FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2646

DATE FILMED 8/26/88 CAMERA NO. 2

CAMERAMAN K.A.U.

8804071342 8

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
88 APR 25 AM 11:55

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM
88 APR 20 AM 10:03

6CC#912
Petition 192

MARCUS & ANTONUCCI
COUNSELORS AT LAW

83 ~~[illegible]~~ STATE STREET - ~~[illegible]~~
SPRINGFIELD, MA. 01103
(413) 737-4667
(800) 325-1109

500 MAIN STREET
GREAT BARRINGTON, MA. 01230
(413) 528-3836

DANA E. MARCUS
FRANK E. ANTONUCCI
WILLIAM P. FARRELL

ADDRESS REPLY TO: (X) SPRINGFIELD
( ) GREAT BARRINGTON

April 15, 1988

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

Gentlemen:

I am writing to you on behalf of The Richard E. Neal For Congress Committee regarding a question pertaining to the "triggering" of a candidacy for Congress in the 2nd Massachusetts District.

The candidate plans to formally announce his candidacy on April 13, 1988. Over the past several months, he has tested the feasibility of his candidacy and potential voter appeal in various manners. All expenses in that regard were paid for through an existing committee that was established in Massachusetts for the purpose of his 1987 campaign for Mayor of Springfield. Financial records have been kept, and none of his expenses involve public advertising on T.V. or in the newspapers.

In reviewing the state campaign account in preparation for transferring the funds from the State Campaign Committee to the Principal Congressional Committee and registering it with the F.E.C., it has come to the Treasurer's attention that in February and March of 1988, approximately $7,000.00 was spent in furtherance of the candidate's congressional campaign as opposed to feasibility studies. This money was expended for bumper stickers, signs and other campaign paraphernalia.

Our concern is that we may have inadvertently exceeded the $5,000.00 threshold, and not formally announced or filed Forms FEC-2 within fifteen (15) days, as required.

Could you please advise us if we have erred and as to a suggested course of action at this point.

Very truly yours,

Frank E. Antonucci

Frank E. Antonucci

FEA:HG

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Mup

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 3, 1988

Frank F. Antonucci, Esquire
83 State Street
Springfield, MA 01103

Re: Pre-MUR 192

Dear Mr. Antonucci:

This is to acknowledge receipt of your letter on April 25, 1988, pertaining to the Richard Neal For Congress Committee. You will be notified as soon as the Federal Election Commission takes action on your submission.

If you have any questions, please call Michael Marinelli, the attorney assigned to this matter, at (202) 376-8200. For your information, we have attached a brief description of the Commission's procedures for handling matters such as this.

Sincerely,

Lawrence M. Noble
General Counsel

By: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

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QCC#9466

RECEIVED
FEDERAL ELECTION COMMISSION

88 JUN -8 AM 9:15

PREMUR192

MARCUS & ANTONUCCI
COUNSELORS AT LAW

83 STATE STREET - SECOND FLOOR
SPRINGFIELD, MA. 01103
(413) 737-4667
(800) 325-1109

500 MAIN STREET
GREAT BARRINGTON, MA. 01230
(413) 528-3836

DANA E. MARCUS
FRANK E. ANTONUCCI
WILLIAM P. FARRELL

ADDRESS REPLY TO: ( ) SPRINGFIELD
( ) GREAT BARRINGTON

June 3, 1988

Michael Marinelli, Esq.
Federal Election Commission
999 E. Street, NW
Washington, D. C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
88 JUN -8 AM 11:19

RE: Neal Campaign

Dear Attorney Marinelli:

As a follow-up to our recent conversation in which you requested certain information from me relative to the expenditure of funds by the Neal For Congress campaign, I herein provide you with the following answers to your questions:

You will find enclosed photocopies of three (3) checks from the Richard Neal Committee. The Richard Neal Committee was the state committee formed for the purpose of electing a candidate to the position of Mayor of the City of Springfield. At the conclusion of his last campaign, in the fall of 1987, there were funds left in this account. Those were the funds expended in the three expenditures by the checks aforementioned.

