reference or indication in the report that the contribution was earmarked for the Evans campaign in that report.

Thus, it appears that NACPAC made an earmarked contribution

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of $3,000 to the Evans campaign through the Idaho Democratic Party. Because NACPAC had already made a $5,000 contribution directly to the Evans campaign for that same election, this results in an excessive contribution by NACPAC in violation of 2 U.S.C. § 441a(a)(2)(A).

Therefore, there is reason to believe that the National Action Committee - NACPAC and Stephen Bittel, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 17, 1990

Idaho State Democratic Party - Federal Account
Mr. Joe Berenter, Treasurer
P.O. Box 445
Boise, Idaho 83701

RE: MUR 2632
Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer

Dear Mr. Berenter:

On July 13, 1990, the Federal Election Commission found that there is reason to believe the Idaho State Democratic Party - Federal Account and you, as treasurer, violated 2 U.S.C. § 441a(a)(8), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. § 110.6(c). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. This finding is in addition the the earlier finding of reason to believe made by the Commission on October 17, 1988.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Idaho State Democratic Party - Federal Account and you, as treasurer. 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 within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Idaho State Democratic Party - Federal Account and you, as treasurer, 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

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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 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 John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

John Warren McGarry

John Warren McGarry
Vice Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

9104030524

BEFORE THE FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: **MUR 2632**

Idaho State Democratic Party-
Federal Account and Joe
Berenter, as treasurer

On October 17, 1988, the Commission found reason to believe that the Idaho State Democratic Party-Federal Account (the "Idaho Democratic Party") and its treasurer violated 11 C.F.R. § 110.6(c) by failing to report the original source and the intended recipient of an earmarked contribution concerning the Evans campaign.

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that a multicandidate committee may make up to $5,000 in contributions to any candidate or his or her authorized committee in each election. 2 U.S.C. § 441a(a)(2)(A). The Act further provides that contributions made by a person that are earmarked or otherwise directed through an intermediary or conduit to a candidate shall be treated as contributions from that person to the candidate. 2 U.S.C. § 441a(a)(8). Moreover, the intermediary or conduit must report the original source and the intended recipient of the contribution to the Commission, the Clerk of the House of Representatives, or the Secretary of the Senate, as appropriate, and to the intended recipient. 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

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Commission regulations define "earmarking" as:

> a designation, instruction, or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b).

The Commission has determined that the earmarking provisions of the Act apply to contributions made by individuals to a state party committee which are designated to be used for coordinated party expenditures on behalf of a particular federal candidate. Therefore, even though the funds are not directly forwarded to the candidate or his or her committee, the contributions are considered earmarked to that candidate and subject to the limitations of the Act. The Commission has also found that the earmarking provisions of the Act are applicable where individuals have contributed to a state party committee knowing that the state party committee would use the contributions to pay for the debts of the candidate's committee. See MUR 377 and MUR 752.

Commission regulations in effect in 1986 provided that contributions made after the primary election, if not designated in writing at the time of the contribution as being for the primary election, will be treated as if designated for the general election. 11 C.F.R. § 110.1(a)(2).

Finally, Commission regulations also provide that a person may contribute directly to a candidate or his or her authorized committee with respect to a particular election, and then also

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contribute to a political committee which has supported or anticipates supporting that same candidate in that same election so long as the political committee is not the candidate's principal or authorized campaign committee, the contributor does not retain control over the funds, and the contributor does not give with the knowledge that a substantial portion will be contributed to or expended on behalf of that candidate for that same election. 11 C.F.R. § 110.1(h).

A. THE IDAHO DEMOCRATIC PARTY VIOLATED 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c) BY FAILING TO PROPERLY REPORT AN EARMARKED CONTRIBUTION FROM THE ST. LOUISIANS.

St. Louisians made direct contributions of $5,000 on December 8, 1985 and October 9, 1986 to the 1986 Senatorial campaign of John Evans for the primary and general elections. In addition, St. Louisians also made a $2,500 contribution to the Idaho Democratic Party on October 24, 1986. In the cover letter accompanying the check, the St. Louisians note: "[w]e are pleased to enclose a check for $2,500 to help in the election of John Evans to the United States Senate....Please convey our best wishes to the governor." The letter was addressed to Betty Ahrens and Barney Gottstein of the Idaho Democratic Party. According to the Audit Referral material, Betty Ahrens was also employed part-time by the Evans' campaign committee at the time.

The Idaho Democratic Party disclosed the receipt of the $2,500 contribution from the St. Louisians on October 31, 1986 in its 1986 Post-General Election Report. This 1986 Post-General Election Report covers the period from October 16 through

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November 24, 1986, including the election itself on November 4, 1986. The report shows that after the contribution by the St. Louisians was posted on October 31st, the Idaho Democratic Party made operating expenditures in the amount of $2171.95, consisting of salaries and tax payments. Additionally, the report discloses coordinated party expenditures totaling $15,852.45 made on behalf of the Evans campaign, consisting of $12,252.45 for an "Election Day Mailgram" and $3,600.00 for postage of the mailgram. The 1986 Year-End Report shows that this was the only coordinated party expenditure made by the Idaho Democratic party during 1986.

On October 17, 1988, the Commission found reason to believe that the Idaho Democratic Party and its treasurer had violated 11 C.F.R. § 110.6(c)[1] by failing to report the original source and the intended recipient of the $2,500 contribution from St. Louisians because the contribution appeared to be earmarked for the Evans Senatorial campaign.

The Idaho Democratic Party, in its responses to the Commission's interrogatories and subpoena to produce written documents, states that in October 1986, a representative from St. Louisians telephoned the Idaho Democratic Party and spoke with Betty Ahrens, then treasurer of the Idaho Democratic Party. Ahrens informed the St. Louisians that contributions received by the Idaho Democratic Party would be used on behalf of all three

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1.The Commission found reason to believe that the Idaho Democratic Party had violated 11 C.F.R. § 110.6(c). The statutory cite with authorizes that regulation, 2 U.S.C. § 441a(a)(8), was not included in the finding of reason to believe at that time.

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federal candidates and would not be specifically earmarked for the John Evans campaign. Shortly thereafter, the Idaho Democratic Party received the letter and contribution in question from St. Louisians. During this period of time, Betty Ahrens was also employed on a part-time basis by the Evans campaign. The Idaho Democratic Party further states that it is not aware of any conversations between the Idaho Democratic Party and the Evans Senatorial campaign concerning the St. Louisians' contribution. Moreover, St. Louisians submitted to the Commission a letter from the Idaho Democratic Party stating that the $2,500 contribution was not specifically used for the Evans campaign, but was used in its State Party Works Program for a get out the vote drive "which benefited all the federal candidates". However, the reports indicate that most of the funds expended by the Idaho Democratic Party between the date of the St. Louisians' contribution and the election were used for the coordinated party expenditure on behalf of the Evans campaign.

The St. Louisians also submitted letters from Michael Litwack, past president of St. Louisians, and from Dr. Carl Lyss. Litwack states that it is "his honest recollection" that the sole intent of the contribution was to aid in getting out the vote in Idaho and not for any specific candidate. Dr. Lyss forwarded the check and letter to the Idaho Democratic Party because Litwack was out of town at the time. Lyss states that his reference to Governor Evans was "strictly a personal good luck", and was not meant to infer that the funds were to be used directly for the Evans campaign. Lyss further states that the funds were to be

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used to help get out the vote.

The letters submitted by Michael Litwack, Carl Lyss and the Idaho Democratic Party do not overcome the appearance that the $2,500 contribution made by the St. Louisians was earmarked for the Evans Senatorial campaign. The letter which accompanied the check at the time the contribution was made states that the funds enclosed are "to help in the election of John Evans to the United States Senate". The Idaho Democratic Party failed to report this as an earmarked contribution to the Evans campaign in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c), which resulted in an excessive contribution to Evans by the St. Louisians.

Therefore, there is reason to believe that the Idaho State Democratic Party-Federal Account and its treasurer, violated 2 U.S.C. § 441a(a)(8) with respect to the St. Louisians for Better Government's contribution.

B. THE IDAHO DEMOCRATIC PARTY VIOLATED 2 U.S.C. § 441a(a)(8) AND 11 C.F.R. § 110.6(c) BY FAILING TO PROPERLY REPORT AN EARMARKED CONTRIBUTION FROM THE NATIONAL ACTION COMMITTEE - NACPAC.

Based on additional information received through the investigation of this matter and the responses and documents provided by the Idaho Democratic Party, it appears that the National Action Committee - NACPAC ("NACPAC"), made an earmarked contribution to the Evans campaign through the Idaho Democratic Party and said contribution was improperly reported by the Idaho Democratic Party in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

NACPAC made a $5,000 contribution directly to the Evans

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campaign on June 26, 1986. This contribution was reported as an itemized contribution on the Evans campaign's 1986 July Quarterly Report. This contribution was made one month after the Idaho Primary election, which occurred on May 27, 1986. Since there is no indication on Evans' Quarterly Report that the contribution from NACPAC was designated for the primary election, it must be treated as if it was designated for the general election. 11 C.F.R. § 110.0(a)(2). Subsequent to the direct contribution to the Evans campaign, NACPAC made a $3,000 contribution to the Idaho Democratic Party on October 24, 1986. A notation on the face of the check reads: "Gov. John Evans - Senate Campaign". It appears that the notation on the front of this check indicates an intent for the funds to be used on Behalf of the Evans campaign, thus constituting earmarking.

The Idaho Democratic Party reported the receipt of the NACPAC contribution on its 1986 Post-General Election Report, dated December 1, 1986. The contribution is itemized as coming from NACPAC, but there is no indication or reference in the report that the funds were earmarked for the Evans campaign.

Thus, it appears that NACPAC made an earmarked contribution of $3,000 to the Evans campaign through the Idaho Democratic Party. The Idaho Democratic Party did not properly report this contribution to the Commission and the Secretary of the Senate, as required by the Act, resulting in another violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

Therefore, there is reason to believe that the Idaho State Democratic Party - Federal Account and its treasurer violated

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2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c) with respect to the NACPAC contribution.

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FEDERAL ELECTION COMMISSION
SECRETARIAT

90 JUL 11 AM 9:47

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
St. Louisians for Better Government and Bernard Pasternak, as treasurer	)	MUR 2632
	)	
	)	
	)	

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to St. Louisians for Better Government and Bernard Pasternak, as treasurer, based on the assessment of the information presently available.

7/10/90
Date

Lawrence M. Noble
General Counsel

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RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 JUL 18 PM 4:12

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

July 18, 1990

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: MUR 2632

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 July 18, 1990. 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

July 18, 1990

St. Louisians for Better Government
Mr. Bernard Pasternak, Treasurer
41 Claverach Drive
St. Louis, Missouri 63105

RE: MUR 2632
St. Louisians for Better Government and Bernard Pasternak, as treasurer

Dear Mr. Pasternak:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, and information supplied by the St. Louisians for Better Government, on October 17, 1988, the Federal Election Commission found reason to believe that St. Louisians for Better Government and its treasurer, violated 2 U.S.C. § 441a(a)(2)(A), 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.

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.

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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.

Should you have any questions, please contact John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
St. Louisians for Better Government and Bernard Pasternak, as treasurer	)	MUR 2632

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

Pursuant to 2 U.S.C. § 438(b), the Audit Division conducted an audit of the St. Louisians for Better Government ("St. Louisians"). On October 17, 1988, the Commission found reason to believe that St. Louisians and its treasurer[1] violated 2 U.S.C. § 441a(a)(2)(A) by making an excessive contribution to the 1986 Senate campaign of John Evans. St. Louisians submitted a response to the Commission's findings on November 28, 1988.

