FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2841

DATE FILMED _____ CAMERA NO. _____

CAMERAMAN _____

9304093056 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 14, 1988

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: JOHN D. GIBSON
ASSISTANT STAFF DIRECTOR
REPORTS ANALYSIS DIVISION

SUBJECT: REFERRAL OF ED JENKINS FOR CONGRESS

This is a referral of the Ed Jenkins for Congress Committee ("the Committee").

On October 4, 1988, the Reports Analysis Division ("RAD") sent a Request for Guidance ("Request") (copy attached) to your office concerning the permissibility of a principal campaign committee ("PCC") making independent expenditures on behalf of a candidate for Federal office, in this case a candidate seeking the nomination for the presidency of a major party.

On November 8, 1988, RAD received a response to the Request (copy attached). The response indicates that the PCC engaged in prohibited activity and explains the reasoning behind this conclusion. The response, however, makes no recommendations as to any further action by RAD regarding this matter. Therefore, the Committee is being referred to your office. No Request for Additional Information has been sent to the Committee regarding this activity.

If you have any questions, please contact Peter Kell, Jr. at 376-2480.

Attachments

93040930562

FEDERAL ELECTION COMMISSION
1987-1988
CANDIDATE INDEX OF SUPPORTING DOCUMENTS - (E)

DATE 10NOV88

CANDIDATE/COMMITTEE/DOCUMENT	OFFICE SOUGHT/	PARTY	RECEIPTS PRIMARY	RECEIPTS GENERAL	DISBURSEMENTS PRIMARY	DISBURSEMENTS GENERAL	COVERAGE DATES / TYPE OF FILER	# OF PAGES	MICROFILM LOCATION
JENKINS, EDGAR L	HOUSE 09	DEMOCRATIC PARTY			GEORGIA		1988 ELECTION	ID# H6GA09029	
1. STATEMENT OF CANDIDATE									
1987 DISAVOWAL NOTICE							10MAR87	2	87FEC/462/3656
STATEMENT OF CANDIDATE							24MAR87	1	87HSE/332/3525
2. PRINCIPAL CAMPAIGN COMMITTEE									
ED JENKINS FOR CONGRESS							ID #C00038323 HOUSE		
1987 MID-YEAR REPORT			30,400		27,080		1JAN87 -30JUN87	9	87HSE/335/1151
YEAR-END			23,170		45,025		1JUL87 -31DEC87	11	88HSE/343/0812
YEAR-END		- AMENDMENT	23,170		49,755		1JUL87 -31DEC87	2	88HSE/345/4420
YEAR-END		- AMENDMENT	23,170		49,755		1JUL87 -31DEC87	3	88HSE/345/5090
YEAR-END		- AMENDMENT	23,170		49,755		1JUL87 -31DEC87	3	88HSE/345/4843
REQUEST FOR ADDITIONAL INFORMATION							1JUL87 -31DEC87	3	88FEC/513/0126
1988 48 HOUR CONTRIBUTION NOTICE							24FEB88	2	88HSE/345/1410
48 HOUR CONTRIBUTION NOTICE							21OCT88	1	88HSE/365/2441
48 HOUR CONTRIBUTION NOTICE							25OCT88	1	88HSE/365/5069
48 HOUR CONTRIBUTION NOTICE							31OCT88	2	88HSE/368/3122
48 HOUR CONTRIBUTION NOTICE							4NOV88	1	88HSE/368/4989
APRIL QUARTERLY			17,119		24,250		1JAN88 -31MAR88	12	88HSE/348/1461
JULY QUARTERLY				184,888		31,627	1APR88 -30JUN88	38	88HSE/355/0742
PRE-PRIMARY			15,689		18,896		1JUL88 -20JUL88	7	88HSE/357/1354
OCTOBER QUARTERLY				62,718		87,800	21JUL88 -30SEP88	22	88HSE/365/0383
PRE-GENERAL				31,872		33,098	1OCT88 -19OCT88	12	88HSE/368/1623
TOTAL			86,378	279,478	119,983	152,525		129	TOTAL PAGES
3. AUTHORIZED COMMITTEES									
4. JOINT FUNDRAISING COMMITTEES AUTHORIZED BY THE CAMPAIGN									

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All reports except the 1988 October Quarterly and 12 Day Pre-General Election Reports have been reviewed.
Ending cash-on-hand as of 10/19/88: $509,699
Outstanding debts owed by the committee as of 10/19/88: $0

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

88 NOV -8 AM 9:37

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 8, 1988

MEMORANDUM

TO: John D. Gibson
Assistant Staff Director
Reports Analysis Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

SUBJECT: RAD Request for Guidance Regarding Independent Expenditures by a Principal Campaign Committee

You have asked this Office for guidance concerning the ability of a principal campaign committee ("PCC") to make independent expenditures on behalf of another federal candidate. The facts as presented involve over $12,000 in expenditures by the principal campaign committee of an incumbent Congressman for newspaper ads on behalf of a Presidential primary candidate. 1/ It is the opinion of this Office that principal campaign committees may not make independent expenditures.

The Act provides, at 2 U.S.C. § 432(e)(3)(A), that "No committee which supports or has supported more than one federal candidate may be designated as an authorized committee . . . ." Section 432(e)(3)(B) further provides that "the term 'support' does not include a contribution by any authorized committee in amounts of $1000 or less to an authorized committee of any other candidate." These provisions were enacted as part of the 1979 Amendments to the Act. Public Law 96-187. Previously, section 432(e)(1) provided that "Any occasional, isolated or incidental support of a candidate shall not be construed as support . . . ." See Public Law 93-443 [1974].

1/ This is a question of first impression. In fact, the Commission currently has no forms for candidates on which they could even report independent expenditures.

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The regulations implementing the 1974 Act interpreted the "support" exemption to permit "contributions to, or expenditures on behalf of, a candidate . . . not exceeding $1000 for any election . . ." See 11 CFR 102.11(c)(2) [1977]. Given that the Act now specifically exempts from the definition of "support" only contributions of $1000 or less, it appears that Congress intended to prohibit PCCs from making independent expenditures. This conclusion is supported by the fact that at the same time Congress narrowed this exemption, it added the "coattails provision" which permits candidates to make unlimited disbursements on behalf of other candidates under certain circumstances. See 2 U.S.C. § 431(8)(B)(xi).

PCCs are not the only committees which are disqualified from making independent expenditures. The Commission has stated in its advisory opinions that political party committees are "incapable of making independent expenditures." See, e.g., AOs 1980-119, 1984-15, 1985-14. See also 11 CFR 110.7(a)(5) and (b)(4). While the reason party committees may not make independent expenditures differs from those presented here, in both cases the basic rationale looks to the role these committees play in the statutory scheme. It is the opinion of this Office that, as in the case of party committees, it would be inconsistent with the statutory scheme to permit PCCs to make independent expenditures.

Under the statute, PCCs have a clearly defined role - to further the election of a designated candidate. This role serves at least two purposes: first, to ensure that the candidate's campaign activities are disclosed through one centralized committee and second, to inform and assure contributors that their donations will be used to further the election of the designated candidate. The statute does recognize, through the exemption from the term "support" and the "coattails" provision, a limited range of permissible activities on behalf of other candidates. However, independent expenditures, which can greatly exceed the $1000 limit on contributions and which do not qualify for the coattails exemption if made through general public political advertising, appear to fall within the definition of "support" and thus may not be made by PCCs.

We do not believe that the First Amendment bars this conclusion. Apart from the ability of PCCs to engage in specified activities on another candidate's behalf, the candidate may also use his or her own personal funds for the full range of

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permissible activities under the law.2/ Thus, the candidate is not prevented from making independent expenditures under this construction of the statute. Moreover, those contributing to the PCC are doing so to further the candidate's own election and not that of another candidate. In this respect, the situation presented here differs from the First Amendment right of association recognized in FEC v. NCPAC. See 470 U.S. 480 (1985) at 494-495. Unlike NCPAC, contributors to a PCC are joining together to support one specific candidate rather than a broader ideological message. To disqualify a PCC from making independent expenditures on behalf of other candidates would therefore not be inconsistent with those contributors' associational rights under the First Amendment.

If you have any questions regarding this memorandum, please contact Susan Propper or Brad Litchfield at 376-5690.