Check #714, dated February 17, 1988, to the Campaign Performance Group, was for the purpose of establishing a list of voters within the district in order to make a direct mailing. That check is signed by Michael Hall, who was Treasurer of the Richard Neal Committee, and subsequently became President of the Richard Neal For Congress Committee.

Check #723, dated February 25, 1988, and #745, dated March 24, 1988, were both payments to an organization called Political Americana, and these were payments for bumper stickers and pins.

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Michael Marinelli, Esq. June 3, 1988

These checks and expenditures were made by James Leyden, Campaign Manager for both the Richard Neal Committee and the Neal For Congress Committee. It is my understanding that these expenditures, which were made prior to the candidate's filing of a statement of organization and a statement of candidacy, both of which, I believe, were filed in April of 1988, after he formally announced his candidacy on April 13, 1988, were made by the individuals aforementioned, without knowledge of the Federal Campaign Laws. I believe these individuals felt that they were allowed to make these expenditures in accordance with the Massachusetts State Law, which allowed them to expend campaign funds in the process of enhancing and furthering his candidacy.

As indicated in my letter of April 15, 1988, it was after reviewing the material provided to him by the Federal Election Commission that the Treasurer realized this expenditure might have been in error.

Should you need any further information regarding this matter, please don't hesitate to contact me, and I will be pleased to assist you in any way I can.

Very truly yours,

Frank E. Antonucci

Frank E. Antonucci

FEA:HG
Enc.

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THE RICHARD NEAL COMMITTEE
76 MAGNOLIA TERRACE
SPRINGFIELD, MA 01108

714

FEBRUARY 17 1988 53-137/118 11

PAY TO THE ORDER OF CAMPAIGN PERFORMANCE GROUP $ 2120 42

TWO THOUSAND ONE HUNDRED TWENTY 42/100 DOLLARS

BANK OF BOSTON
WESTERN MASSACHUSETTS, N.A.
SPRINGFIELD, MASSACHUSETTS 01103

FOR

Michael J. Hom
TREASURER

⑈000714⑈ ⑆011801379⑆ 880⑈59167⑈ ⑈0000212042⑈

THE RICHARD NEAL COMMITTEE
76 MAGNOLIA TERRACE
SPRINGFIELD, MA 01108

723

2/25 1988 53-137/118 11

PAY TO THE ORDER OF Bank of Boston $ 4980 00

Forty-nine hundred eighty dollars and 00/100 DOLLARS

BANK OF BOSTON
WESTERN MASSACHUSETTS, N.A.
SPRINGFIELD, MASSACHUSETTS 01103

FOR Political Americana

James B. Leydon

⑈000723⑈ ⑆011801379⑆ 880⑈59167⑈ ⑈0000498000⑈

THE RICHARD NEAL COMMITTEE
76 MAGNOLIA TERRACE
SPRINGFIELD, MA 01108

745

3-24 1988 53-137/118 11

PAY TO THE ORDER OF Political Americana $ 618 89

Six hundred eighteen dollars and 89/100 DOLLARS

BANK OF BOSTON
WESTERN MASSACHUSETTS, N.A.
SPRINGFIELD, MASSACHUSETTS 01103

FOR

James B. Leydon

⑈000745⑈ ⑆011801379⑆ 880⑈59167⑈ ⑈0000061889⑈

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FEDERAL ELECTION COMMISSION
RECEIVED
SECRETARIAT

88 JUL -1 PM 3:41

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

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

EXECUTIVE SESSION
JUL 12 1988

PRE-MUR #192
STAFF MEMBER: Michael Marinelli

SOURCE OF MUR: Sua Sponte

RESPONDENTS: Richard E. Neal

The Richard E. Neal Committee and
Michael Hall, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 431(2)
2 U.S.C. § 431(4)(A)
2 U.S.C. § 432(e)(1)
2 U.S.C. § 433(a)
2 U.S.C. § 434(a)
2 U.S.C. § 434(a)(4)(A)(i)
2 U.S.C. § 434(a)(2)(A)(iii)
2 U.S.C. § 441b(a)
11 C.F.R. § 100.3(a)
11 C.F.R. § 100.5
11 C.F.R. § 100.7(b)(1)(i)
11 C.F.R. § 100.7(b)(1)(ii)
11 C.F.R. § 100.8(b)(1)(i)
11 C.F.R. § 100.8(b)(1)(ii)
11 C.F.R. § 102.6(a)
11 C.F.R. § 104.12
Advisory Opinion 1985-40
Advisory Opinion 1987-12