II. ARGUMENT:

ST. LOUISIANS FOR BETTER GOVERNMENT MADE A $2,500 CONTRIBUTION TO THE IDAHO STATE DEMOCRATIC PARTY - FEDERAL ACCOUNT WHICH WAS EARMARKED FOR THE JOHN EVANS SENATORIAL CAMPAIGN, RESULTING IN AN EXCESSIVE CONTRIBUTION TO THE EVANS CAMPAIGN BY ST. LOUISIANS.

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that a multicandidate committee may make up to $5,000 in contributions to any candidate or his or her authorized committee in each election. 2 U.S.C. § 441a(a)(2)(A). The Act further provides that contributions made by a person which are earmarked or otherwise directed through an intermediary or

1. The current treasurer of St. Louisians for Better Government is Bernard Pasternak.

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conduit to a candidate shall be treated as contributions from that person to the candidate. 2 U.S.C. § 441a(a)(8). Moreover, the intermediary or conduit must report the original source and the intended recipient of the contribution to the Commission, the Clerk of the House of Representatives, or the Secretary of the Senate, as appropriate, and to the intended recipient. 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

Commission regulations define "earmarking" as:

> a designation, instruction, or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b).

Commission regulations state that a person may contribute to a candidate or that candidate's authorized committee with respect to an election and also contribute to a political committee which has supported or anticipates supporting that same candidate in that same election so long as the political committee is not the candidate's principal or authorized committee, the contributor does not retain control over the funds, and the contributor does not give with the knowledge that a substantial portion will be contributed to or expended on behalf of that same candidate for that same election. 11 C.F.R. § 110.1(h).

The Commission has determined that the earmarking provisions of the Act apply to contributions made by individuals to a state party committee which are designated to be used for coordinated party expenditures on behalf of a particular federal candidate.

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Therefore, even though the funds are not directly forwarded to the candidate's committee, the contributions are considered earmarked to that candidate and subject to the limitations of the Act. The Commission has also found that the earmarking provisions of the Act are applicable where individuals have contributed to a state party committee knowing that the state party committee would use the contributions to pay for the debts of the candidate's committee. See MUR 377 and MUR 752.

St. Louisians made two direct contributions of $5,000 each to the 1986 Senatorial campaign of John Evans on December 8, 1985 and October 9, 1986 for the primary and general elections, respectively. St. Louisians also made a $2,500 contribution to the Idaho Democratic Party on October 24, 1986. There were not any notations on the face of the check as to its purpose. In a cover letter accompanying the check, St. Louisians note that "[w]e are pleased to enclose a check for $2,500.00 to help in the election of John Evans to the United States Senate....Please convey our best wishes to the governor." The letter was addressed to Betty Ahrens and Barney Gottstein. Betty Ahrens was employed by the Idaho Democratic Party and was also employed part-time by the Evans campaign committee at that time.

In addition, the Idaho Democratic Party, in its 1986 Post-General Election Report, disclosed the receipt of the contribution from St. Louisians on October 31, 1986. This 1986 Post-General Election Report covers the period from October 16 through November 24, 1986, including the election itself on November 4, 1986. The report shows that after the contribution

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from St. Louisians was posted on October 31st, the Idaho Democratic Party made operating expenditures in the amount of $2171.95, consisting of salaries and tax payments. Additionally, the report discloses coordinated party expenditures totaling $15,852.45 made on behalf of the Evans campaign, consisting of $12,252.45 for an "Election Day Mailgram" and $3,600.00 for postage of the mailgram. The 1986 Year End Report shows that this was the only coordinated party expenditure made by the Idaho Democratic Party during 1986.

St. Louisians has submitted a letter from the Idaho Democratic Party stating that the $2,500 contribution was not specifically used for John Evans, but was used in its State Party Works Program for the get-out-the-vote drive "which benefited all the federal candidates." However, as stated above, the reports show that most of the funds expended by the Idaho State Democratic party from the time of the St. Louisians' contribution until the election were used for an "Election Day Mailgram" and postage on behalf of the Evans campaign.

St. Louisians submitted letters in response to the Commission's findings from Michael Litwack, past President of St. Louisians, and Dr. Carl Lyss. Litwack states that it is "his honest recollection" that the sole intent of the funds were to aid in getting out the vote in Idaho and not for any specific candidate. Dr. Lyss forwarded the check to the Idaho Democratic Party because Litwack was out of town. Lyss states that his reference to Governor Evans was "strictly a personal good luck" and was not meant to infer that the funds were to be used

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directly for the Evans campaign. Lyss further notes that the money was to be used to help get out the vote.

Nevertheless, based on the information reviewed through the investigation of this matter, the $2,500 contribution made by the St. Louisians to the Idaho Democratic Party was earmarked for use on behalf of the John Evans Senatorial campaign, resulting in an excessive contribution by St. Louisians. Although St. Louisians have submitted letters attempting to explain the purpose and intent behind the contribution to the Idaho Democratic Party, the language used in the letter which accompanied the check at the time the contribution was made indicates an intent that the money was to be used for the benefit of the Evans campaign. Furthermore, the financial reports of the Idaho Democratic Party disclose that, aside from its administrative expenses, the six remaining expenditures by the party between October 16 and December 31, 1986, after the receipt of the $2,500 contribution, were coordinated party expenditures on behalf of John Evans, including an "Election Day Mailgram," computer lists and printing costs. Additionally, the letter accompanying the $2,500 contribution was addressed to Betty Ahrens, who was also employed by the Evans campaign committee. It appears that St. Louisians made a contribution knowing and/or intending that a substantial portion of the funds would be contributed to or expended on behalf of a candidate to whom they had already contributed the maximum amount allowed by the Act for that election.

Therefore, the Office of the General Counsel recommends that the Commission find probable cause that St. Louisians for Better

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Government and Bernard Pasternak, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A).

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that St. Louisians for Better Government and Bernard Pasternak, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A).

7/18/90
Date

Lawrence M. Noble
General Counsel

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RECEIVED
FEDERAL ELECTION COMMISSION

90 JUL 30 AM 11:48

CHAIM H. ZIMBALIST
PROFESSIONAL CORPORATION
ATTORNEY AND COUNSELOR AT LAW
1750 INTERCO CORPORATE TOWER
101 SOUTH HANLEY ROAD
ST. LOUIS (CLAYTON), MISSOURI 63105

OF COUNSEL TO
MORGANSTERN, SORAGHAN, STOCKENBERG,
MC KITRICK & GOULD

TELEPHONE (314) 725-7100
TELECOPIER (314) 725-6592

CERTIFIED - RETURN RECEIPT REQUESTED

July 26, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 JUL 30 PM 2:47

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

Re: MUR 2632
St. Louisians for Better
Government and Bernard
Pasternak, as Treasurer

Dear Mr. Canfield:

In accordance with our telephone conversations of yesterday, enclosed herein please find duly executed Statement of Designation of Counsel, formally designating me as attorney for the above-referenced Respondents in the referenced matter.

Please consider this letter (1) as my formal entry of appearance on behalf of said Respondents; (2) as a formal request that I be furnished copies of any letters and correspondence received by the Federal Election Commission relating to the above referenced matter (i) from Bunny Goldwasser, who had at one time been the Treasurer of Respondent, St. Louisians for Better Government; and (ii) copies of any other type of documents which may have been submitted on behalf of St. Louisians for Better Government, including any correspondence, if any there be, from the Idaho Democratic Party and/or the Evans Campaign Committee.

In view of the fact that none of the present officers of St. Louisians for Better Government had prior knowledge of the events leading to the above matter, it will be necessary for this office to use due diligence in investigating the true facts and determining the nature of the pleadings, if any, to be filed on its behalf. Therefore, I respectfully request that the time to file a responsive brief be extended for twenty (20) days, up to and including August 24, 1990. Your letter of July 18, 1990 was received on July 20, 1990.

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I look forward to receiving the requested information, and I thank you in advance for your cooperation.

Yours truly,

Chaim H. Zimbalist

CHAIM H. ZIMBALIST

CHZ:jw

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2632

NAME OF COUNSEL: CHAIM H. ZIMBALIST

ADDRESS: 101 South Hanley Road
Suite 1750
St. Louis, Missouri 63105

TELEPHONE: 314-725-7100

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.

July 25, 1990
Date

Bernard Pasternak
Signature

RESPONDENT'S NAME: St. Louisians for Better Government

ADDRESS: 41 Claverach Drive
St. Louis, Missouri 63105

HOME PHONE: 314-862-6159

BUSINESS PHONE: 314-878-7900

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 2, 1990

Chaim H. Zimbalist, Esquire
101 South Hanley Road, Suite 1750
Clayton, Missouri 63105

RE: MUR 2632
St. Louisians for
Better Government and
Bernard Pasternak,
as treasurer

Dear Mr. Zimbalist:

This is in response to your letter dated July 26, 1990, which we received on July 30, 1990, requesting an extension until August 24, 1990 to respond to the probable cause brief in the above referenced matter. 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 24, 1990. We are also in receipt of your designation as counsel.

With respect to your request for documents, enclosed please find copies of all the documents previously submitted by St. Louisians for Better Government to the Commission in connection with MUR 2632. Regarding any documents submitted by the Idaho State Democratic Party and/or the Evans campaign committee, be advised that the only documents submitted by those parties specifically relating to the St. Louisians were a copy of the contribution check and the cover letter from Dr. Carl Lyss.

If you have any questions, please contact John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
St. Louisians documents

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RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 AUG -2 AM 10: 06

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2632
Idaho State Democratic Party -	)	
Federal Account and Joe Berenter,	)	
as treasurer	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On October 17, 1988, the Commission found reason to believe that the Idaho State Democratic Party-Federal Account (the "Idaho Democratic Party") and its treasurer violated 11 C.F.R. § 110.6(c) by failing to report the original source and intended recipient of an earmarked contribution involving the John Evans Senatorial campaign.

After the issuance of a subpoena, the Idaho Democratic Party submitted answers to the Commission's interrogatories on December 4, 1989. A subpoena to produce documents and an order to submit written answers was issued by the Commission on April 9, 1990. Answers and documents were submitted by the Idaho Democratic Party and were received by the Commission on May 21, 1990.

On July 13, 1990, the Commission found reason to believe that the Idaho Democratic Party violated 2 U.S.C. § 441a(a)(8) with respect to a contribution from the St. Louisians for Better Government, and also violated 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c) with respect to a contribution from the National Action Committee - NACPAC.

In the most recent Report from this Office, the General Counsel made no recommendation concerning certain contributions

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received by the Idaho Democratic Party in October, 1986. The prior subpoena had requested information concerning contributions made to the Idaho Democratic Party in October, 1986, which might possibly have been earmarked for a specific candidate. The Idaho Democratic Party, in its response to the subpoena, stated that it was unable to locate any copies of checks or other information regarding the requested contributions. However, in its response, the Idaho Democratic Party did provide copies of its checking account deposit slips, which identify the bank and account numbers used by the party committee.

Accordingly, the General Counsel recommends that the Commission issue the attached subpoena to the West One Bank in an attempt to locate copies of the sought after checks.[1] This office has been informed by telephone that the bank maintains copies of all checks deposited into its accounts on microfilm for a period of seven years. Two separate subpoena are attached to this report because the Idaho Democratic Party apparently used two different accounts at two different branches of the bank in question.