2/ In addition, section 439a of the Act does not prohibit those who were Members of Congress on or before January 8, 1980 from converting campaign funds for personal use. Several qualifiers would apply in the present situation, however. If a Member decided to convert campaign funds to personal use for independent expenditures, that amount would have to be deposited first in the Member's own account before being used for such expenditures, rather than being spent directly from the PCC, to make clear that it is the Member's expenditure. It would then be taxed as income to the Member and would be reportable as an independent expenditure by an individual. While this activity would be permitted by the Act, an expenditure of this kind could be in violation of House Rule 43(6), which prohibits the use of campaign funds for personal purposes by incumbent Members of the House.

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88RG-3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 4, 1988

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: JOHN D. GIBSON
ASSISTANT STAFF DIRECTOR
REPORTS ANALYSIS DIVISION

SUBJECT: REQUEST FOR GUIDANCE REGARDING INDEPENDENT EXPENDITURES BY A PRINCIPAL CAMPAIGN COMMITTEE

A review of the 1988 April Quarterly Report filed by the Ed Jenkins for Congress Committee (the "Committee") disclosed $12,313 in independent expenditures on behalf of a presidential candidate. The expenditures were for newspaper advertisements supporting a specific candidate (Attachment 1).

The Committee is the principal campaign committee of Edgar L. Jenkins, a candidate for the U.S. House of Representatives from the 9th District of Georgia. Mr. Jenkins was elected to Congress in 1976 and has been re-elected in each subsequent election. The Committee started the 1987-1988 election cycle with $416,351.06 cash-on-hand and $0 in debts and obligations (Attachment 2).

The Committee's April Quarterly Report was filed on FEC FORM 3X. It is our understanding that the Committee called the Commission and asked how to report independent expenditures and was told to use FORM 3X, Schedule E. The Committee requested and received the forms from the Commission. Subsequent filings by the Committee disclose no further independent expenditures.

After considerable research into the question of a principal campaign committee ("PCC") making an independent expenditure the Reports Analysis Division ("RAD") can find no precedent for this type of activity by a PCC, nor can we find specific prohibitions.

Therefore, based on the RAD Review and Referral Procedures for Authorized Committees, we are referring the matter to your office for guidance. Our questions are as follows:

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1. Could these expenditures be considered campaign related by the committee?
2. May a PCC make "independent expenditures?"
3. If so, would there be any prohibitions or restrictions?
4. If not, would the activity discussed above be considered permissible under any circumstances?

If you have any questions regarding this matter, please contact Peter Kell, Jr. at 376-2480.

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ATTACHMENT 1
(3 Pages)

SCHEDULE B

ITEMIZED INDEPENDENT EXPENDITURES

Use separate sheet for additional

Page 1 of 1 Page

Name of Committee (In Full)

ED JENKINS FOR CONGRESS COMMITTEE

I.D. No. 900003

Full Name, Mailing Address & ZIP Code of Each Payee	Purpose of Expenditure	Date (Month, Day, Year)	Amount	Name of Person Supported or Opposed by the Expenditure & Office Sought
The Citizen News P. O. Box 1167 Dalton, Georgia 30720	newspaper ad	2-26-88	767.00	Richard Gephardt U. S. President ☒ Support ☐ Oppose
The Times P. O. Box 838 Gainesville, Georgia 30503	newspaper ad	2-26-88	318.45	Richard Gephardt U. S. President ☒ Support ☐ Oppose
The Griffin Daily News P. O. Drawer M Griffin, Georgia 30224	newspaper ad	2-26-88	220.81	Richard Gephardt U. S. President ☒ Support ☐ Oppose
The Grinnett Daily News 394 Clayton Street Lawrenceville, Georgia 30045	newspaper ad	2-26-88	377.36	Richard Gephardt U. S. President ☒ Support ☐ Oppose
The Macon Telegraph and News P. O. Box 4167 Macon, Georgia 31213	newspaper ad	2-26-88	737.22	Richard Gephardt U. S. President ☒ Support ☐ Oppose
The Marietta Daily Journal P. O. Box 449 Marietta, Georgia 30060	newspaper ad	2-26-88	896.90	Richard Gephardt U. S. President ☒ Support ☐ Oppose

(a) SUBTOTAL of Itemized Independent Expenditures $ _____

(b) SUBTOTAL of Unitemized Independent Expenditures $ _____

(c) TOTAL Independent Expenditures $ _____

Under penalty of perjury I certify that the independent expenditures reported herein were not made in association, consultation, concert with, or at the request or suggestion of any candidate or any authorized committee or agent of such candidate or authorized committee. Further more, these expenditures did not include the furnishing of assistance, cooperation, or consultation on where or all part of any campaign materials prepared by the candidate, his campaign committee, or their agents.

Subscribed and sworn to before me this 15 day of April 1988

Notary Public

Notary Public, Fulton County, Georgia
My Commission Expires Nov. 6, 1988

Signature

4-15-88
Date

900131814170

Name of Committee (In Full)

ED JENKINS FOR CONGRESS COMMITTEE

I.D. No. [illegible]

Full Name, Mailing Address & ZIP Code of Each Payee	Purpose of Disbursement	Date (Month, Day, Year)	Amount	Name of Federal Candidate mentioned or supported by the disbursement & office sought
The Albany Herald P. O. Box 48 Albany, Georgia 31703	newspaper ad	2-26-80	108.44	Richard Gephardt U. S. President ☒ Favor ☐ Oppose
The Athens Daily News P. O. Box 1727 Athens, Georgia 30613	newspaper ad	2-22-80	353.78	Richard Gephardt U. S. President ☒ Favor ☐ Oppose
The Atlanta Constitution P. O. Box 4689 Atlanta, Georgia 30302	newspaper ad	2-26-80	2,844.02	Richard Gephardt U. S. President ☒ Favor ☐ Oppose
The Augusta Chronicle P. O. Box 1928 Augusta, Georgia 30913	newspaper ad	3-02-80	1,014.30	Richard Gephardt U. S. President ☒ Favor ☐ Oppose
The Times Georgian P. O. Box 460 Carrollton, Georgia 30117	newspaper ad	2-28-80	108.30	Richard Gephardt U. S. President ☒ Favor ☐ Oppose
The Columbus Enquirer P. O. Box 711 Columbus, Georgia 31994	newspaper ad	[illegible]	[illegible]	Richard Gephardt U. S. President ☒ Favor ☐ Oppose
(a) SUBTOTAL of Itemized Independent Expenditures				
(b) SUBTOTAL of Unitemized Independent Expenditures				
(c) TOTAL Independent Expenditures				

Under penalty of perjury I certify that the information contained herein and in attachments hereto is true and complete to the best of my knowledge and belief. I have not made or authorized, solicited, or knowingly accepted any contribution or expenditure in violation of the provisions of 2 U.S.C. 441b. I have not made any contribution of cash in excess of $100 to any candidate or authorized committee. Furthermore, I have not knowingly accepted any contribution or gift of money, or any other thing of value, in connection with a Federal election in violation of 2 U.S.C. 441g. I have not knowingly helped or assisted any person in making a contribution in the name of another or knowingly accepted a contribution made by one person in the name of another. I have not knowingly accepted a contribution from a foreign national. I have not knowingly accepted a contribution or expenditure from a prohibited corporation or labor organization. I have not knowingly accepted a contribution from a person who is not a citizen of the United States or a lawfully admitted permanent resident alien.