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

On April 20, 1988, the Commission received, sua sponte, a letter notifying the Commission of a possible violation of 2 U.S.C. § 432(e)(1) from Frank E. Antonucci, attorney for the Richard E. Neal for Congress Committee ("the Committee"). On June 3, 1988, the Committee supplemented its submission with

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additional information. See Attachment 1. The Committee was concerned that certain Committee actions may have caused a violation of the Federal Election Campaign Act of 1971, as amended (the "Act").

II. FACTUAL AND LEGAL ANALYSIS

A. BACKGROUND.

The candidate, Richard E. Neal, is seeking election to the U.S. House of Representatives as the Congressman from the 2nd Congressional District of Massachusetts. Since 1984, Mr. Neal has been mayor of Springfield, Massachusetts' third largest city. In 1987, using his state committee, the Richard E. Neal Committee (the "Neal Committee") he won re-election to that office. On April 13, 1988, Mr. Neal announced his candidacy for the 2nd District seat. Prior to declaring his candidacy, the candidate had used the Neal Committee to finance activity for the current congressional race. The submission states that records of the funds used for this purpose were kept and that none of the expenses involved television or newspaper advertisements. When the Neal Committee examined its account in preparation to transferring the funds to the Committee, it discovered that in February and March 1988, $7,718.89 was spent to produce bumper stickers, signs and "other campaign paraphernalia."

According to further information provided to this Office by the Committee, the money was spent as follows: on February 17, 1988, $2,120 was spent to create a list of voters within the 2nd District as preparation for a direct mailing to be made later; on February 25, 1988, $4,980.00 was spent as payment for bumper

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stickers and pins; a further $618.89 was spent for this purpose on March 24, 1988.

The Committee made its submissions because of its concern that the spending of these sums on these items which it characterizes as spending funds "in furtherance of the candidate's congressional campaign as opposed to feasibility studies" may have caused Mr. Neal to become a candidate within the meaning of the Act before the April 13, 1988, date. The Committee acknowledges that if that is the case, the candidate failed to file a Statement of Candidacy within the 15-day period after becoming a candidate as required by the Act. Instead, Mr. Neal filed a Statement of Candidacy on April 25, 1988, within 15 days of his formal announcement of his candidacy on April 13, 1988.

Although the $7,718.89 was spent by the Neal Committee, the Neal Committee has not registered with the Commission. The Statement of Organization filed by the Richard E. Neal For Congress Committee on April 25, 1988, lists the Richard E. Neal Committee as an affiliated committee.

B. STATEMENT OF LAW

An individual becomes a candidate under the Act if such individual, or a person authorized by such individual, has received contributions aggregating in excess of $5,000 or has made expenditures aggregating in excess of $5,000. 2 U.S.C. § 431(2). Within 15 days of becoming a candidate, an individual must file a Statement of Candidacy which designates a principal campaign committee. 2 U.S.C. § 432(e)(1).

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Commission regulations permit an individual to receive funds and make payments if done solely for the purpose of determining whether he or she should become a candidate, without such funds being aggregated for the purpose of the $5,000 threshold for candidate status under the Act. Only funds permissible under the Act can be used for these activities, and records must be kept of all the funds that are received for such purposes. 11 C.F.R. §§ 100.7(b)(1)(i) and 100.8(b)(1)(i).