21040305548

1. The Right to Financial Privacy Act does not apply to the bank accounts of non-individuals.

II. **RECOMMENDATIONS**

1. Authorize the attached subpoenas to the West One Bank.

2. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date 8/1/90

BY: [signature]
Lois G. Lerner
Associate General Counsel

Attachments
Subpoenas - (2)

Staff Assigned: John Canfield

21040330549

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer.	)	MUR 2632

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 7, 1990, the Commission decided by a vote of 6-0 to take the following actions in MUR 2632:

1. Authorize the subpoenas to the West One Bank, as recommended in the General Counsel's Report dated August 1, 1990.

2. Approve the letters, as recommended in the General Counsel's Report dated August 1, 1990.

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

Attest:

8-7-90
Date

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

Received in the Secretariat: Thurs., August 2, 1990 10:06 a.m.
Circulated to the Commission: Thurs., August 2, 1990 4:00 p.m.
Deadline for vote: Mon., August 6, 1990 4:00 p.m.
At the time of deadline, 4 affirmative votes had not been received.
Final vote received: Tues., August 7, 1990 10:50 a.m.

dh

9104083055 0

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 14, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Alan Mullins
West One Bank
210 Illinois Avenue
Council, Idaho 83612

RE: MUR 2632

Dear Mr. Mullins:

The Federal Election Commission has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, United States Code. The Commission has issued the attached subpoena which requires you to provide certain information in connection with an investigation it is conducting. The Commission does not consider you a respondent in this matter, but rather a witness only.

Because this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena. However, you are required to submit the information within 15 days of your receipt of this subpoena. All answers to questions must be submitted under oath.

If you have any questions, please contact John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Subpoena

9104030551

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	MUR 2632
	)	

SUBPOENA TO PRODUCE DOCUMENTS

TO: Mr. Alan Mullins, Manager
West One Bank, Council Office
210 Illinois Avenue
Council, Idaho 83612

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 the documents listed on the attachment to this subpoena.

Notice is given that these documents must be submitted to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, within 15 days of your receipt of this subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

21040305552

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set her hand in Washington, D.C. on this 10th day of August, 1990.

Lee Ann Elliott
Lee Ann Elliott, Chairman
Federal Election Commission

ATTEST:

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

Attachment
Document Request (3 pages)

9104030553

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.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory 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.

Unless otherwise indicated, the discovery request shall refer to the time period from September 1, 1986 to January 1, 1987.

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.

2104083055 54

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 entity in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof. The term shall also include the Idaho First National Bank, an entity subsequently acquired by the West One Bank.

"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 the 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.

9104030555

SUBPOENAED DOCUMENTS

Produce copies of the checks from the entities noted below, which were deposited into the account of the Idaho Democratic Party at the Idaho First National Bank, account number 120001692623 (Council) and/or account number 01058398 (Boise):

1. ATLA PAC (American Trial Lawyers Association)
   Amount: $5,000
   Date: 10/23/86

2. Desert Caucus
   Amount: $5,000
   Date: 10/23/86

3. National PAC
   Amount: $5,000
   Date: 10/23/86

9104033055 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 14, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Cari Maupin
West One Bank
205 North 10th Street
Boise, Idaho 83702

RE: MUR 2632

Dear Ms. Maupin:

The Federal Election Commission has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, United States Code. The Commission has issued the attached subpoena which requires you to provide certain information in connection with an investigation it is conducting. The Commission does not consider you a respondent in this matter, but rather a witness only.

Because this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this subpoena. However, you are required to submit the information within 15 days of your receipt of this subpoena. All answers to questions must be submitted under oath.

If you have any questions, please contact John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Subpoena

2 1 5 4 0 8 3 0 5 5 7

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	MUR 2632
	)	

SUBPOENA TO PRODUCE DOCUMENTS

TO: Ms. Cari Maupin, Customer Service Supervisor
West One Bank, Main Office
205 North 10th Street
Boise, Idaho 83702

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 the documents listed on the attachment to this subpoena.

Notice is given that these documents must be submitted to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, within 15 days of your receipt of this subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

9104030558

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set her hand in Washington, D.C. on this 10th day of August, 1990.

Lee Ann Elliott

Lee Ann Elliott, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Attachment
Document Request (3 pages)

9104030559

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.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory 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.

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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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"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 the 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.

9104030561

SUBPOENAED DOCUMENTS

Produce copies of the checks from the entities noted below, which were deposited into the account of the Idaho Democratic Party at the Idaho First National Bank, account number 120001692623 (Council) and/or account number 01058398 (Boise):

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   Amount: $5,000
   Date: 10/23/86

2. Desert Caucus
   Amount: $5,000
   Date: 10/23/86

3. National PAC
   Amount: $5,000
   Date: 10/23/86

9104030562

06C 7229

LAW OFFICES
MARK R. VOGEL
PROFESSIONAL ASSOCIATION
SUITE 880
MIAMI CENTER
201 S. BISCAYNE BLVD.
MIAMI, FLORIDA 33131
TELEPHONE (305) 358-9207

SANTIAGO DIEZ, P.A.
CRAIG Z. SHERAR, P.A.
MARK R. VOGEL, P.A.

GARY R. SIEGEL, P.A.
OF COUNSEL

REPLY TO:
Miami

CABLE: MRVOGEL
TELEX: 52-2279 (UT)
44-1582 (ITT)
FAX: (305) 358-[illegible]

2651 N. FEDERAL HWY.
FORT LAUDERDALE, FL 33306
TEL: (305) 563-1010

RECEIVED
FEDERAL ELECTION COMMISSION

90 AUG -8 AM 11:12

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 AUG 8 PM 12:13

August 03, 1990

The Federal Election Commission
Office of General Counsel
ATTN: JOHN CANFIELD, ESQ.
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2632
National Action Committee - NACPAC
and Stephen Bittel, as treasurer

Dear Mr. Canfield:

Reference the above-entitled MUR and the related correspondence and Factual and Legal Analysis dated July 17, 1990. Please note the enclosure of Respondent's Statement of Designation of Counsel, telecopied prior.

We hereby respectfully request pre-probable cause conciliation pursuant to 2 U.S.C. 437g(a)(4)(A)(i) and 11 C.F.R. §111.18(d). We also respectfully request that this MUR remain confidential in accordance with 2 U.S.C. 437g(a)(4)(B) and 437g(a)(12)(A) and 11 C.F.R. §111.21.

We have set forth below facts and attach herewith materials which we believe are relevant to the Commission's consideration of this MUR. If necessary, we will provide the following in affidavit form. Please be advised as follows:

1. MUR 2632 is **based primarily upon a clerical error**, that is, the omission by the Respondent's clerical staff of the word "primary" in Item I., John Evans for Senate Comm., on page 1 of the Itemized Disbursements of FEC Form 3X for the quarter ended June 30, 1986.

2. Respondent's clerical staff has regularly prepared FEC Forms 3X and the FEC has never objected to the omission of "primary." **Respondent has therefore come to rely upon this format as being acceptable and proper.** Any errors or omissions by Respondent were inadvertent and unintentional or a result of Respondent's being unaware of a particular requirement.

3. Respondent sincerely regrets the omission as described

above and therefore respectfully requests the opportunity and **leave to amend FEC Form 3X for the quarter ended June 30, 1986** in order to reflect "primary" in the Schedule of Itemized Disbursements.

4. **Respondent allocated $5,000.00** to Governor John Evans on April 10, 1986, as reflected in the attached copy of Minutes, which was **prior to the Idaho primary election** which occurred on May 27, 1986. This pre-primary contribution was held in accordance with Respondent's long-standing policy of hand-delivering to all candidates Respondent's contributions and therefore, said check was held until Respondent's June 1986 event whereupon same was given to Governor Evans.

5. Respondent understands the Federal Election Campaign Act's contributions limitations; i.e., a maximum of $5,000.00 per election. Respondent has never contributed amounts in any campaign that would violate these provisions, including MUR 2632. **Respondent's clear intention herein was to contribute $5,000.00 to Governor Evans' (unusually early) primary election.**

6. If any of Respondent's 1986 FEC filings contained any violations, same were inadvertent and unintentional.

We sincerely appreciate the Commission's consideration and will be pleased to provide any additional information or documentation as required.

Very truly yours,

MARK R. VOGEL, P.A.

By: _____
Mark R. Vogel, Esq., LL.M., C.P.A.
Chairman, NACPAC

MRV/ly
Encls.
Cert. RRR (P 261 966 713)
cc: Stephen Bittel

NACPAC
NATIONAL ACTION COMMITTEE

3050 BISCAYNE BLVD., SUITE 800, MIAMI, FL 33137 (305) 576-1500

JOSHUA SOCIETY/EXECUTIVE COMMITTEE

April 10, 1986 MEETING

M I N U T E S

I. CALL TO ORDER: 12:30 p.m. - Members in attendance: Eliot Abbott, Michael Adler, Robert Alperin, Dory Auerbach, Lang Baumgarten, Jeffrey Bercow, Jeffrey Berkowitz, Richard Berkowitz, Stephen Bittel, Bill Blechman, Merritt Epstein, Mark Friedland, Harvey Friedman, Robert Friedman, Robert Kaplan, Barbara Kipnis, Steven Kravitz, Richard Minkin, Arnold Picker, Hank Rodstein, Bob Rubinstein, James Schwade, Ed Shohat, Rick Sisser, David Smith, Joe Smith, David Stone, Mark Vogel and Barbara Aronson.

II. TREASURER'S REPORT: There are $41,010.34, available for distribution (after deducting those contributions which were allocated as of April 10th, but not yet disbursed).

III. MEMBERSHIP REPORT: There are a number of Joshua Society members who have not yet renewed for 1986. Those present were assigned names to call, requesting they renew their Joshua Society membership or join the Capitol Club.

A letter will go out shortly to all NACPAC members asking them to rejoin for 1986 and consider upgrading to the Joshua Society.

Steve Kravitz is heading the Capitol Club campaign which will focus on face-to-face solicitations.

IV. FUNDRAISING EVENTS:

A. There will be a community fundraiser for Representative John Breaux on May 16, 1986. It was unanimously passed that NACPAC will not sponsor a separate Breaux event.

B. A motion was passed to sponsor a NACPAC Luncheon featuring Governor John Evans and a prominent Senator in June. There will also be a community fundraiser for Evans when he is in Miami.

V. CONTRIBUTION REQUESTS:

A. Representative Cardiss Collins - $1,000 already disbursed by the officers was ratified.
B. Representative John Breaux - $2,500 passed unanimously.
C. Representative Larry Smith - $2,500 passed unanimously (with an additional $2,500 available in the future).
D. Representative Vin Weber - $2,500 passed unanimously.
E. Governor John Evans - $5,000 passed unanimously (to be delivered at NACPAC event)
F. Senator Paula Hawkins - $3,000 (to be disbursed when she is actively campaigning again.)
G. Governor Bob Graham - Allocation tabled until after the election.
H. Senator Patrick Leahy - $2,500 passed.
I. Harriet Woods - $5,000 passed unanimously.

VI. ANNOUNCEMENTS: All Joshua Society members were invited to attend the Smith event April 14th, Kennedy event April 18, Vin Weber event April 21, Pat Leahy April 19, Bob Graham April 27th and Claude Pepper on June 10th.