Signature

4-15-80

Date

Treasurer

Treasurer's Name (Typed or Printed)

8 0 0 1 3 1 8 1 4 7 1

SCHEDULE B

ITEMIZED INDEPENDENT EXPENDITURES

(Use Separate Schedule for Each Candidate)

Page 2 of 2 Pages

Name of Committee (In Full): ED JENKINS FOR CONGRESS COMMITTEE

I.D. No.: 065603

Full Name, Mailing Address & ZIP Code of Each Payee	Purpose of Expenditure	Date (month, day, year)	Amount	Name of Federal Candidate Supported or Opposed by the Expenditure & Office Sought
The Rome News-Tribune P. O. Drawer F Rome, Georgia 30161	newspaper ad	2-26-88	364.76	Richard Gephardt U. S. President ☒ Support ☐ Oppose
The Savannah News-Press P. O. Box 1088 Savannah, Georgia 31402	newspaper ad	2-26-88	995.56	Richard Gephardt U. S. President ☒ Support ☐ Oppose
The Thomasville Times P. O. Box 650 Thomasville, Georgia 31799	newspaper ad	2-26-88	216.08	Richard Gephardt U. S. President ☒ Support ☐ Oppose
The Tifton Gazette P. O. Box 708 Tifton, Georgia 31793	newspaper ad	2-26-88	217.37	Richard Gephardt U. S. President ☒ Support ☐ Oppose
The Valdosta Daily Times P. O. Box 968 Valdosta, Georgia 31601	newspaper ad	2-26-88	213.57	Richard Gephardt U. S. President ☒ Support ☐ Oppose
The Warner Robins Sun P. O. Drawer 2768 Warner Robins, Georgia 31099	newspaper ad	2-26-88	251.56	Richard Gephardt U. S. President ☒ Support ☐ Oppose

(a) SUBTOTAL of Itemized Independent Expenditures: $10,176.10

(b) SUBTOTAL of Unitemized Independent Expenditures: $2,136.72

(c) TOTAL Independent Expenditures: $12,312.82

Under penalty of perjury I certify that the information contained in this report is true and complete to the best of my knowledge, information, and belief, and that it is made in cooperation, consultation, concert with, or at the request or suggestion of any candidate or any authorized committee or agent of such candidate or authorized committee. Furthermore, this expenditure did not require the beginning of disbursement, disbursement, or contribution in whole or in part of the campaign funds as defined by the constitution, the statutes of Georgia or this county.

Sworn and subscribed before me this 15th day of April, 1988

Signature: Hollie C. Williams

Date: 4-15-88

My Commission expires:

Notary Public

Notary Public, Fulton County, Georgia
My Commission Expires Nov. 6, 1988

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REPORTS OF RECEIPTS AND DISBURSEMENTS
For Authorized Committee

ATTACHMENT 2
(2 Pages)

JAN 31 1987

CERTIFIED MAIL (Summary Page)

1 Name of Committee (in Full)
Ed Jenkins for Congress Committee

Address (Number and Street)
Post Office Box 70

City, State and Zip Code
Jasper, Georgia 30143

FEC Identification Number
C00560031

Is this Report an Amendment? ☐ Yes ☒ No

☐ Check if address is different than prior year's filing

4 TYPE OF REPORT

- ☐ April 15 Quarterly Report
- ☐ July 15 Quarterly Report
- ☐ October 15 Quarterly Report
- ☒ January 31 Year End Report
- ☐ July 31 Mid Year Report (Non-election Year Only)
- ☐ Twelfth day report preceding election on ___ in the State of ___
- ☐ Thirtieth day report following the general election on ___ in the State of ___
- ☐ Termination Report

This report contains activity for – ☒ Primary Election ☐ General Election ☐ Runoff Election ☐ Special Election

SUMMARY	COLUMN A This Period	COLUMN B Calendar Year-to-Date
5. Covering Period 11-25-86 through 12-31-86		
6. Net Contributions (other than loans)		
(a) Total Contributions (other than loans) (From Line 11 (a))	2,770.00	119,180.66
(b) Total Contribution Refunds (from Line 20 (d))		
(c) Net Contributions (other than loans) (subtract Line 6 (b) from 6 (a))	2,770.00	119,180.66
7. Net Operating Expenditures		
(a) Total Operating Expenditures (from Line 17)	2,265.11	70,262.12
(b) Total Offsets to Operating Expenditures (from Line 14)		1,228.10
(c) Net Operating Expenditures (Subtract Line 7 (b) from 7 (a))	2,265.11	69,034.02
8. Cash on Hand at Close of Reporting Period (from Line 27)	416,351.06	
9. Debts and Obligations Owed TO The Committee (Itemize all on Schedule C or Schedule D)		
10. Debts and Obligations Owed BY The Committee (Itemize all on Schedule C or Schedule D)		

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Hollis Q. Lathem
Type or Print Name of Treasurer

Hollis Q. Lathem
SIGNATURE OF TREASURER

01-30-87
Date

For further information, contact:
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
Toll Free 800-424-9530
Local 202-376-3120

NOTE: Submission of false erroneous or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. 437g

All previous versions of FEC FORM 3 and FEC FORM 3a are obsolete and should no longer be used

FEC FORM 3 (3/86)

8449332 PM 2:27

DETAILED SUMMARY PAGE
of Receipts and Disbursements
(Page 2, FEC FORM 3)

Name of Committee (in Full): Ed Jenkins for Congress Committee

Report Covering the Period: From: 11-25-86 To: 12-31-86

	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date	
I. RECEIPTS			
11 CONTRIBUTIONS (other than loans) FROM:			
(a) Individuals/Persons Other Than Political Committees (Memo Entry Unitemized $ 370.00)	1,270.00	29,580.00	11 (a)
(b) Political Party Committees			11 (b)
(c) Other Political Committees	1,500.00	89,600.66	11 (c)
(d) The Candidate			11 (d)
(e) TOTAL CONTRIBUTIONS (other than loans (add 11(a), 11(b), 11(c) and 11(d))	2,770.00	119,180.66	11 (e)
12. TRANSFERS FROM OTHER AUTHORIZED COMMITTEES			12
13. LOANS:			
(a) Made or Guaranteed by the Candidate			13 (a)
(b) All Other Loans			13 (b)
(c) TOTAL LOANS (add 13 (a) and 13 (b))			13 (c)
14. OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)		1,228.10	14
15. OTHER RECEIPTS (Dividends, Interest, etc.)	1,665.94	24,041.81	15
16. TOTAL RECEIPTS (add 11 (e), 12, 13 (c), 14 and 15)	4,435.94	144,450.57	16
II. DISBURSEMENTS			
17. OPERATING EXPENDITURES	2,265.11	70,262.12	17
18. TRANSFERS TO OTHER AUTHORIZED COMMITTEES			18
19. LOAN REPAYMENTS:			
(a) Of Loans Made or Guaranteed by the Candidate			19 (a)
(b) Of All Other Loans			19 (b)
(c) TOTAL LOAN REPAYMENTS (add 19 (a) and 19 (b))			19 (c)
20. REFUNDS OF CONTRIBUTIONS TO:			
(a) Individuals/Persons Other Than Political Committees			20 (a)
(b) Political Party Committees			20 (b)
(c) Other Political Committees			20 (c)
(d) TOTAL CONTRIBUTION REFUNDS (add 20 (a), 20 (b), and 20 (c))			20 (d)
21. OTHER DISBURSEMENTS		22,000.00	21
22. TOTAL DISBURSEMENTS (add 17, 18, 19 (c), 20 (d) and 21)	2,265.11	92,262.12	22

III. CASH SUMMARY

23. CASH ON HAND AT BEGINNING OF REPORTING PERIOD	$ 414,180.23	23
24. TOTAL RECEIPTS THIS PERIOD (From Line 16)	$ 4,435.94	24
25. SUBTOTAL (Add Line 23 and Line 24)	$ 418,616.17	25
26. TOTAL DISBURSEMENTS THIS PERIOD (From Line 22)	$ 2,265.11	26
27. CASH ON HAND AT CLOSE OF THE REPORTING PERIOD (Subtract Line 26 from 25)	$ 416,351.06	27

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

89 MAR 20 AM 10:54

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

RAD Referral 88L-28
STAFF MEMBER: Frania Monarski

SOURCE: I N T E R N A L L Y G E N E R A T E D

RESPONDENTS: Ed Jenkins for Congress and
Hollis Lathem, as treasurer

EXECUTIVE SESSION
MAR 28 1989

RELEVANT STATUTES: 2 U.S.C. § 432(e)(3)(A)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441d(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

On November 15, 1988, the Reports Analysis Division ("RAD") referred the Ed Jenkins for Congress Committee (the "Committee") and Hollis Lathem, as treasurer, to the Office of the General Counsel to determine whether it is permissible for a principal campaign committee to make independent expenditures on behalf of a candidate for federal office. This is a case of first impression before the Commission. The Committee is the principal campaign committee of Edgar L. Jenkins, the incumbent in the U.S. House of Representatives for the Ninth Congressional District of Georgia. As part of its 1988 April Quarterly Report, the Committee filed an FEC Form 3X reporting independent expenditures totaling $12,312.52 made on behalf of Richard Gephardt for

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President.[1] The April Quarterly Report indicates that the Committee purchased eighteen advertisements in various Georgia newspapers on February 26, 1988 supporting Gephardt. Subsequent filings by the Committee disclose no further disbursements as independent expenditures.