The "testing the waters" exemption found in Sections 100.7 and 100.8 does not apply to funds received or expended for "activities that indicate that and individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign." 11 C.F.R. §§ 100.7(b)(1)(ii) and 100.8(b)(1)(ii). Examples of what would constitute activities of this nature are provided in the regulations and include public political advertising or authorized written or oral statements that refer to the individual as a candidate for a particular office. As the regulations state, the examples provided do not exhaust all of the possibilities. Other activities may be disqualified from the exemption if they can be viewed as crossing the line from merely testing the waters to signaling an intention to become a contender for political office. Id.; see also, Advisory Opinion 1985-40.

The Act defines a political committee as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000

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during a calendar year." 2 U.C.S. § 431(4)(A). All committees are required to file Statements of Organizations. If the committee is an authorized committee, the filing must occur within 10 days of designation as an authorized committee. All other committees must file the Statement of Organization within 10 days of qualifying as a political committee. 2 U.S.C. § 433(a).

All committees controlled by the same corporation, labor organization, person or group of persons are affiliated committees. 11 C.F.R. § 100.5. Transfer of funds may be made without limit between affiliated committees. 11 C.F.R. § 102.6(a). The Commission has determined that a candidate's state and federal committees are affiliated and that the state committee may make unlimited transfers to the federal candidate or committee although it has not specifically addressed whether an affiliated state committee can make unlimited expenditures on behalf of a federal candidate. Nevertheless, the state committee must register and report with the Commission as a political committee once its transfers or expenditures in the aggregate exceed $1,000. See Advisory Opinion 1987-12. In registering and reporting, the state committee must also exclude from its cash-on-hand any impermissible funds. Id; 11 C.F.R. § 104.12.

A political committee may not accept contributions made from the treasuries of national banks, corporations or labor organizations. 2 U.S.C. § 441b(a).

Political committees are required to file reports of receipts

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and disbursements. 2 U.S.C. § 434(a). During an election year in which the candidate is running for Congressional office, the candidate's principal campaign committee must file quarterly reports due no later than the 15th day after the last day of each quarter. 2 U.S.C. § 434(a)(2)(A)(iii). During a general election year, all other committees other than authorized committees must also file quarterly reports. 2 U.S.C. § 434(a)(4)(A)(i).

C. APPLICATION TO FACTS

The information provided by the Committee indicates amounts were spent for activity that went beyond testing the waters for a congressional bid. The use of funds for bumper stickers, signs and to create a list of voters for a direct mailing demonstrates a decision by Mr. Neal to become a candidate rather than testing the waters for a bid. The Committee stated that by February 25, 1988, the Neal Committee had spent $7,100 "in furtherance of the candidate's campaign as opposed to feasibility studies." Thus, Richard E. Neal was required to file his Statement of Candidacy within 15 days or by March 11, 1988. The Statement of Candidacy was filed on April 25, 1988, 46 days late.

Therefore, the Office of the General Counsel recommends that the Commission find reason to believe that Richard E Neal violated 2 U.S.C. § 432(e)(1).

A further issue is the obligation of the Richard E. Neal Committee to register and report with the Commission. The state committee controlled by Mr. Neal would be considered affiliated with his federal committee. Therefore, once the federal

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committee was established, the Neal Committee could have made unlimited transfers to the Committee. It would follow then, that before the establishment of the federal committee, the Neal Committee could also spend unlimited funds (in this case the $7,718.89) on behalf of Mr. Neal. See 11 C.F.R. § 100.3(a); but see Advisory Opinion 1985-40. Nevertheless, once the Neal Committee made expenditures of more than $1,000 for congressional campaign-related activities, it incurred an obligation to register and report with the Commission. On February 25, 1988, the Neal Committee had spent a total of $7,100 which not only exceeded the $1,000 threshold for political committee status but also qualified Richard E. Neal as a candidate under 2 U.S.C. § 431(2). Accordingly, the Neal Committee should have filed a Statement of Organization and a 1988 April Quarterly Report to report the expenditures made on behalf of Mr. Neal.

Therefore, the Office of the General Counsel recommends that the Commission find reason to believe that the Richard E. Neal Committee and Michael Hall, as treasurer violated 2 U.S.C. §§ 433(a) and 434(a).