Respectfully submitted,

Barbara Aronson

Barbara Aronson,
Executive Director

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MACPAC
NATIONAL ACTION COMMITTEE
3050 BISCAYNE BLVD., SUITE 800, MIAMI, FL 33137 (305) 576-1500

MACPAC CONTRIBUTIONS FOR 1986 RACES TO DATE

Ballenger, Cass	$ 250.00
Breaux, John (not yet disbursed)	2,500.00
Bumpers, Dale Senator Dale Bumpers Re-election Comm.	2,500.00
Collins, Cardiss	1,000.00
Cranston, Alan	3,500.00
Daschle, Tom A Lot of People Supporting Tom Daschle	3,500.00
Dodd, Chris Chris Dodd for Senate	1,000.00
Evans, John (not yet disbursed)	5,000.00
Gejdenson, Sam (not yet disbursed)	1,500.00
Gibbons, Sam Sam Gibbons Committee	1,000.00
Hamilton, Lee Lee Hamilton for Congress	1,000.00
Hawkins, Paula (not yet disbursed)	3,000.00
Hollings, Fritz Committee to Re-elect Fritz Hollings	1,000.00
Kasten, Bob Bob Kasten for US Senate	2,500.00
Lancaster, Martin	250.00
Leahy, Patrick	2,500.00
McCain, John McCain for Senate	1,000.00
Obey, David Committee for a Progressive Congress	1,000.00
Packwood, Bob Re-elect Packwood Committee	1,000.00
Smith, Larry	2,500.00
Weber, Vin	2,500.00
Woods, Harriet (not yet disbursed)	5,000.00
Wright, Jim (not yet disbursed)	1,000.00
TOTAL TO DATE:	$46,000.00

5/08/86

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06C7467

LAW OFFICES
MARK R. VOGEL
PROFESSIONAL ASSOCIATION
SUITE 880
MIAMI CENTER
201 S. BISCAYNE BLVD.
MIAMI, FLORIDA 33131
TELEPHONE (305) 358-9207

SANTIAGO DIEZ, P.A.
CRAIG Z. SHERAR, P.A.
MARK R. VOGEL, P.A.

GARY R. SIEGEL, P.A.
OF COUNSEL

CABLE: MRVOGEL
TELEX: 52-2271 (WUT)
44-1582 (ITT)
FAX: (305) 358-1618

2651 N. FEDERAL HWY.
FORT LAUDERDALE, FL 33306
TEL: (305) 563-1010

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

90 AUG 16 AM 11:10

August 09, 1990

REPLY TO:
Miami

The Federal Election Commission
Office of General Counsel
ATTN: JOHN CANFIELD, ESQ.
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 AUG 16 PM 12:41

Dear Mr. Canfield:

Enclosed please find the Statement of Designation of Counsel which I have signed in accordance with your instructions contained in your letter dated August 08, 1990. I sincerely regret any inconvenience but I was unaware of this signature requirement.

Please don't hesitate to contact me if you have any questions or require any additional documentation or information.

Very truly yours,

MARK R. VOGEL, P.A.

By: _____
Mark R. Vogel, Esq., LL.M., C.P.A.

MRV/ly
Encls.

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2632

NAME OF COUNSEL: Mark R. Vogel

ADDRESS: 201 S. Biscayne Blvd.
Miami Center, Suite 880
Miami, Florida 33131

TELEPHONE: (305) 358-9207

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.

08/09/90
Date

Signature

RESPONDENT'S NAME: National Action Committee (NACPAC)

ADDRESS: 201 S. Biscayne Blvd.
Miami Center, Suite 880
Miami, Florida 33131

HOME PHONE: (305) 864-4671

BUSINESS PHONE: (305) 358-9207

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00C7573

CHAIM H. ZIMBALIST
PROFESSIONAL CORPORATION
ATTORNEY AND COUNSELOR AT LAW
1750 INTERCO CORPORATE TOWER
101 SOUTH HANLEY ROAD
ST. LOUIS (CLAYTON), MISSOURI 63105

OF COUNSEL TO
MORGANSTERN, SORAGHAN, STOCKENBERG,
MC KITRICK & GOULD

TELEPHONE (314) 725-7100
TELECOPIER (314) 725-6592

90 AUG 23 AM 10:25

August 22, 1990

Mr. John Canfield
FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 AUG 23 PM 1:02

Re: MUR 2632
St. Louisians for Better Government
and Bernard Pasternak, as Treasurer

Dear Mr. Canfield:

Enclosed please find Response of Respondent to General Counsel's Brief.

Yours truly,

Chaim H. Zimbalist

CHAIM H. ZIMBALIST

CHZ:jw

Enclosure

9104030569

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
St. Louisians for Better Government and Bernard Pasternak, as treasurer	)	MUR 2632

RESPONSE OF RESPONDENT

Respondent respectfully requests that prior to acting on the General Counsel's Recommendations filed in this cause on July 18, 1990, the Federal Election Commission duly consider the following facts and circumstances:

1. That in 1985 and 1986, when it made two direct contributions of $5,000.00 each to the 1986 Senatorial campaign of Evans, those contributions were made in accordance with law.

2. That when it made a $2,500.00 contribution to the Idaho Democratic Party in October, 1986, that action was taken only with the firm belief that the contribution was made and the funds would be used only in accordance with law.

3. That the wording of the letter of October 24, 1986 of Carl A. Lyss was incorrect at the time it was written and did not state the true intent and purpose of that contribution. This intent was more fully set out in the letter of Michael Litwack, past President, 1985-86, dated November 22, 1988. (See attached Affidavit of Michael Litwack)

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Further, the Respondent suggests that prudence would require the Commission to consider both the intent and the act before finding probable cause to believe that Respondent violated 2 U.S.C., Section 441a(a)(2)(A). In so doing, it is respectfully urged that the Recommendation of the General Counsel not be followed, and that this Federal Election Commission order that no further action be taken in this cause.

Respectfully submitted,

Chaim H. Zimbalist

CHAIM H. ZIMBALIST,

Attorney for Respondent

9104033057 1

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

BERNARD PASTERNAK, being first duly sworn upon his oath, states that he is the President and Treasurer of ST. LOUISIANS FOR BETTER GOVERNMENT, that he is a United States citizen over the age of eighteen, and is a registered voter of St. Louis County, Missouri.

Affiant further states that he has read the above and foregoing RESPONSE OF RESPONDENT and that the contents thereof are true and correct to the best of his personal knowledge, information and belief.

Bernard Pasternak
BERNARD PASTERNAK

Subscribed and sworn to before me, a Notary Public, this 21st day of August, 1990.

Chaim H. Zimbalist
NOTARY PUBLIC

My Commission Expires:

CHAIM H. ZIMBALIST
NOTARY PUBLIC, STATE OF MISSOURI
MY COMMISSION EXPIRES 2/15/93
ST. LOUIS COUNTY

2104083057 2

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

AFFIDAVIT

MICHAEL LITWACK, being first duly sworn upon his oath, states as follows:

1. That I am a United States Citizen over the age of eighteen, and am a registered voter of St. Louis County, Missouri.

2. That I was President of St. Louisians for Better Government during the calendar years 1985 and 1986.

3. That when the $2,500 contribution to the Idaho Democratic Party was made in October, 1986, the sole intent of the use of those funds was to aid in getting out the vote and were not to be earmarked for any specific candidate.

4. That, unfortunately and unintentionally, in his letter of October 24, 1986, Carl A. Lyss incorrectly set forth the purpose of the contribution. It had not been at any time the intent of St. Louisians for Better Government to earmark those funds in an illegal or inappropriate manner.

MICHAEL LITWACK

Subscribed and sworn to before me, a Notary Public, this 21st day of August, 1990.

NOTARY PUBLIC

My Commission Expires:

CHAIM H. ZIMBALIST
NOTARY PUBLIC, STATE OF MISSOURI
MY COMMISSION EXPIRES 2/16/93
ST. LOUIS COUNTY

2104053057 3

06077729

90 SEP -3 AM 11:00

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2632

NAME OF COUNSEL: Mark R. Vogel, Esq.

ADDRESS: 201 S. Biscayne Blvd., #880
Miami, FL 33131

TELEPHONE: (305) 358-9207

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 SEP -5 AM 10:08

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.

August 20, 1990
Date

Signature

RESPONDENT'S NAME: Stephen H. Bittel

ADDRESS: 2665 South Bayshore Drive
Penthouse II-B
Miami, FL 33133

HOME PHONE: (305) 856 8700

BUSINESS PHONE: (305) 666 6996

9 1 0 4 0 3 3 0 5 7 4

Canfield
OGC 7837

WEST ONE

September 6, 1990

MUR 2632

90 SEP 10 AM 11:34

Ms. Lee Ann Elliott, Chairman
Office of the General Counsel
Federal Election Commission
999 E. Street N.W.
Washington, D.C. 20463

Re: SUBPOENA: Idaho Democratic Party

Dear Ms. Elliott:

This is an invoice for records produced for the Subpoena in the above stated matter. Standard reimbursement rates for producing records for Subpoenas are listed below:

90 SEP 11 PM 1:01

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

SERVICE	QUANTITY	UNIT PRICE	AMOUNT
Time	2 hours	$10.00 per hour	$ 20.00
Photos	8 copies	.15 each	$ 1.20
		Total	$ 21.20

Please forward payment to: West One Bancorp
#3-2025
P.O. Box 8247
Boise, ID 83733
Attn: Corporate Security

If you have any questions, please contact me at (208)383-5263.

Sincerely,

Rhonda Harwood

Rhonda Harwood
Executive Secretary

90 SEP -7 PM 3:11

21040830575

DEPOSIT SLIP

IDAHO FIRST NATIONAL BANK
COUNCIL OFFICE
P.O. Box 1
Council, Idaho 83612

TO THE CREDIT OF

IDAHO DEMOCRATIC PARTY
P. O. BOX 445
BOISE, ID 83701

DATE 10/22/86

CURRENCY

COIN

CHECK DETAILS

ATLA 5000

TOTAL ITEMS 2

TOTAL DEPOSIT 15,000

15,000 3

⑈12000 1692623⑈ 0008/0001500000

DESERT CAUCUS
7731 E. SABINO VISTA CIRCLE
TUCSON, ARIZONA 85715

1095

19 91-532/1221

Pay to the order of Desert State Democratic Party Bill $ 5000.00

Five Thousand and 00/100 Dollars

National Bank of Tucson
Tucson, AZ 85711-0001

MONEY MARKET ACCOUNT

Joe Lesser Treas

⑆122105320⑆1095 0016000056⑈ /0000500000/

NATIONAL PAC FEDERAL ACCOUNT

260

October 16, 19 86

Pay to the order of Idaho Democratic Party ---------- $ 5,000.00

Five Thousand and 00/100 ---------- DOLLARS

The National Office Bank
OF CAPITOL HILL

Contribution

⑈00000260⑈ ⑆054000056⑆ 1004261901⑈ RICHARD H. ALTMAN
Executive Director

ATLA PAC
ASSOCIATION OF TRIAL LAWYERS OF AMERICA
POLITICAL ACTION COMMITTEE
CONTRIBUTION ACCOUNT
1000 - 31ST STREET, NW.
WASHINGTON, D.C. 20007

The RIGGS NATIONAL BANK
of WASHINGTON, D.C.
FARMERS & MECHANICS OFFICE
WISCONSIN AVENUE & M STREET, N.W.

1723

19-3/540

October 17 19 86

PAY Five Thousand Dollars and 00/100 ---------- DOLLARS $ 5000.00

TO THE ORDER OF Idaho Democratic Party-Federal Account
PO Box 445
Boise ID 83707

Alan Parker

⑈001723⑈ ⑆054000030⑆ 06⑈08219453⑈ /0000500000/

THE IDAHO FIRST NATIONAL BANK

IDAHO DEMOCRATIC PARTY

12000160202

9563

PAY ANY BANK P.E.O.