II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act") defines an independent expenditure as an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without the cooperation or consultation with any candidate, or any authorized committee or agent of the candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of the candidate. 2 U.S.C. § 431(17). For purposes of this section, the term "person" includes a partnership, committee, association, or any organization or group of persons. 11 C.F.R. § 109.1(b)(1). Pursuant to the Act, "clearly identified" means that the name or a photograph or drawing of the candidate involved appears, or the identity of the candidate is apparent by unambiguous reference. 2 U.S.C. § 431(18). Commission Regulations indicate that the term "expressly advocating" refers to a communication which includes expressions such as "vote for", "elect" and "support". 11 C.F.R.

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1. The Commission currently does not have any forms for candidates to report independent expenditures. According to the RAD Referral material, however, the Committee contacted the Commission to determine how to report these expenditures and were told to use Form 3X.

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§ 109.1(b)(2).

The Act provides that each candidate for federal office shall designate in writing a political committee to serve as his or her principal campaign committee. 2 U.S.C. § 432(e)(1). The primary role of a principal campaign committee under the Act is to further the election of a designated candidate by ensuring that the candidate's campaign activities are disclosed through one centralized committee and by informing contributors that their donations will be used to further the election of that candidate. The Act requires that no political committee which supports or has supported more than one candidate may be designated as an authorized committee. 2 U.S.C. § 432(e)(3)(A). Pursuant to this section, the term "support" does not include a contribution of $1,000 or less by an authorized committee to an authorized committee of another candidate. 2 U.S.C. § 432(e)(3)(B). Congress enacted these provisions as part of the 1979 Amendments to the Act. Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1979). Prior to these amendments, section 432(e)(1) provided that "[a]ny occasional, isolated or incidental support of a candidate shall not be construed as support." See Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-433, 88 Stat. 1263 (1974).

Commission Regulations implementing the 1974 Act interpreted the "support" exemption to permit "contributions to, or expenditures on behalf of, a candidate ... not exceeding $1,000 for any election." 11 C.F.R. § 102.11(c)(2) (1977). Because the Act now specifically exempts only contributions of $1,000 or less

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and not expenditures from the definition of "support", it appears that Congress intended to prohibit principal campaign committees from making independent expenditures in support of or opposition to other federal candidates. This conclusion is supported by the fact that at the same time Congress narrowed this exemption, it added the "coattail" provisions which exempts from the definition of contribution, payments for campaign materials by candidates or their authorized committees which include information or reference to any other candidate and which are used in connection with volunteer activities. 2 U.S.C. § 431(8)(B)(xi). Therefore, it appears that the Act recognizes a limited range of permissible activities on behalf of other candidates through the exemption from the term "support" and the "coattail" provision. Independent expenditures, however, can greatly exceed the $1,000 contribution limits and do not qualify for the "coattail" exemption if made through general public political advertising. Therefore, it appears that independent expenditures fall within the definition of support and cannot be made by principal campaign committees.

The Act further provides that a person may make up to $1,000 in contributions to any candidate for federal office or his or her authorized committee. 2 U.S.C. § 441a(a)(1)(A). Pursuant to the Act, the term "person" includes a principal campaign committee of a federal candidate. 2 U.S.C. § 431(11). The term "contribution" refers to any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. 2 U.S.C.

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§ 431(8)(A)(i).

With the assistance of the Commission's librarian, this Office has obtained a copy of one advertisement placed in the Augusta Chronicle on March 5, 1988 by the Jenkins Committee. (Attachment 2). The advertisement is a letter on a facsimile of "Jenkins for Congress" stationery from Congressman Jenkins to his constituents explaining that he was supporting Gephardt for President because he has served with Gephardt for the past eleven years on the House Ways and Means Committee and has witnessed the "depth of his commitment to America. ... I wholeheartedly endorse him for President of the United States." The advertisement includes photographs of Congressmen Jenkins and Gephardt. Moreover, it expressly advocates the nomination of Richard Gephardt for President. It does not, however, include a disclaimer indicating who paid for and authorized it. Although the Committee reported the payments for this advertisement and other advertisements as independent expenditures totaling $12,312.52 made on behalf of Richard Gephardt for President, there is still a question as to whether it should have treated them as independent expenditures or as in-kind contributions to the Gephardt campaign. As noted above, Jenkins endorsed Gephardt for President. At this time, it is not known whether Congressmen Jenkins and Gephardt made joint appearances prior to the Georgia primary or whether Gephardt or his committee participated in or authorized these advertisements by Jenkins. The Committee's expenditure of more than $12,000 on the advertisements, however, exceeded the $1,000 limit of 2 U.S.C. § 441a(a)(1)(A).

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During the discussions of the proposed 1989 Legislative Recommendations, the view was expressed that the Act and regulations make it clear that an authorized committee will lose its status as an authorized committee when it makes independent expenditures on behalf of another candidate. During the 1988 calendar year, the Committee reported a total of $363,055.54 in contributions and $328,208.13 in disbursements with $464,486.24 in cash on hand at the end of the year. According to the 1988 Year End Report, disbursements totaling $297,394.61 were for operating expenditures presumably on behalf of Congressman Jenkins' reelection campaign. The Committee's $12,312.52 expenditure on behalf of Congressman Gephardt in February 1988 raises the issue of whether the Committee's subsequent expenditures in 1988 on behalf of Congressman Jenkins exceeded the limitation of 2 U.S.C. § 441a. Moreover, this Office notes that there is still a question as to whether the expenditures on behalf of Congressman Gephardt should be treated as independent expenditures or in-kind contributions. This Office recommends, however, that the Commission find reason to believe the Committee may be in violation of 2 U.S.C. § 441a(a)(1)(A) by making either excessive in-kind contributions to the Gephardt campaign or by making excessive in-kind contributions to Congressman Jenkins' reelection campaign.

The Act further requires that any expenditure for a communication which expressly advocates the election or defeat of a clearly identified candidate must state whether or not that communication was paid for by the candidate, an authorized

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political committee of the candidate, or agents of the candidate. 2 U.S.C. § 441d(a)(1) and (2). Moreover, if the communication is not authorized by the candidate, an authorized political committee, or agents of the candidate, it must clearly state the name of the person who paid for the communication and indicate that it was not authorized by the candidate or candidate's committee. 2 U.S.C. § 441d(a)(3).

In the present matter, the Committee did not include any disclaimer on the advertisement it placed in the Augusta Chronicle on March 5, 1988. The advertisement did not indicate who paid for it and whether or not it was authorized by Congressman Gephardt or his principal campaign committee. Therefore, it appears the Committee may be in violation of 2 U.S.C. § 441d(a) by not including the appropriate disclaimer on its advertisement.

III. RECOMMENDATIONS

1. Open a MUR.

2. Find reason to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A) and 441d(a).

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3. Approve the attached letter, Factual and Legal Analysis, Questions and the Request for the Production of Documents.

Date 3/20/89

Lawrence M. Noble
General Counsel

Attachments
1. Referral Materials
2. Copy of Newspaper Advertisement
3. Proposed Letter and Factual and Legal Analysis
4. Questions and Request for Production of Documents

93040930581

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JOSHUA MCFADDEN
COMMISSION SECRETARY

DATE: MARCH 22, 1989

SUBJECT: OBJECTIONS TO RAD Ref. 88L-28: FIRST G.C. REPORT SIGNED MARCH 20, 1989

The above-captioned document was circulated to the Commission on Monday, March 20, 1989 at 4:00 p.m.

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

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

This matter will be placed on the meeting agenda for March 28, 1989.

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

93040930582

BEFORE THE FEDERAL ELECTION COMMISSION

(MUR 2841)

In the Matter of	)	
	)	
Ed Jenkins for Congress and Hollis Lathem, as treasurer	)	RAD Referral 88L-28
	)	

CERTIFICATION

I, Hilda Arnold, recording secretary for the Federal Election Commission executive session on March 28, 1989, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in RAD Referral 88L-28:

1. Open a MUR.

2. Find reason to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A) and 441d(a).

3. Approve the letter and an amended Factual and Legal Analysis, Questions and Request for the Production of Documents. The basis of the Factual and Legal Analysis would be to find an excessive contribution to the Gephardt campaign for giving support in excess of $1,000, treating that as an in-kind contribution based on the prohibitions of 2 U.S.C. § 432(e).

Commissioners Aikens, Josefiak, McDonald and McGarry voted affirmatively for this decision. Commissioner Thomas dissented.