As noted above, if the Neal committee had registered and reported as it was required to under the act, it would have been required to exclude any impermissible funds from its beginning cash-on-hand balance. See 11 C.F.R. § 104.12. Because the Neal Committee did not register and report, a further question arises whether the Neal Committee had or used impermissible funds in making these expenditures. Massachusetts campaign financing law permits contributions from union treasuries but prohibits

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contributions from corporate treasuries. This Office has learned the Neal Committee, however, was apparently governed by municipal rather than state law in that it was not required to file reports with the Massachusetts Office of the Secretary of State.

Therefore, in order to investigate the source of funds used to make these expenditures, this Office recommends that the Commission find reason to believe that the Richard E. Neal Committee and Michael Hall, as treasurer, violated 2 U.S.C § 441b(a). The proposed letter to the Committee asks it to provide an itemization of such funds or copies of public disclosure reports indicating such information.

III. RECOMMENDATIONS

1. Open a MUR.

2. Find reason to believe that Richard E. Neal violated 2 U.S.C. § 432(e)(1).

3. Find reason to believe that the Richard E. Neal Committee and Michael Hall, as treasurer, violated 2 U.S.C. §§ 433(a), 434(a) and 441b(a).

2. Approve the attached letters, and Factual and Legal Analyses (2).

Lawrence M. Noble
General Counsel

6/30/88
Date

BY: Lois G. Lerner
Associate General Counsel

Attachments
1. Letters from Respondent
2. Proposed Letter and Factual and Legal Analyses

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/KAREN E. TRACH KET
COMMISSION SECRETARY

DATE: JULY 7, 1988

SUBJECT: OBJECTIONS TO: PRE-MUR 192: FIRST GENERAL COUNSEL'S REPORT SIGNED JUNE 30, 1988

The above-captioned document was circulated to the Commission on TUESDAY, JULY 5, 1988, at 11:00 A.M.

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

Commissioner Aikens	X
Commissioner Elliott	
Commissioner Josefiak	X
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	

This matter will be placed on the meeting agenda for JULY 12, 1988.

Please notify us who will represent your Division before the Commission on this matter.

8804071342

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Richard E. Neal	)	Pre-MUR 192 (MUR 2646)
The Richard E. Neal Committee	)	
and Michael Hall, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 12, 1988, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in Pre-MUR 192:

1. Open a Matter Under Review.

2. Find reason to believe that Richard E. Neal violated 2 U.S.C. § 432(e)(1).

3. Find reason to believe that the Richard E. Neal Committee and Michael Hall, as treasurer, violated 2 U.S.C. §§ 433(a), 434(a), and 441b(a).

4. Take no further action with respect to these violations and close the file.

5. Direct the Office of General Counsel to send appropriate letters and Factual and Legal Analyses.

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

Attest:

7-14-88
Date

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

8804071343

plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 27, 1988

Richard E. Neal
36 Atwater Terrace
Springfield, MA 01107

RE: MUR 2646
Richard E. Neal

Dear Mr. Neal:

On July 12, 1988, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 432(e), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Please send such materials to the General Counsel's Office.

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

Sincerely,

Thomas J. Josefiak
Chairman

Enclosure
Factual and Legal Analysis

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pl m

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 27, 1988

Frank E. Antonucci, Esq.
Marcus & Antonucci
83 State Street-Second Floor
Springfield, MA. 01103

RE: MUR 2646
The Richard E. Neal
Committee and Michael Hall,
as treasurer

Dear Mr. Antonucci:

On July 14, 1988, the Federal Election Commission found reason to believe that your clients, the Richard E. Neal Committee and Michael Hall, as treasurer, violated 2 U.S.C. §§ 433(a), 434(a) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The file will be made part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Please send such materials to the General Counsel's Office.

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

Sincerely,

Thomas J. Josefiak
Chairman

Enclosure
Factual and Legal Analysis

8804071345

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2646

DATE FILMED 8/26/88 CAMERA NO. 2

CAMERAMAN K.A.U.

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