92-1

27

OCT 22

THE IDAHO FIRST NATIONAL BANK

IDAHO DEMOCRATIC PARTY

9563

PAY ANY BANK P.E.O.

92-1

27

OCT 22

PAY TO THE ORDER OF

THE IDAHO FIRST NATIONAL BANK

IDAHO DEMOCRATIC PARTY

12000160202

PAY ANY BANK P.E.O.

92-1

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92-1

OCT 22

PROPERLY

	9563
	PAY ANY BANK P.E.O.
	92-1
	27
	92-1
	$15000.00
TOTAL	

FEDERAL ELECTION COMMISSION
RECEIVED
90 SEP 11 PM 4:27

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	MUR 2632
National Action Committee -	)	
NACPAC and Stephen Bittel,	)	
as treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On July 13, 1990, the Commission found reason to believe that the National Action Committee - NACPAC ("NACPAC") and Stephen Bittel, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis which formed the basis of this finding was sent to the respondents on July 17, 1990. On August 8, 1990, this Office received a response from NACPAC as well as supporting documents. The respondents also requested that the Commission enter with them into pre-probable cause conciliation. See Attachment 1.

II. ANALYSIS

The reason to believe finding against NACPAC involves campaign contributions made by NACPAC to the John Evans Senate campaign in 1986. The information submitted by NACPAC with its recent response raises a question concerning a possible fundraiser which NACPAC may have held on behalf of Senate candidate John Evans. The reports of both NACPAC and Evans will now have to be examined in order to determine if funds raised at such an event were reported in the required manner.

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Additionally, there is still ongoing discovery in this MUR regarding another respondent, the Idaho Democratic Party, including recently issued subpoenas for bank records.

Because of the ongoing discovery with regard to NACPAC, the Evans campaign and the Idaho Democratic Party, this Office believes that it would be premature to enter into pre-probable cause conciliation with NACPAC at this time.

III. RECOMMENDATIONS

1. Decline, at this time, to enter into conciliation with the National Action Committee - NACPAC prior to a finding of probable cause to believe.

2. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

9/10/90
Date

BY: [signature]
Lois G. Lerner
Associate General Counsel

Attachment
1. Request for Conciliation

Staff Assigned: John Canfield

2104083057 9

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
National Action Committee -	)	MUR 2632
NACPAC and Stephen Bittel,	)	
as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 20, 1990, the Commission decided by a vote of 6-0 to take the following actions in MUR 2632:

1. Decline, at this time, to enter into conciliation with the National Action Committee - NACPAC prior to a finding of probable cause to believe, as recommended in the September 10, 1990 General Counsel's Report.

2. Approve the appropriate letter as recommended in the September 10, 1990 General Counsel's Report.

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

Attest:

9-20-90
Date

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

Received in the Secretariat:	Tuesday,	Sept. 11, 1990	4:27
Circulated to the Commission:	Wednesday,	Sept. 12, 1990	11:00
Deadline for vote:	Thursday,	Sept. 20, 1990	4:00

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 24, 1990

Mr. Mark R. Vogel, Esq.
201 S. Biscayne Blvd., Suite 880
Miami, Florida 33131

RE: MUR 2632
National Action Committee

Dear Mr. Vogel:

On July 17, 1990, you were notified that the Federal Election Commission found reason to believe that your clients, National Action Committee - NACPAC and Stephen Bittel, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A). On August 8, 1990, 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 John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner
Associate General Counsel

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RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 SEP 19 PM 11:42

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
)
St. Louisians for Better Government) MUR 2632
and Bernard Pasternak, as)
treasurer)

SEP 25 1990

EXECUTIVE SESSION

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On October 17, 1988, the Commission found reason to believe that St. Louisians for Better Government ("St. Louisians") and its treasurer, Bernard Pasternak[1], violated 2 U.S.C. § 441a(a)(2)(A) by making an excessive contribution to the 1986 Senate campaign of John Evans via an earmarked contribution to the Idaho State Democratic Party. St. Louisians filed a response on November 28, 1988, asserting that the contribution in question was made to the Idaho State Democratic Party for its "Get Out The Vote" effort and was not earmarked for the Evans campaign.

Based on the information received, the General Counsel filed a brief on July 18, 1990, recommending that the Commission find probable cause that St. Louisians and its treasurer violated 2 U.S.C. § 441a(a)(2)(A). The St. Louisians filed a response to this brief on August 23, 1990, urging the Commission not to find probable cause in this matter because the wording of the letter which accompanied the contribution in question "did not state the true intent and purpose of that contribution."

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1. The current treasurer is Bernard Pasternak. The treasurer at the time of the events in question was Ms. Bunny Goldwasser.

II. ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that a multicandidate committee may make up to $5,000 in contributions to any candidate or his or her authorized committee in each election. 2 U.S.C. § 441a(a)(2)(A). The Act further provides that contributions made by a person which are earmarked or otherwise directed through an intermediary or conduit to a candidate shall be treated as contributions from that person to the candidate. 2 U.S.C. § 441a(a)(8). Moreover, the intermediary or conduit must report the original source and the intended recipient of the contribution to the Commission, the Clerk of the House of Representatives, or the Secretary of the Senate, as appropriate, and to the intended recipient. 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

Commission regulations define "earmarking" as:

> a designation, instruction, or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b).

Commission regulations state that a person may contribute to a candidate or that candidate's authorized committee with respect to an election and also contribute to a political committee which has supported or anticipates supporting that same candidate in that same election so long as the political committee is not the candidate's principal or authorized committee, the contributor does not retain control over the

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funds, and the contributor does not give with the knowledge that a substantial portion will be contributed to or expended on behalf of that same candidate for that same election. 11 C.F.R. § 110.1(h).

The Commission has determined that the earmarking provisions of the Act apply to contributions made by individuals to a state party committee which are designated to be used for coordinated party expenditures on behalf of a particular federal candidate. Therefore, even though the funds are not directly forwarded to the candidate's committee, the contributions are considered earmarked to that candidate and subject to the limitations of the Act. The Commission has also found that the earmarking provisions of the Act are applicable where individuals have contributed to a state party committee knowing that the state party committee would use the contributions to pay for the debts of the candidate's committee. See MUR 377 and MUR 752.

St. Louisians made two direct contributions of $5,000 each to the 1986 Senatorial campaign of John Evans on December 8, 1985 and October 9, 1986 for the primary and general elections, respectively. St. Louisians also made a $2,500 contribution to the Idaho Democratic Party on October 24, 1986. There were not any notations on the face of the check as to its purpose. In a cover letter accompanying the check, St. Louisians note that "[w]e are pleased to enclose a check for $2,500.00 to help in the election of John Evans to the United States Senate....Please convey our best wishes to the governor." The letter was addressed to Betty Ahrens and Barney Gottstein. Betty Ahrens was

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employed by the Idaho Democratic Party and was also employed part-time by the Evans campaign committee at that time.

In addition, the Idaho Democratic Party, in its 1986 Post-General Election Report, disclosed the receipt of the contribution from St. Louisians on October 31, 1986. This 1986 Post-General Election Report covers the period from October 16 through November 24, 1986, including the election itself on November 4, 1986. The report shows that after the contribution from St. Louisians was posted on October 31st, the Idaho Democratic Party made operating expenditures in the amount of $2171.95, consisting of salaries and tax payments. Additionally, the report discloses coordinated party expenditures totaling $15,852.45 made on behalf of the Evans campaign, consisting of $12,252.45 for an "Election Day Mailgram" and $3,600.00 for postage of the mailgram. The 1986 Year End Report shows that these were the only coordinated party expenditures made by the Idaho Democratic Party during 1986.

St. Louisians submitted a letter from the Idaho Democratic Party stating that the $2,500 contribution was not specifically used for John Evans, but was used in its State Party Works Program for the get-out-the-vote drive "which benefited all the federal candidates". However, as stated above, the reports show that a clear majority of the funds expended by the Idaho State Democratic party between the time of the St. Louisians' contribution until the election were used for an "Election Day Mailgram" and postage on behalf of the Evans campaign.

St. Louisians submitted letters in response to the

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Commission's findings from Michael Litwack, past President of St. Louisians, and Dr. Carl Lyss. Litwack states that it is "his honest recollection" that the sole intent of the funds were to aid in getting out the vote in Idaho and not for any specific candidate. Dr. Lyss signed the cover letter in question and forwarded the check to the Idaho Democratic Party because Litwack was out of town. Lyss states that his reference to Governor Evans was "strictly a personal good luck" and was not meant to infer that the funds were to be used directly for the Evans campaign. Lyss further notes that the money was to be used to help get out the vote.

In its response to the General Counsel's Probable Cause Brief, St. Louisians submitted an affidavit from Michael Litwack which states that the cover letter which accompanied the contribution check "incorrectly set forth the purpose of the contribution", and that it was not the intent of the St. Louisians to earmark the funds for the Evans campaign. See Attachment 1.

Nevertheless, based on the information reviewed through the investigation of this matter, it appears that the $2,500 contribution made by the St. Louisians to the Idaho Democratic Party was earmarked at that time for use on behalf of the John Evans Senatorial campaign, resulting in an excessive contribution by St. Louisians. Although St. Louisians have submitted letters and affidavits attempting to explain the purpose and intent behind the contribution to the Idaho Democratic Party, the language used in the letter which accompanied the check at the

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time the contribution was made indicates an intent that the money was to be used for the benefit of the Evans campaign. Furthermore, the financial reports of the Idaho Democratic Party disclose that, aside from its administrative expenses, the six remaining expenditures by the party between October 16 and December 31, 1986, after the receipt of the $2,500 contribution, were coordinated party expenditures on behalf of John Evans, including an "Election Day Mailgram", computer lists and printing costs. Additionally, the letter accompanying the $2,500 contribution was addressed to Betty Ahrens, who was also employed by the Evans campaign committee. It appears that St. Louisians made a contribution knowing and/or intending that a substantial portion of the funds would be contributed to or expended on behalf of a candidate to whom they had already contributed the maximum amount allowed by the Act for that election.

Therefore, the Office of the General Counsel recommends that the Commission find probable cause that the St. Louisians for Better Government and Bernard Pasternak, as treasurer, made an excessive contribution to the John Evans Senate campaign in violation 2 U.S.C. § 441a(a)(2)(A).

III. DISCUSSION OF CIVIL PENALTY

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III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that St. Louisians for Better Government and Bernard Pasternak, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A).

2. Approve the attached conciliation agreement and the appropriate letters.

9/13/90
Date

LM Noble (LMN)
Lawrence M. Noble
General Counsel

Attachments:
1. St. Louisians' response
2. Conciliation Agreement

Staff Assigned: John Canfield

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2632
St. Louisians for Better Government	)	
and Bernard Pasternak, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on September 25, 1990, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 2632:

1. Find probable cause to believe that St. Louisians for Better Government and Bernard Pasternak , as treasurer, violated 2 U.S.C. § 441a(a)(2)(A).

2. Approve the conciliation agreement and the appropriate letters as recommended in the General Counsel's report dated September 13, 1990.

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

Attest:

9-26-90
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 3, 1990

Chaim H. Zimbalist, Esquire
101 South Hanley Road; Suite 1750
Clayton, Missouri 63105

RE: MUR 2632
St. Louisians for Better Government and
Bernard Pasternak, as treasurer

Dear Mr. Zimbalist:

On September 25, 1990, the Federal Election Commission found that there is probable cause to believe your clients, St. Louisians for Better Government and Bernard Pasternak, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with a contribution to the 1986 John Evans Senate campaign.

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.