Attest:

March 29, 1989
Date

Hilda Arnold
Hilda Arnold
Administrative Assistant

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plm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 12, 1989

Hollis Lathem, Treasurer
Ed Jenkins for Congress
Post Office Box 70
Jasper, GA 30143

RE: MUR 2841
Ed Jenkins for Congress
and Hollis Lathem, as
treasurer

Dear Ms. Lathem:

On March 28, 1989, the Federal Election Commission found that there is reason to believe Ed Jenkins for Congress ("Committee") and you, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A) and 441d(a), provisions 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 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.

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

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

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

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 Frania Monarski, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Vice Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Questions

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer

MUR: 2841

The Ed Jenkins for Congress Committee (the "Committee") is the principal campaign committee of Edgar L. Jenkins, the incumbent in the U.S. House of Representatives for the Ninth Congressional District of Georgia. After contacting the Reports Analysis Division, the Committee filed an FEC Form 3X, as part of its 1988 April Quarterly Report, reporting independent expenditures totaling $12,312.52 made on behalf of Richard Gephardt for President. The April Quarterly Report indicates that the Committee purchased eighteen advertisements in various Georgia newspapers on February 26, 1988 supporting Gephardt. Subsequent filings by the Committee disclose no further disbursements as independent expenditures.

The Federal Election Campaign Act of 1971, as amended (the "Act") provides that each candidate for federal office shall designate in writing a political committee to serve as his or her principal campaign committee. 2 U.S.C. § 432(e)(1). The primary role of a principal campaign committee under the Act is to further the election of a designated candidate by ensuring that the candidate's campaign activities are disclosed through one centralized committee and by informing contributors that their donations will be used to further the election of that candidate. The Act requires that no political committee which supports or has supported more than one candidate may be designated as an

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authorized committee. 2 U.S.C. § 432(e)(3)(A). Pursuant to this section, the term "support" does not include a contribution of $1,000 or less by an authorized committee to an authorized committee of another candidate. 2 U.S.C. § 432(e)(3)(B).

The Act further provides that a person may make up to $1,000 in contributions to any candidate for federal office or his or her authorized committee. 2 U.S.C. § 441a(a)(1)(A). Pursuant to the Act, the term "person" includes a principal campaign committee of a federal candidate. 2 U.S.C. § 431(11). The term "contribution" refers to any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A)(i). Commission Regulations provide that the term "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A). In-kind contributions refer to the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services. Id. Examples of goods and services include, but are not limited to, securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.

One advertisement was placed in the Augusta Chronicle on March 5, 1988 by the Jenkins Committee. The advertisement is a letter on a facsimile of "Jenkins for Congress" stationery from Congressman Jenkins to his constituents explaining that he was supporting Gephardt for President because he has served with

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Gephardt for the past eleven years on the House Ways and Means Committee and has witnessed the "depth of his commitment to America. ... I wholeheartedly endorse him for President of the United States." The advertisement includes photographs of Congressmen Jenkins and Gephardt. Moreover, it expressly advocates the nomination of Richard Gephardt for President. It does not, however, include a disclaimer indicating who paid for and authorized it. The Committee reported expenditures totaling $12,312.52 for this advertisement and other advertisements made on behalf of Richard Gephardt for President. The Committee's expenditure of more than $12,000 on the advertisements exceeded the $1,000 contribution limit of 2 U.S.C. § 441a(a)(1)(A). Therefore, there is reason to believe the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) by making excessive in-kind contributions to the Gephardt campaign.

The Act further requires that whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through any broadcasting, newspaper or any type of general public political advertising, the communication, if paid for and authorized by the candidate, an authorized political committee of the candidate, or agents of the candidate, must clearly state that it was paid for by such authorized committee. 2 U.S.C. § 441d(a)(1). If the communication is paid for by other persons but authorized by a candidate, an authorized committee of a candidate, or its agents, it must clearly state that the

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communication was paid for by such other persons and authorized by such authorized political committee. 2 U.S.C. § 441d(a)(2). Moreover, if the communication is not authorized by the candidate, an authorized political committee, or agents of the candidate, it must clearly state the name of the person who paid for the communication and indicate that it was not authorized by the candidate or candidate's committee. 2 U.S.C. § 441d(a)(3).

In the present matter, the Committee did not include any disclaimer on the advertisement it placed in the Augusta Chronicle on March 5, 1988. The advertisement did not indicate who paid for it and whether or not it was authorized by Congressman Gephardt or his principal campaign committee. Therefore, there is reason to believe the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 441d(a) by not including the appropriate disclaimer on its advertisement.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2841
)

INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Hollis Lathem, Treasurer
Ed Jenkins for Congress
Post Office Box 70
Jasper, GA 30143

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 15 days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

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 1987 to May 1988.

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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Questions and Request for Production of Documents

In its 1988 April Quarterly Report, the Ed Jenkins for Congress Committee (the "Committee") and Hollis Lathem, as treasurer, reported independent expenditures totaling $12,312.52 made on behalf of Richard Gephardt for President.

1. Describe in detail all discussions that took place between Congressman Ed Jenkins, his Committee and Congressman Gephardt or his principal campaign committee concerning Congressman Jenkins' support of Gephardt for President.

a. State whether Congressmen Jenkins and Gephardt made any joint appearances with respect to the Georgia Primary. If so, indicate the dates and locations of these joint appearances.

b. State whether Congressman Jenkins formally endorsed Congressman Gephardt for President and where this endorsement took place.

2. Provide copies or scripts of all advertisements for which expenditures totaling $12,312.52 were made by the Committee on behalf of Richard Gephardt for President.

a. Indicate whether these expenditures were newspapers advertisements, television advertisements or other types of general public political advertising.

b. State where and when these advertisements appeared.

c. Explain whether the advertisements or expenditures were made in cooperation or consultation with Congressman Gephardt, his principal campaign committee or any other agent of Congressman Gephardt.

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OGC 2558

RECEIVED
FEDERAL ELECTION COMMISSION
ADMINISTRATIVE DIVISION

89 APR 24 PM 12:59

JENKINS FOR CONGRESS

Campaign Committee, P.O. Box 1015, Gainesville, GA 30503

April 20, 1989

RECEIVED
FEDERAL ELECTION COMMISSION
89 APR 25 PM 1:27

Office of the General Counsel
Federal Election Commission
Room 659
999 E Street NW
Washington, D. C. 20463

RE: MUR 2841

Dear Ms. Monarski:

Pursuant to the inquiry of April 12, 1989, I am hereby submitting answers to the questions raised along with documentation verifying the Committee's action.

I would appreciate your prompt review of this information and your reply.

Thank you.

Sincerely,

Hollis Q. Lathem

HOLLIS Q. LATHEM
Treasurer

Enclosures (7)

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STATE OF GEORGIA
COUNTY OF CHEROKEE

Personally appeared before the undersigned attesting officer duly authorized to administrer oaths came HOLLIS Q. LATHEM who states that the facts contained in the within and foregoing answers are true and correct.

Hollis Q. Lathem
HOLLIS Q. LATHEM

Sworn to and subscribed
before me this 20th day of April, 1989.

Mary Collett
NOTARY PUBLIC
Notary Public, Cherokee County, Georgia
My Commission Expires March 11, 1990

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REPLIES TO QUESTIONS AND

PRODUCTION OF DOCUMENTS

1. The discussions entailed Ed Jenkins' support for Congressman Gephardt. There was no discussion between Ed Jenkins' Committee and Mr. Gephardt. Discussions between Ed Jenkins' Committee and Mr. Gephardt's Committee centered on a joint appearance in Georgia, such as scheduling, key contact individuals and campaign strategy. There was no discussion concerning independent expenditures between either the Congressmen or their respective Committees.

1a. Congressmen Jenkins and Gephardt made a joint appearance in Georgia on April 20, 1987. They appeared at a reception in Atlanta prior to Mr. Gephardt's scheduled speech to the Dekalb County Democratic Party. Mr. Jenkins attended both events.

Mr. Jenkins and Mr. Gephardt also appeared together at the Annual Jefferson-Jackson Day Dinner on February 26, 1988.

1b. Congressman Jenkins formally endorsed Mr. Gephardt in a press release dated February 26, 1988. (Exhibit "A")

2. The newspaper advertisements were distributed with the enclosed instructions. (Exhibit "B") Copies of advertisements that were returned by the newspaper as requested by our Committee are enclosed. (Exhibit "C") Also attached is the master copy of the advertisement that was submitted to each newspaper. (Exhibit "D")

2a. All independent expenditures were for newspaper advertisements.