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 John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

2 1 0 4 0 3 3 0 5 9 0

OGC 7975

LAW OFFICES
GIVENS, PURSLEY, WEBB & HUNTLEY

REBECCA W. ARNOLD
ELEANORE S. BAXENDALE*
CHRISTOPHER J. BEEBON
MICHAEL C. CREAMER
JEFFREY C. FEREDAY
RAYMOND D. GIVENS
JAMES D. HANSEN
JUDITH K. HOLCOMBE
ROBERT C. HUNTLEY, JR.
KENNETH R. McCLURE
L. EDWARD MILLER
PATRICK J. MILLER
TERRY L. MYERS
STEVEN L. OLSEN
KENNETH L. PURSLEY
MICHAEL T. SPINK
CONLEY WARD
JAY L. WEBB

*ALSO ADMITTED IN OREGON
LISTED ALPHABETICALLY

SUITE 200, PARK PLACE
277 NO. 6TH STREET
POST OFFICE BOX 2720
BOISE, IDAHO 83701

TELEPHONE
(208) 342-6571

TELECOPIER
(208) 343-9492
(208) 342-8920

September 21, 1990

Mr. John Canfield
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

90 SEP 25 AM 11:36
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Re: MUR 2632--Idaho State Democratic Party Federal Account and Joe Berenter, as treasurer

Dear Mr. Canfield:

I apologize again for the long delay in responding to your inquiries about MUR 2632. We have done our best to investigate the circumstances surrounding this matter, but have not turned up any information that has not been furnished to the FEC in previous filings. Our task has been made more difficult by the fact that there is no one left in the employ of the Idaho Democratic Party who was involved with finances during the 1986 campaign, and all the Party officers, including myself, took office in 1988.

Consequently, the Idaho Democratic Party requests pre-probable cause conciliation. It is our hope that this matter can be resolved with a minimum of proceedings.

Sincerely yours,

Conley Ward

Conley Ward
Chair, Idaho Democratic Party

90 SEP 25 AM 9:32
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

CW:cw

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SECRETARIAT

90 OCT 22 PM 12:40

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer	)	MUR 2632
	)	
National Action Committee - NACPAC and Stephen Bittel as treasurer	)	

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

Pursuant to 2 U.S.C. § 438(b), the Audit Division conducted an audit of the St. Louisians for Better Government ("St. Louisians"). On October 17, 1988, the Commission found reason to believe that St. Louisians and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) by making an excessive contribution earmarked to the 1986 Senate campaign of John Evans. On that same date the Commission also found reason to believe that the Idaho State Democratic Party-Federal Account (the "Idaho Democratic Party") and its treasurer[1] violated 11 C.F.R. § 110.6(c) by failing to report the original source and the intended recipient of the earmarked St. Louisians' contribution to the Evans campaign.

After the issuance of a subpoena, the Idaho Democratic Party submitted answers to the Commission's interrogatories on December 4, 1989. On February 13, 1990, the Commission returned to the General Counsel's Office a report recommending that the

1. The current treasurer of the Idaho State Democratic Party-Federal Account is Joe Berenter.

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Commission take no further action against the Idaho Democratic Party and the St. Louisians in this matter. A subpoena to produce documents and an order to submit written answers was issued by the Commission on April 9, 1990, to the Idaho Democratic Party. Answers and documents submitted by the Idaho Democratic Party were received by the Commission on May 21, 1990. On July 13, 1990, the Commission found reason to believe that the National Action Committee - NACPAC ("NACPAC") and Stephen Bittel, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) by making an excessive contribution earmarked to the Evans campaign. On that same date the Commission also found reason to believe that the Idaho Democratic Party violated 2 U.S.C. § 441a(a)(8) and 11 C.F.R. 110.6(c) by failing to properly report this earmarked contribution from NACPAC to the Evans campaign. NACPAC filed its response to the Commission's finding on August 8, 1990, and also requested pre-probable cause conciliation. The Commission denied at that time the request for conciliation on September 20, 1990. On August 10, 1990, the Commission issued a subpoena to the Idaho Democratic Party's bank concerning records of other contributions made at the time in question. The subpoenaed documents were received by the Commission on September 10, 1990. See Attachment 1. The Idaho Democratic Party requested pre-probable cause conciliation on September 25, 1990. See Attachment 2.

II. ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that a multicandidate committee may make up to $5,000 in contributions to any candidate or his or her authorized

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committee in each election. 2 U.S.C. § 441a(a)(2)(A). The Act further provides that contributions made by a person that are earmarked or otherwise directed through an intermediary or conduit to a candidate shall be treated as contributions from that person to the candidate. 2 U.S.C. § 441a(a)(8). Moreover, the intermediary or conduit must report the original source and the intended recipient of the contribution to the Commission, the Clerk of the House of Representatives, or the Secretary of the Senate, as appropriate, and to the intended recipient. 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

Commission regulations define "earmarking" as:

> a designation, instruction, or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

11 C.F.R. § 110.6(b).

The Commission has determined that the earmarking provisions of the Act apply to contributions made by individuals to a state party committee which are designated to be used for coordinated party expenditures on behalf of a particular federal candidate. Therefore, even though the funds are not directly forwarded to the candidate or his or her committee, the contributions are considered earmarked to that candidate and subject to the limitations of the Act. The Commission has also found that the earmarking provisions of the Act are applicable where individuals have contributed to a state party committee knowing that the state party committee would use

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the contributions to pay for the debts of the candidate's committee. See MUR 377 and MUR 752.

Commission regulations in effect in 1986 provided that contributions made after the primary election, if not designated in writing at the time of the contribution as being for the primary election, will be treated as if designated for the general election. 11 C.F.R. § 110.1(a)(2).

Finally, Commission regulations also provide that a person may contribute directly to a candidate or his or her authorized committee with respect to a particular election, and then also contribute to a political committee which has supported or anticipates supporting that same candidate in that same election so long as the political committee is not the candidate's principal or authorized campaign committee, the contributor does not retain control over the funds, and the contributor does not give with the knowledge that a substantial portion will be contributed to or expended on behalf of that candidate for that same election. 11 C.F.R. § 110.1(h).

A. THE IDAHO DEMOCRATIC PARTY VIOLATED 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c) BY FAILING TO PROPERLY REPORT AN EARMARKED CONTRIBUTION FROM THE ST. LOUISIANS FOR BETTER GOVERNMENT.

St. Louisians made direct contributions of $5,000 on December 8, 1985 and October 9, 1986 to the 1986 Senatorial campaign of John Evans for the primary and general elections. In addition, St. Louisians also made a $2,500 contribution to the Idaho Democratic Party on October 24, 1986. In the cover letter accompanying the check, the St. Louisians note: "[w]e are

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pleased to enclose a check for $2,500 to help in the election of John Evans to the United States Senate....Please convey our best wishes to the governor."[2] The letter was addressed to Betty Ahrens and Barney Gottstein of the Idaho Democratic Party. According to the Audit Referral material, Betty Ahrens was also employed part-time by the Evans' campaign committee at the time.

The Idaho Democratic Party disclosed the receipt of the $2,500 contribution from the St. Louisians on October 31, 1986 in its 1986 Post-General Election Report. The 1986 Post-General Election Report covered the period from October 16 through November 24, 1986, including the election of November 4, 1986. This report shows that after the contribution from St. Louisians was posted on October 31st, the Idaho Democratic Party made operating expenditures in the amount $2,171.95, consisting of salaries and tax payments. Additionally, this report discloses coordinated party expenditures totaling $15,852.45 made on behalf of the Evans campaign, consisting of $12,252.45 for an "Election Day Mailgram" and $3,600.00 for postage of that mailgram. Attachment 6. The 1986 Year-End Report shows that this was the only coordinated party expenditure made by the Idaho Democratic Party during 1986.

The Idaho Democratic Party, in its responses to the Commission's interrogatories and subpoena to produce written

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2. On September 25, 1990, the Commission found probable cause to believe that the St. Louisians violated 2 U.S.C. 441a(a)(2)(A) in making this contribution. The General Counsel's Office is currently pursuing conciliation with the St. Louisians.

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documents, states that in October 1986, a representative from St. Louisians telephoned the Idaho Democratic Party and spoke with Betty Ahrens, then treasurer of the Idaho Democratic Party. Ahrens informed the St. Louisians that contributions received by the Idaho Democratic Party would be used on behalf of all three federal candidates and would not be specifically earmarked for the John Evans campaign. Shortly thereafter, the Idaho Democratic Party received the letter and contribution in question from St. Louisians. During this period of time, Betty Ahrens was also employed on a part-time basis by the Evans campaign. The Idaho Democratic Party further states that it is not aware of any conversations between the Idaho Democratic Party and the Evans Senatorial campaign concerning the St. Louisians' contribution. Moreover, in response to the Audit Division's inquiry, St. Louisians submitted to the Commission a letter from the Idaho Democratic Party stating that the $2,500 contribution was not specifically used for the Evans campaign, but was used in its State Party Works Program for a get out the vote drive "which benefited all the federal candidates". However, the reports filed with the Commission show that most of the funds expended between the time of the St. Louisians' contribution and the election were spent as coordinated party expenditures on behalf of the Evans campaign.

In response to the Commission's findings, the St. Louisians also submitted letters from Michael Litwack, past president of St. Louisians, and from Dr. Carl Lyss. Litwack states that it is "his honest recollection" that the sole intent of the

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contribution was to aid in getting out the vote in Idaho and not for any specific candidate. Dr. Lyss forwarded the check and letter to the Idaho Democratic Party because Litwack was out of town at the time. Lyss states that his reference to Governor Evans was "strictly a personal good luck", and was not meant to infer that the funds were to be used directly for the Evans campaign. Lyss further states that the funds were to be used to help get out the vote.

The letters submitted by Michael Litwack, Carl Lyss and the Idaho Democratic Party do not overcome the appearance that the $2,500 contribution made by the St. Louisians was earmarked for the Evans Senatorial campaign. The letter which accompanied the check at the time the contribution was made states that the funds enclosed are "to help in the election of John Evans to the United States Senate". The Idaho Democratic Party failed to report this as an earmarked contribution to the Commission, the Secretary of the Senate and to the intended recipient in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c), which resulted in an excessive contribution to Evans by the St. Louisians.

B. THE NATIONAL ACTION COMMITTEE - NACPAC VIOLATED 2 U.S.C. § 441a(a)(2)(A) BY MAKING AN EXCESSIVE CONTRIBUTION EARMARKED FOR THE EVANS CAMPAIGN; AND THE IDAHO DEMOCRATIC PARTY VIOLATED 2 U.S.C. § 441a(a)(8) AND 11 C.F.R. § 110.6(c) BY FAILING TO PROPERLY REPORT THE EARMARKED CONTRIBUTION.

With regard to the NACPAC contribution, NACPAC made a $5,000 contribution directly to the Evans Senatorial campaign on June 26, 1986. This contribution was reported as an itemized contribution on the Evans campaign's 1986 July quarterly report.

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This contribution was made one month after the Idaho primary election, which was held on May 27, 1986. Since there is no indication on the Evans' quarterly report that the contribution from NACPAC was designated for the primary election, it must be treated as if it was designated for the general election. 11 C.F.R. § 110.1(a)(2). Subsequent to this direct contribution to the Evans campaign, NACPAC made a $3,000 contribution to the Idaho Democratic Party on October 24, 1986. A notation on the face of the check reads: "Gov. John Evans - Senate Campaign." It appears that the notation on this check indicates an intent for the funds to be used on behalf of the Evans campaign, thus constituting earmarking.