2b. The exact advertisements appeared on March 4, 1988, in the newspapers described in our letter to the Clerk, U. S. House of Representatives dated February 26, 1988. (Exhibit "E")

2c. These advertisements were placed without any knowledge, cooperation or consultation of Congressman Gephardt, his principal Campaign Committee or any other agent of Congressman Gephardt.

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JENKINS FOR CONGRESS

campaign NEWS release

FOR IMMEDIATE RELEASE

Date: February 26, 1988

Contact:

Phone:

JENKINS ENDORSES GEPHARDT

Georgia's Ninth District Congressman Ed Jenkins announced today that he is endorsing Missouri Democrat Richard (Dick) Gephardt for President.

"As a grassroots worker and moderate Democrat, Dick and I share many common values and goals," Jenkins said in his endorsement. "As a candidate for President of the United States, he is the best."

The Jasper Democrat pointed out that he has served with Gephardt on the House Ways and Means Committee where he has had "many opportunities to see the depth of his commitment to America."

"Dick Gephardt and I have worked closely on major trade issues involving the textile and apparel industries, as well as on agricultural matters. We have fought for tough, fair trade policies which would correct imbalances with other countries. Simply put, we have sought to enforce the golden rule with our trade partners: treat us fairly and you'll get the same in return. He has worked diligently to preserve and support our agricultural bases and family farms."

"The Gephardt Presidency will invest our resources in the greatest hope we have... our people...those who are beginning their careers, those who are established in the workplace and those who have retired. Dick Gephardt is a realist. He is a motivator and a leader. I have always found him to be very attentive to me as a Georgian and the needs of our state. I trust him and I wholeheartedly endorse him for President of the United States."

# # #

Exhibit A

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JENKINS
FOR CONGRESS
Campaign Committee, P.O. Box 1015, Gainesville, GA 30503

February 26, 1988

MEMORANDUM

TO: SELECTED DAILY NEWSPAPERS

FROM: HOLLIS Q. LATHEM, TREASURER
JENKINS FOR CONGRESS COMMITTEE

RE: AD

Please find the enclosed advertisement for your newspaper. The ad is to run Friday, March 4.

Please remit a receipt and tear sheet to me at the address listed above.

Should you have a question, please call Tina Carlson at Horton and Associates, Inc. at 404/536-8921.

Thank you.

93040930598

Exhibit B

The Augusta Chronicle AUGUSTA HERALD

SOUTHEASTERN NEWSPAPERS CORPORATION

PO BOX 1928 - (13) PHONE (404) 724-0851

AUGUSTA, GEORGIA 30913-1928

ADVERTISING INVOICE / STATEMENT

2 BILLED TO

JENKINS FOR CONGRESS
P O BOX 70
JASPER GA 30143

4 BILLING DATE: 3/31/88
5 BILLING PERIOD: MONTHLY
6 TERMS OF PAYMENT: ALL BILLS DUE UPON RECEIPT
7 ACCOUNT NO: 80837
PAGE: 1

TRANSACTION DATES STARTS			CONTINUES			11 REFERENCE NO	12 TYPE *	13 14 15 DESCRIPTION SIZE / DIMENSIONS	16 TIMES	17 BILLED UNITS LINES & INCHES	18 RATE	19 GROSS AMOUNT
C	3	4	H	03 3	03 4		CC	CASH CONGRESS				1,014.30- 1,014.30

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PREVIOUS BALANCE	CHARGES	DEBIT ADJUSTMENTS	PAYMENTS	CREDIT ADJUSTMENTS	FINANCE CHARGE	25 BALANCE DUE
.00	1,014.30		1,014.30			.00

AGING				23 DISCOUNTS AVAILABLE		
CURRENT	30 DAYS	60 DAYS	90 DAYS & OVER	NATIONAL	CLASSIFIED	RETAIL

NATIONAL INCHES	CLASSIFIED LINES	RETAIL INCHES

1.5 PCT. MONTHLY FINANCE CHARGE ON AMOUNTS OVER 60 DAYS. DISCOUNTS SHOWN MAY BE EARNED AND WILL BE ALLOWED FROM BALANCE DUE IF PAYMENT IS RECEIVED BY 15th OF MONTH FOLLOWING.

ER TO REVERSE SIDE OF THIS STATEMENT FOR AN EXPLANATION.

REMITTANCE ADVICE - DETACH AND RETURN THIS PORTION WITH PAYMENT TO INSURE PROPER CREDIT

COUNT NO	27 ACCOUNT NAME	BALANCE DUE
80837	JENKINS FOR CONGRESS	

LINE DATE	DISCOUNTS AVAILABLE		
/31/88			
	NATIONAL	CLASSIFIED	RETAIL

INDICATE THE AMOUNT YOU ARE PAYING. IF PAYMENT DOES NOT EQUAL AMOUNT DUE PLEASE EXPLAIN ON REVERSE SIDE

SOUTHEASTERN NEWSPAPERS CORPORATION

PO BOX 1928 - (13)

AUGUSTA, GA 30913 - 1928

Public C

AFFIDAVIT OF PUBLICATION

ATTORNEY or AGENCY Jenkins for Congress

BUSINESS

STATE OF GEORGIA

COUNTY OF Richmond

Personally appeared before me Matt Reynolds

to me known, who being sworn, deposes and says:

That he/she is the authorized agent of Southeastern Newspapers Corporation, a Georgia corporation, doing business in said county under the trade name of The Augusta Chronicle, Augusta Herald, a newspaper published in said county;

That he/she is authorized to make affidavits of publication on behalf of said publisher corporation;

That said newspaper is of general circulation in said county and in the area adjacent thereto;

That he/she has reviewed the regular editions of said newspapers published on March 4, 19 88, 19__, 19__, 19__, 19__ and finds that the following advertisement appeared in each of said edition(s) as follows:

(deponent)

Sworn to and subscribed before me

this __ day of __ 19__

Notary Public, Richmond County, Georgia

My Commission Expires Feb. 13, 1992

NOTARY PUBLIC

JENKINS FOR CONGRESS

Ed Jenkins

Dear Fellow Georgians,

Over the past six months, many of you have asked why I am supporting **Dick Gephardt** for President. Serving on the House Ways & Means Committee with him for the past 11 years has given me many opportunities to see the depth of his commitment to America. As a grassroots worker and moderate Democrat, Dick and I share many common values and goals. As a candidate for President of the United States, he is the best.

Dick Gephardt and I have worked closely on major trade issues involving the textile and apparel industries, as well as on agricultural matters. We have fought for tough, fair trade policies that would correct imbalances with other countries. Simply put, we have sought to enforce the golden rule with our trade partners: treat us fairly and you'll get the same in return. He has worked diligently to preserve and support our agricultural bases and family farms.

The Gephardt Presidency will invest our resources in the greatest hope we have...our people...those who are beginning their careers, those who are established in the workplace and those who have retired. Dick Gephardt is a realist. He is a motivator and a leader. I have always found him to be very attentive to me as a Georgian and the needs of our state. I trust him, and I wholeheartedly endorse him for President of the United States.

Ed Jenkins

Ed Jenkins

Congressman, 9th District of Georgia

Dick Gephardt

This ad is paid for by the Jenkins for Congress Committee, and is not authorized by any candidate.

FIRST RUN PUB.

THE MARIETTA DAILY JOURNAL
and
NEIGHBOR NEWSPAPERS INC.

Pub. Week _____ Log # _____

CUSTOMER NAME: Ed Jenkins for Congress

COLOR, PURCHASE ORDER

AGENCY

ADDRESS: PO Box 70

CITY, STATE, ZIP CODE: Jasper GA 30144

AUTHORIZED BY: Hollis Lathem

PHONE NUMBER

AUTHORIZATION

Authorization is hereby given to publish the advertisement as described by this insertion order on the dates and the rates so indicated. It is understood that this advertisement is subject to all conditions and policies contained in the publisher's rate card. No verbal agreement will be recognized or considered binding.

attached

Signature _____ Title _____

LISTING	DISPATCH
TAG LINE	☑ NEW ☑ CAMERA READY
POSITION REQUESTED	PICK-UP ☐ NO CHANGE ☐ WITH CHANGE

PICK-UP

Date _____ Unit _____

☑ Check # 3805
Bank Jasper
$396.90
Amount

☐ Cash Receipt # _____
Date _____

CUSTOMER PROOF

SALES PERSON PROOF

COMPOSING
AD BUILT BY:

AD CORRECTED
BY

AD PICKED UP
BY

SALES REP NAME: Law

Primary newspaper: MDJ

ACCOUNT NUMBER: 888007

SALES NUMBER: 007

UNIT NO	UNIT NAME	
	MARIETTA DAILY JOURNAL ☐ Mon. ☑ Fri. ☐ Tues. ☐ Sat. ☐ Wed. ☐ Sun. ☐ Thurs.	1
	North Cobb Group	2
	East Cobb Group	3
	Smyrna Neighbor	4
	South Cobb Group	5
	Douglas Neighbor	6
	Paulding Neighbor	7
	North DeKalb Group	8
	Mid DeKalb Group	9
	South DeKalb Group	10
	Rockdale Neighbor	11
	No. Fulton Group	12
	Northside Group	13
	South Fulton Group	14
	Clayton Neighbor	15
	North Clayton Neighbor	25
	South Clayton Neighbor	35
	Fayette Neighbor	16
	Henry Neighbor	17
	Bartow Neighbor	18
	All Units	All

AD SIZE
COL. x INCHES
3 x 10

DAILY DATE: 3/4/88
WEEKLY DATE: / /

OTHER CHARGE _____ AMOUNT _____

TRANS. CODE _____

RATE _____ PCI

TOTAL SALE: 396.90

FLAT RATE TOTAL

Pub. Code: 01

Trans. Code: 180

Position: 01

COMMENTS:

Composition Log # _____

Date _____

Retail Advertising

Advanced Sections

☐ TV Time ☐ Church Page
☐ Lifestyle ☐ Attractions
☐ Homes ☐ Food

DEADLINE

☐ A.M.
☐ P.M. DAY _____

Deadline Met ☐ Yes ☐ No

I hereby certify that the ad represented by this insertion order was checked and okayed for publication by _____ at _____ A.M./P.M. on _____ and I further certify that this ad as approved and checked by me is per instruction of the advertiser and is ready for billing.

Name _____

Title _____ Sales No. _____

Primary newspaper _____

I hereby certify that the pick up ad represented by this insertion order was checked and appeared correctly by _____ at _____ A.M./P.M. on _____ and I further certify that this ad as approved and checked by me is per instruction of the advertiser and is ready for billing.

Name _____

Title _____ Sales No. _____

Primary newspaper _____

☐ Outside Sales Call
☐ Walk In Sale ☐ Phone In Sale

THE MARIETTA DAILY JOURNAL
and
NEIGHBOR NEWSPAPERS

NANCY LAW
Cobb Neighbor
Account Executive

428-9411
580 Fairground Street
Marietta, 30060

9304093060 1

Marietta Daily Journal 3-4-88

JENKINS FOR CONGRESS

Ed Jenkins

Dear Fellow Georgians,

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Ed Jenkins

Ed Jenkins

Congressman, 9th District of Georgia

Dick Gephardt

This ad is paid for by the Jenkins for Congress Committee, and is not authorized by any candidate.

9304093060 2

The Daily Tribune News
MONDAY THROUGH FRIDAY

Cartersville Newspapers, Inc.
Publishers-Printers-Photographers
251 SOUTH TENNESSEE ST.
CARTERSVILLE, GEORGIA

The Herald Tribune
EVERY THURSDAY

382-4545

P. O. BOX 70

Customer's Order No. _____ Date 2/29 19 88

Name Ed Perkins for Congress Committee

Address P.O. Box 70

Jasper GA 30143

SOLD BY	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE. RETD.	PAID OUT

QUAN.	DESCRIPTION	PRICE	AMOUNT
	Q # 3793		
	Political display ad to run 3/4 &		124.04
	PAID		
	1		

All claims and returned goods MUST be accompanied by this bill.

000912 Received By

TAX

TOTAL 124.04

GS 58 IVAN ALLEN COMPANY · CARTERSVILLE GA 30120 49883-40

9304093060 3

The Cartersville Daily News 3-4-88

JENKINS FOR CONGRESS

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Congressman, 9th District of Georgia

Dick Gephardt

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9304093060 4

ADVERTISING RECEIPT-The Union-Recorder, Milledgeville, Ga.

Received from: Jenkins for Congress Date 3/4 19 88

Name Jenkins for Congress

Address P.O. Box 105

City/State Gainesville, Georgia Zip 30503

Amount Paid One hundred & eighty nine 00/100 Dollars

For: ☐ Prepaid Classified Ad ☒ Prepaid Display Ad ☐ Prepaid Legal Ad

☐ Credit to be applied to Account No. 555555

Received by Laura Spinella Amount $ 189.00

9304093060 5

The Times 3-2-88

JENKINS FOR CONGRESS

Ed Jenkins

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9304093060 6

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Congressman, 9th District of Georgia

Dick Gephardt

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Gwinnett Daily, 3-7-88

9304093060 07

THE MACON TELEGRAPH PUBLISHING CO.
Telephone 744-4200 — Macon, Georgia 31213

Acct. #	Account Title	Date
4300 9930	Dollins for Congress	3/1/88

TYPE
[C] [T]
[D] [N]
[L]

C = Commercial
T = Transient
D = Display
N = National
L = Legal

26154

Street Address

City | State | Zip Code

AD NUMBER

DATE(s) TO RUN 3/4

NAME OF PAYEE

AMOUNT PAID 797 22

Ck

MACON TELEGRAPH PUBLISHING CO.

PER M. Robinson

Thank You – We Appreciate Your Business

Reorder No. 16953 - Macon Printing Company

9304093060 8

Southeast

Ski report

Temperatures

Lucas petition
rtist control

People

Metro Centre couldn't hold such a concert.

Green eggs, ham eaten on Dr. Seuss' birthday

First graders at Del Obispo Elementary School in San Juan Capistrano, Calif., ate green eggs and ham this week in honor of the 86th birthday of Theodore Seuss Geisel, known to readers of his children's books as Dr. Seuss.

The 130 youngsters used food coloring to create the culinary tribute to one of Dr. Seuss' most famous nonsensical works — *Green Eggs and Ham.*

Senator's missing mother found unharmed in hotel

The mother of U.S. Sen. Richard G. Lugar, reported missing early Thursday by relatives, was found unharmed at a hotel in neighboring Illinois, a spokesman for Lugar said.

Bertha Lugar Caldwell, 81, was last seen driving her car late Wednesday in Indianapolis, about 70 miles from the Illinois state line, Andy Fisher, an aide to the Indiana Republican, said from Washington.

"We assume that she was driving ... and got disoriented," said

Sen. Richard Lugar

Reader-Advertiser Service Directory

The Macon Telegraph and News (USPS 076-270) is owned daily and published by the Macon Telegraph Publishing Co. at 120 Broadway, Macon, Georgia 31201. Second class postage is paid in Macon, Georgia.

KNIGHT RIDDER

SUBSCRIBER SERVICES

Home Delivery: Seven-day home delivery of the Macon Telegraph and News is available for $2.35 a week, Monday through Friday, $1.20 a week, Saturday and Sunday, $1.20 a week (Georgia state sales tax included). Subscriptions are payable quarterly in advance to the Macon Telegraph and News.

To start home delivery. Call 744-4242 in Macon or 928-7970 in Warner Robins from 9 a.m. to 5 p.m. Monday through Friday.

To report a delivery problem in Macon, call 744-4242 between 6:30 a.m. and 5:30 p.m. Monday through Friday, from 6:30 to 10:30 a.m. on Saturday, and from 7:00 to 10:30 a.m. on Sunday.

To discuss a subscription billing matter. Phone 744-4222.

Single-copy rates: At newsstands and newsracks, weekday and Saturday editions are 25 cents and Sunday editions are $1.00.

Mail delivery. Six-day mail with Sunday home delivery of the Macon Telegraph and News is available for $3.07 a week. Monday through Saturday mail delivery is $2.16 a week. Seven-day mail delivery is $3.23 a week. Call 744-4242.

POSTMASTER: Send address change notifications to the Macon Telegraph and News, P.O. Box 4167, Macon, Ga. 31208-9979.

School delivery. The Macon Telegraph and News' educational services department offers school delivery of 10 copies or more at reduced rates. Call 744-4215.