The Idaho Democratic Party reported the receipt of the NACPAC contribution on its 1986 Post-General Election Report, dated December 1, 1986. The contribution was itemized, but there is no reference or indication in the report that the contribution was earmarked for the Evans campaign. Thus, using the rationale stated above, NACPAC made an earmarked contribution of $3,000 to the Evans campaign through the Idaho Democratic Party. Because NACPAC had already made a $5,000 contribution directly to the Evans campaign for that same election, this results in an excessive contribution by NACPAC in violation of 2 U.S.C. § 441a(a)(2)(A). Additionally, the Idaho Democratic Party did not properly report this earmarked contribution to the Commission, the Secretary of the Senate and the intended recipient, as required by the Act, resulting in another violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

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Finally, the subpoenaed bank records concerning the Idaho Democratic Party did not reveal any further evidence of any other earmarked contributions to the Evans campaign during the time period in question. NACPAC's response filed in August, 1990, also indicated that there may have been a fundraiser held for the Evans campaign in Miami during the summer of 1986. However, a review of the reports filed by both NACPAC and the Evans campaign failed to disclose any evidence of a fundraiser being held by NACPAC in 1986 for the benefit of the Evans campaign.

III. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

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IV. RECOMMENDATIONS

1. Enter into conciliation with the Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer, prior to a finding of probable cause to believe.

2. Enter into conciliation with the National Action Committee - NACPAC and Stephen Bittel, as treasurer, prior to a finding of probable cause to believe.

3. Approve the attached proposed conciliation agreements and the appropriate letters.

Lawrence M. Noble
General Counsel

10/19/90
Date

BY: [signature]
Lois G. Lerner
Associate General Counsel

Attachments
1. Subpoenaed documents - Idaho
2. Requests for pre-probable cause conciliation (2)
3. Proposed conciliation agreement - Idaho
4. Proposed conciliation agreement - NACPAC

Staff assigned: John Canfield

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer;	)	MUR 2632
	)	
National Action Committee - NACPAC and Stephen Bittel as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 24, 1990, the Commission, decided by a vote of 5-0 to take the following actions MUR 2632:

1. Enter into conciliation with the Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer, prior to a finding of probable cause to believe.

2. Enter into conciliation with the National Action Committee - NACPAC and Stephen Bittel, as treasurer, prior to a finding of probable cause to believe.

(Continued)

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3. Approve the conciliation agreements and the appropriate letters, as recommended in the General Counsel's Report dated October 19, 1990.

Commissioners Aikens, Elliott, Josefiak, McGarry, and Thomas voted affirmatively for the decision; Commissioner McDonald did not cast a vote.

Attest:

10-25-90
Date

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

Received in the Secretariat:	Mon., Oct. 22, 1990	12:40 p.m.
Circulated to the Commission:	Mon., Oct. 22, 1990	4:00 p.m.
Deadline for vote:	Wed., Oct. 24, 1990	4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 30, 1990

Idaho State Democratic Party - Federal Account
Mr. Joe Berenter, Treasurer
P.O. Box 445
Boise, Idaho 83701

RE: MUR 2632
Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer

Dear Mr. Berenter:

On October 17, 1988, the Federal Election Commission found reason to believe that the Idaho State Democratic Party - Federal Account and you, as treasurer, violated 11 C.F.R. § 110.6(c). Additionally, on July 13, 1990, the Commission found reason to believe that the Idaho State Democratic Party - Federal Account and you, as treasurer, violated 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c). At your request, on October 24, 1990, 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.

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 John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 30, 1990

National Action Committee - NACPAC
Mr. Stephen Bittel, Treasurer
201 South Biscayne Blvd.; Suite 880
Miami, Florida 33131

RE: MUR 2632
National Action Committee -
NACPAC and Stephen Bittel,
as treasurer

Dear Mr. Bittel:

On July 13, 1990, the Federal Election Commission found reason to believe that the National Action Committee - NACPAC and you, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A). At your request, on October 24, 1990, 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.

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 John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

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RECEIVED
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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
St. Louisians for Better Government and Bernard Pasternak, as treasurer	)	MUR 2632
	)	
	)	
	)	

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

Attached is a conciliation agreement which has been signed by Bernard Pasternak, treasurer of the St. Louisians for Better Government.

II. **RECOMMENDATIONS**

1. Accept the attached conciliation agreement with St. Louisians for Better Government and Bernard Pasternak, as treasurer.

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2. Close the file as it pertains to this respondent.

3. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

11/1/90
Date

BY: Lois G. Lerner
Associate General Counsel

Attachments
1. Conciliation agreement
2. Photocopy of civil penalty check

Staff Assigned: John Canfield

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
St. Louisians for Better Government	)	MUR 2632
and Bernard Pasternak, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on November 13, 1990, the Commission decided by a vote of 6-0 to take the following actions MUR 2632:

1. Accept the conciliation agreement with St. Louisians for Better Government and Bernard Pasternak, as treasurer, as recommended in the General Counsel's Report dated November 1, 1990.

2. Close the file as it pertains to this respondent.

3. Approve the appropriate letter, as recommended in the General Counsel's Report dated November 1, 1990.

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

Attest:

11/13/90
Date

Hilda Arnold
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Fri., November 2, 1990 4:47 p.m.
Circulated to the Commision: Mon., November 5, 1990 11:00 a.m.
Deadline for vote: Tues., November 13, 1990 4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 20, 1990

Chaim H. Zimbalist, Esquire
101 South Hanley Road
Clayton, Missouri 63105

RE: MUR 2632
St. Louisians for Better
Government and Bernard
Pasternak, as treasurer

Dear Mr. Zimbalist:

On November 13, 1990, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441a(a)(2)(A), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to your clients.

This matter will become a part of the public record within 30 days after it has been closed with respect to all other respondents involved. If you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

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Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
St. Louisians for Better Government and Bernard Pasternak, as treasurer	)	MUR 2632
	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that St. Louisians for Better Government and Bernard Pasternak, as treasurer, ("Respondents") violated 2 U.S.C. § 441a(a)(2)(A).

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in his matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. St. Louisians for Better Government is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Mr. Bernard Pasternak is the current treasurer of St. Louisians for Better Government. Ms. Bunny Goldwasser was treasurer at the time of the contributions in question in 1986.

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3. The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that a multicandidate committee may make up to $5,000 in contributions to any candidate or his or her authorized committee in each election. 2 U.S.C. § 441a(a)(2)(A).

4. The Act further provides that contributions made by a person which are earmarked or otherwise directed through an intermediary or conduit to a candidate shall be treated as contributions from that person to the candidate. 2 U.S.C. § 441a(a)(8). Moreover, the intermediary or conduit must report the original source and the intended recipient of the contribution to the Commission, the Clerk of the House of Representatives, or the Secretary of the Senate, as appropriate, and to the intended recipient. 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

5. Commission regulations define "earmarking" as "a designation, instruction, or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b).

6. The Commission has determined that the earmarking provisions of the Act apply to contributions made by individuals to a state party committee which are designated to be used for coordinated party expenditures on behalf of a certain federal candidate. Even though such funds are not forwarded directly to a candidate's committee, the contributions are considered

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earmarked to that candidate and subject to the limitations of the Act. The Commission has also found that the earmarking provisions of the Act are applicable where individuals have contributed to a state party committee knowing that the state party committee would use the contributions to pay for the debts of the candidate's committee. See MUR 377 and MUR 752.

7. Commission regulations state that a person may contribute to a candidate or that candidate's authorized committee with respect to an election and also contribute to a political committee which has supported or anticipates supporting that same candidate in that same election so long as the political committee is not the candidate's principal or authorized committee, the contributor does not retain control over the funds, and the contributor does not give with the knowledge that a substantial portion will be contributed to or expended on behalf of that same candidate in that same election. 11 C.F.R. § 110.1(h).

8. St. Louisians for Better Government made two direct contributions to the John Evans 1986 Senate campaign on December 8, 1985 and October 9, 1986, for the primary and general elections, respectively.

9. St. Louisians for Better Government also made a $2,500 contribution to the Idaho State Democratic Party - Federal Account on October 24, 1986. A cover letter from the St. Louisians for Better Government stated: "[w]e are pleased to enclose a check for $2,500 to help in the election of John Evans to the United States Senate....Please convey our best wishes to

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the governor." Pursuant to 11 C.F.R. § 110.6(b), this constituted earmarking of the funds to the Evans campaign.

10. Most of the funds expended by the Idaho State Democratic Party between the posting of the St. Louisians' contribution and the general election were on behalf of the Evans Senatorial campaign. According to records filed with the Commission, the Idaho State Democratic Party made operating expenditures in the amount of $2171.95 after the St. Louisians' contribution was posted on October 31, 1986. The reports also disclose coordinated party expenditures made on behalf of the Evans campaign after the St. Louisians' contribution totaling $15,852.45. The 1986 Year End Report shows that this was the only coordinated party expenditure made by the Idaho State Democratic Party during 1986.

V. Respondents made a $2,500 contribution to the Idaho State Democratic Party - Federal Account, which was earmarked for use in the 1986 John Evans Senate campaign, in violation of 2 U.S.C. § 441a(a)(2)(A).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of nine hundred dollars ($900), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the

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District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY: _____ 11/20/90
Lois G. Lerner
Associate General Counsel
Date

FOR THE RESPONDENTS:

Bernard Pastuszek, Treasurer
Name
Position

10-24-90
Date

9104083015

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 26, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

National Action Committee - NACPAC
Stephen Bittel, Treasurer
201 South Biscayne Blvd.; Suite 880
Miami, Florida 33131

RE: MUR 2632
National Action Committee -
NACPAC and Stephen Bittel,
as treasurer

Dear Mr. Bittel:

On October 30, 1990, you were notified that, at your request, the Federal Election Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. On that same date you were sent a conciliation agreement offered by the Commission in settlement of this matter.

Please note that conciliation negotiations entered into prior to a finding of probable cause to believe are limited to a maximum of 30 days. To date, you have not responded to the proposed agreement. The 30 day period for negotiations will soon expire. Unless we receive a response from you within five days, this Office will consider these negotiations terminated and will proceed to the next stage of the enforcement process.

Should you have any questions, please contact John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: George F. Rishel
Assistant General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
Idaho State Democratic	)	MUR 2632
Party - Federal Account	)	
and Joe Berenter,	)	
as treasurer	)	
	)	

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

Attached is a conciliation agreement which has been signed by Conley Ward, Chairman of the Idaho State Democratic Party.

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II. **RECOMMENDATIONS**

1. Accept the attached conciliation agreement with the Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer.

2. Close the file as it pertains to this respondent.

3. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

11/24/90
Date

BY: LGL
Lois G. Lerner
Associate General Counsel

Attachments
1. Conciliation agreement
2. Photocopy of civil penalty check

Staff Assigned: John Canfield

21040333613

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Idaho State Democratic	)	MUR 2632
Party - Federal Account	)	
and Joe Berenter, as	)	
treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on November 29, 1990, the Commission decided by a vote of 6-0 to take the following actions in MUR 2632:

1. Accept the conciliation agreement with the Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer, as recommended in the General Counsel's Report dated November 26, 1990.

2. Close the file as it pertains to this respondent.

3. Approve the appropriate letter, as recommended in the General Counsel's Report dated November 26, 1990.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the Decision.

Attest:

11-29-90
Date

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

Received in the Secretariat: Tues., November 27, 1990 4:00 p.m.
Circulated to the Commission: Tues., November 27, 1990 4:00 p.m.
Deadline for vote: Thurs., November 29, 1990 4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 4, 1990

Mr. Conley Ward, Chairman
Idaho State Democratic Party
P.O. Box 445
Boise, Idaho 83701

RE: MUR 2632
Idaho State Democratic Account-
Federal Account and Joe
Berenter, as treasurer

Dear Mr. Ward:

On November 29, 1990, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on behalf of the Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer, in settlement of violations of 2 U.S.C. § 441a(a)(8), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter as it pertains to the Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer.

This matter will become a part of the public record within 30 days after it has been closed with respect to all other respondents involved. If you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter has been closed. The Commission will notify you when the entire file has been closed. In the event you wish to waive confidentiality under 2 U.S.C. § 437g(a)(12)(A), written notice of the waiver must be submitted to the Commission. Receipt of the waiver will be acknowledged in writing by the Commission.

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Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact John Canfield , the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2632
Idaho State Democratic Party -	)	
Federal Account and Joe Berenter,	)	
as treasurer	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Idaho State Democratic Party - Federal Account and Joe Berenter, as treasurer, ("Respondent") violated 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

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IV. The pertinent facts in this matter are as follows:

1. The Idaho State Democratic Party - Federal Account is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Joe Berenter is the treasurer of the Idaho State Democratic Party - Federal Account.

3. The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that a multicandidate committee may make up to $5,000 in contributions to any candidate or his or her authorized committee in each election. 2 U.S.C. § 441a(a)(2)(A). The Act also provides that contributions made by a person that are earmarked or otherwise directed through an intermediary or conduit to a candidate shall be treated as contributions from that person to the candidate. 2 U.S.C. § 441a(a)(8). Moreover, the intermediary or conduit must report the original source and the intended recipient of the contribution to the Commission and to the Clerk of the House of Representatives or the Secretary of the Senate, as appropriate, and to the intended recipient. 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

4. Commission regulations define "earmarking" as: "a designation, instruction, or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b).

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5. On October 24, 1986, the St. Louisians for Better Government made a $2,500 contribution to the Idaho State Democratic Party - Federal Account. In the cover letter accompanying this check, the St. Louisians wrote: "[w]e are pleased to enclose a check for $2,500 to help in the election of John Evans to the United States Senate....Please convey our best wishes to the governor." This constituted an earmarked contribution to the 1986 John Evans Senate campaign.

6. On October 24, 1986, the National Action Committee - NACPAC made a $3,000 to the Idaho State Democratic Party - Federal Account. A notation on the face of the check stated: "Gov. John Evans - Senate Campaign." This constituted an earmarked contribution to the 1986 John Evans campaign.

7. The Idaho State Democratic Party - Federal Account failed to report both of these earmarked contributions to the Commission, the Secretary of the Senate, and to the intended recipient.

V. Respondent failed to report to the Commission, the Secretary of the Senate and the intended recipient a $2,500 earmarked contribution from the St. Louisians for Better Government, in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c). Respondent also failed to report to the Commission, the Secretary of the Senate and the intended

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recipient a $3,000 earmarked contribution from the National Action Committee - NACPAC, in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c).

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of two thousand seven hundred dollars ($2,700), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and

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no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY: _____ Date 12/4/90
Lois G. Lerner
Associate General Counsel

FOR THE RESPONDENT:

Conley Ward
Name Conley Ward
Position Chairman
Idaho Democratic Party

Date 11/5/90

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OBC 9935

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
91 JAN 28 PM 12:32

NACPAC
NATIONAL ACTION COMMITTEE

201 South Biscayne Boulevard, Suite 880, Miami, Florida 33131
Telephone: (305) 358-9207 Telecopier: (305) 358-1618

OFFICERS
Mark R. Vogel
Chairman
Stephen H. Bittel
Co-Chairman
Samuel J. Dubbin
Co-Chairman
Barry Goldmeier
Vice-Chairman
Michael S. Olin
Vice-Chairman
Rhonda Rose
Vice-Chairman
Henry Rodstein
Secretary
Charles A. Citrin
Treasurer
Benedict P. Kuehne
Deputy Treasurer

PAST CHAIRMEN
Michael M. Adler
Jeffrey L. Berkowitz

BENEFACTORS
Jerome C. Berlin
Jack Campbell
Mark R. Vogel

CAPITOL CLUB
Leonard Abess, Jr.
Jeffrey L. Berkowitz
Stephen H. Bittel
Charles A. Citrin
Samuel J. Dubbin
Sophie De Mayo
Joseph Falk
Eli Feinberg
Lora Friedkin
Anonymous
Charles Ganz
Fred Havenick
Jonathan Kislak
Alan Kluger
Ronald Kohn
Franklin Kreutzer
Benedict P. Kuehne
Marsha Madorsky
Sanford B. Miot
Michael Olin
Henry Rodstein
Rowland Schaefer
Lawrence R. Sherry
Susan B. Vogel
Seth Werner
Sigmund Zilber

JOSHUA SOCIETY
Eliot C. Abbott
Bernyce Adler
Judy C. Adler
Anonymous
Samuel I. Adler
James G. Asher
David Auerbach
Dory Auerbach
Nancy Berkowitz
Richard Berkowitz
Brian Bilzin
Ronald Book
Tim Cohen
Mike Cooper
Paul Cummings
Alvin Entin
George Firestone
Nola Firestone
Barry Fishman
John Fleeman
Joel Friedland
Mark Friedland

JOSHUA SOCIETY *(Cont'd)*
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Seth Gadinsky
Robert Gitlin
Barry Goldmeier
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Sherwin Grossman
Samuel Harte
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Neisen Kasdin
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Norman L. Weiner
Alan Weisberg
Laura Weissman
Allan Yarkin
Rae Ellen Yarkin
Stephen Zack
Richard Zinn

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Samuel Goldstein
Larry Hellring
Norman Levine
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Michael Weiss

RECEIVED
FEDERAL ELECTION COMMISSION
91 JAN 28 PM 12:32

January 14, 1991

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

Re: MUR 2632

Dear Sir:

Please be advised that Charles Citrin is the new Treasurer of the National Action Committee.

Thank you for your attention to this matter. Please contact the undersigned if you require any additional information.

Very truly yours,

NACPAC

By: Mark R. Vogel, Chairman

MRV/ly
Telecopied

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91 JAN 31 [illegible]

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
National Action Committee - NACPAC and Charles Citrin, as treasurer	)	MUR 2632
	)	
	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by Mark Vogel, Chairman of the National Action Committee - NACPAC.

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II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with the National Action Committee - NACPAC and Charles Citrin, as treasurer.

2. Close the file.

3. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

1/30/91
Date

BY: [signature]
Lois G. Lerner
Associate General Counsel

Staff Assigned: John Canfield

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2632
National Action Committee -	)	
NACPAC and Charles Citrin,	)	
as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 4, 1991, the Commission decided by a vote of 4-0 to take the following actions in MUR 2632:

1. Accept the conciliation agreement with the National Action Committee - NACPAC and Charles Citrin, as treasurer, as recommended in the General Counsel's Report dated January 30, 1991.

2. Close the file.

3. Approve the appropriate letters, as recommended in the General Counsel's Report dated January 30, 1991.

Commissioners Aikens, Elliott, Josefiak and McGarry voted affirmatively for the decision; Commissioners McDonald and Thomas did not cast votes.

Attest:

2-4-91
Date

Hilda Arnold
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thurs., January 31, 1991 9:58 a.m.
Circulated to the Commission: Thurs., January 31, 1991 4:00 p.m.
Deadline for vote: Mon., February 4, 1991 4:00 p.m.

dh

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 11, 1991

Chaim H. Zimbalist, Esquire
101 South Hanley Road
Clayton, Missouri 63105

RE: MUR 2632
St. Louisians for Better
Government and Bernard
Pasternak, as treasurer

Dear Mr. Zimbalist:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within 30 days. Should you wish to submit any legal or factual materials to be placed on the public record in connection with this matter, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

Should you have any questions, contact John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 11, 1991

Mr. Conley Ward, Chairman
Idaho State Democratic Party
P.O. Box 445
Boise, Idaho 83701

RE: MUR 2632
Idaho State Democratic Party -
Federal Account and Joe
Berenter, as treasurer

Dear Mr. Ward:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within 30 days. Should you wish to submit any legal or factual materials to be placed on the public record in connection with this matter, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

Should you have any questions, contact John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 11, 1991

Mark R. Vogel, Chairman
National Action Committee - NACPAC
201 South Biscayne Blvd., Suite 880
Miami, Florida 33131

RE: MUR 2632
National Action Committee -
NACPAC and Charles Citrin,
as treasurer

Dear Mr. Vogel:

On February 4, 1991, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on behalf of the National Action Committee in settlement of a violation of 2 U.S.C. § 441a(a)(2)(A), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact John Canfield, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Conciliation Agreement

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RECEIVED
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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

91 JAN 25 AM 10:31

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2632
National Action Committee -	)	
NACPAC and Charles Citrin,	)	
as treasurer	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the National Action Committee - NACPAC and its treasurer, ("Respondent") violated 2 U.S.C. § 441a(a)(2)(A).

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

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IV. The pertinent facts in this matter are as follows:

1. The National Action Committee - NACPAC is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Charles Citrin is the current treasurer of the National Action Committee - NACPAC. Stephen Bittel was the treasurer of the National Action Committee - NACPAC during all times relevant to this matter.

3. The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that a multicandidate committee may make up to $5,000 in contributions to any candidate or his or her authorized committee in each election. 2 U.S.C. § 441a(a)(2)(A). The Act also provides that contributions made by a person that are earmarked or otherwise directed through an intermediary or conduit to a candidate shall be treated as contributions from that person to the candidate. 2 U.S.C. § 441a(a)(8).

4. Commission regulations define "earmarking" as: "a designation, instruction, or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b).

5. Commission regulations in effect in 1986 provided that contributions made after the primary election, if not designated in writing at the time of the contribution as being for the primary election, will be treated as if designated for

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the general election. 11 C.F.R. § 110.1(a)(2). A party may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting, the same candidate in the same election, so long as the political committee is not the candidate's principal campaign committee or other authorized committee or a single candidate committee; the contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that same candidate for the same election; and the contributor does not retain control over the funds. 11 C.F.R. § 110.1(h).

6. The National Action Committee - NACPAC made a direct contribution of $5,000 to the John Evans Senate campaign on June 26, 1986. This contribution was made one month after the Idaho primary election, and the contribution was not designated in writing as being for the primary election. Therefore, it was a general election contribution.

7. On October 24, 1986, the National Action Committee - NACPAC made a $3,000 contribution to the Idaho State Democratic Party - Federal Account. A notation on the face of the check stated: "Gov. John Evans - Senate Campaign." This constituted an earmarked contribution to the 1986 John Evans campaign.

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8. The $3,000 contribution to the Idaho State Democratic Party - Federal Account, earmarked for the John Evans Senate campaign, constituted an excessive contribution.

9. Respondent contends that although this contribution was delivered to the Evans campaign after the primary election, the contribution had been allocated one month prior to said primary election, as reflected in the minutes of its meetings. Respondent also contends that there was no intent on its part to knowingly and willfully violate any provision of the Act.

V. Respondent made an earmarked excessive contribution to the John Evans Senate campaign in violation of 2 U.S.C. § 441a(a)(2)(A).

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of seven hundred fifty dollars ($750), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

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IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY: _____ Date 2/8/91
Lois G. Lerner
Associate General Counsel

FOR THE RESPONDENT:

_____ Date 01-18-91
Name Mark R. Vogel, Esq., Chairman
Position Attorney for Respondent

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2632

DATE FILMED 3/7/91 CAMERA NO. 4

CAMERAMAN AL

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