ADVERTISER SERVICES

To place, cancel or correct a classified ad: Phone 744-4234 from 8 a.m. to 5:30 p.m., Monday through Friday; for, call toll-free 1-800-342-5841.

READER SERVICES

To provide story tips or obtain information, please call the departments as indicated.

City news. Phone 744-4232 from 3 p.m. to 12:30 a.m.

Day copy desk. Phone 744-4226.

State news. Phone 744-4251 or city desk number.

Sports. Phone 744-4225 from 3 p.m. to 12:30 a.m.

Features, entertainment, weddings. Phone 744-4245 from 9 a.m. to 5 p.m.

Obituaries. Phone 744-4291 from 3 p.m. to 7 p.m.; phone 744-4220 after 9 p.m.

Editorials. Phone 744-4240 from 8 a.m. to 5 p.m.

Sunday editor. Phone 744-4487 from 9 a.m. to 6 p.m. Monday through Friday; from 3 p.m. to 12:30 a.m. on Saturday.

Managing editor/news. Phone 744-4219 from 1 p.m. to midnight.

Managing editor/features. Phone 744-4231 from 8 a.m. to 5 p.m.

Editor. Phone 744-4242 from 8:30 a.m. to 6 p.m. (On Saturdays, Sundays and holidays the newsroom is closed until about 3 p.m.)

To correct an error. The Telegraph and News will promptly and prominently correct errors on its news pages. Readers are invited to call any errors to the attention of the appropriate editor or department listed above.

The Macon Telegraph and News is a merger of the Macon Telegraph and the Macon News.

Macon Telegraph and News
ADVERTISING SUPPLEMENTS

The following preprinted advertising supplements appear in some or all editions of today's Macon Telegraph and News.

SHOBER FURNITURE

LAYAWAYS & INSTANT CREDIT
5640 EISENHOWER PKWY. (NEAR TOYS R US)
784-1233

Ladies Apparel
Wholesale Clothing

$3 TO $13 NONE HIGHER
CHOOSE FROM THOUSANDS.

JUST ARRIVED
•Acid Wash Dresses•
•No Excuses Skirts•
•NAUTICAL SKIRT SETS•

NEW SHIPMENT ACCESSORIES

Winter Clearance Sale

LARGE SIZES
•JORDACHE JEANS•
•GITANO•TOPS•PANTS•SKIRTS
•GITANO JEANS

BEHIND JD KINDERS
Across from Macon Mall
PARKWAY VILLAGE
781-6597
TUE THRU SAT. 10-7
SUN. 1-6

JENKINS FOR CONGRESS

Ed Jenkins

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Ed Jenkins

Ed Jenkins
Congressman, 9th District of Georgia

Dick Gephardt

THE CORDELE DISPATCH
P. O. BOX 1058
CORDELE, GA. 31015

BUSINESS FORM—PRODUCT OF WILSON JONES

RECEIPT Date March 3 1988 No. 710954

Received From Jenkins for Congress Campaign Committee

Address P.O. Box 1015

Jamesville, Georgia 30503 Dollars $ 116.65

For 3x11 ad to run March 4, 1988

ACCOUNT		HOW PAID	
AMT. OF ACCOUNT	116.65	CASH	
AMT. PAID	116.65	CHECK #3990	
BALANCE DUE	-0-	MONEY ORDER	

By Sarah Farmer

9304093061 0

JENKINS FOR CONGRESS

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Ed Jenkins

Ed Jenkins

Congressman, 9th District of Georgia

Dick Gephardt

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Warner Robbins Daily Sun 3-4-88

Ed Jenkins

9304093061 1

ADVERTISING ACCOUNT WITH

The Cordele Daily Dispatch

306 13th Ave. West P. O. Box 1058
Cordele, Georgia 31015 - 1058
Phone (912) 273-2277

DATE OF BILL MAR 31 1988

Jenkins for Cogress Campaign Committee
P.O. Box 1015
Gainesville, Georgia 30503

Attn: Hollis Q. Lathem, Treasurer

Pre Paid

Date	Inches	Miscellaneous	
3-4	33		
		$	
		$	
TOTAL	33	THIS MONTH $	166.65
RATE	5.05	THANK BALANCE $	(166.65)
AMOUNT	166.65	YOU! TOTAL DUE $	-0-

BILLS ARE PAYABLE WHEN RENDERED

9304093061 2

JENKINS FOR CONGRESS

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Ed Jenkins

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Congressman, 9th District of Georgia

Dick Gephardt

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Cordele Dispatch 3-4-88

9304093061 3

THE TIMES

ORLANDO, FLORIDA
(305) 898-7680
THE TIMES

THE TIMES

P.O. BOX 100003
GAINESVILLE, GA 30503-7003
(404) 532-1234

ADVERTISING STATEMENT

889

JENKINS ED
P.O. BOX 1015
GAINESVILLE GA 30503

CUSTOMER NO.	STATEMENT NO.
045037	39877
DUE DATE	**AMOUNT DUE**
04/10/88	14.47-
FOR THE PERIOD	**THRU**
02/29/88	03/27/88

A FINANCE CHARGE OF 1½% PER MONTH IS APPLIED TO ACCOUNTS OVER 30 DAYS. ANNUAL PERCENTAGE RATE OF 18%.

DATE	EDT	CLASS	DESCRIPTION	COL	DEPTH	TIMES RUN	TOTAL SIZE	RATE	AMOUNT
			PREVIOUS BALANCE						.00
0314			CASH PAYMENT						318.45-
0307	TID		ED JENKINS	3	10.50	1	31.50	9.6500	303.98

9304093061 4

CURRENT	OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS	OVER 120 DAYS	TOTAL DUE
14.47-	.00	.00	.00	.00	14.47-

CONTRACT TYPE	CONTRACT QUANTITY	EXPIRATION DATE	CURRENT USAGE	TOTAL USED	QUANTITY REMAINING	SALES PERSON
						WAITS

TEAR AT THIS PERFORATION

CUSTOMER NUMBER	NAME	STATEMENT NO.	AMOUNT PAID
045037	JENKINS ED	39877	

DETACH THIS STUB AND RETURN WITH PAYMENT PAYABLE TO:

THE TIMES
P.O. BOX 100003
GAINESVILLE, GA 30503-7003

04/10/88

JENKINS FOR CONGRESS

Ed Jenkins

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Congressman, 9th District of Georgia

Dick Gephardt

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9304093061 5

3-7

9 3 0 4 0 9 3 0 6 1 6

Date of Invoice
MONTH March 1988

DATE	Local Class.	Extra	BB	Special Subtotal	TMC Amount Due
1					
2					
3					
4	31½				
5					
6					
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26					
27					
28					
29					
30					
31					
Total	31½				

In Account With
GRIFFIN
DAILY NEWS
P.O. Drawer M (323 East Solomon St.)
Griffin, Ga. 30224 (404) 227-3276

Jenkins for Congress
P.O. Box 70
Jasper, Ga. 30143

DISPLAY ADVERTISING 31½ @ 7.01	220	81
CLASSIFIED ADVERTISING @		
FINANCE CHARGE		
TOTAL	220	81
CREDITS	(220	81)
PAST DUE		
TOTAL AMOUNT DUE	—0—	

Payments must be received by end of month to be reflected on statement. Accounts are - NET - no discounts. This invoice is due upon receipt. 1½% Finance Charge on Past Due Balances. Annual Rate 18%.

JENKINS FOR CONGRESS

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Dick Gephardt

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93040930617

Atlanta Constitution 3-4-88

9304093061 8

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Congressman, 9th District of Georgia

Dick Gephardt

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Wendy Shelton
Advertising Representative
138 Church St.
Jonesboro, Ga. 30236
(404) 478-5753

Clayton News/Daily
"The local people paper for South Metro Atlanta"
ATL SENTINEL HERALD

Clayton Daily News 3-4-88

Ed Jenkins

Dear Fellow Georgians,

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Dick Gephardt and I have worked closely on major trade issues involving the textile and apparel industries, as well as on agricultural matters. We have fought for tough, fair trade policies that would correct imbalances with other countries. Simply put, we have sought to enforce the golden rule with our trade partners: treat us fairly and you'll get the same in return. He has worked diligently to preserve and support our agricultural bases and family farms.

The Gephardt Presidency will invest our resources in the greatest hope we have...our people...those who are beginning their careers, those who are established in the workplace and those who have retired. Dick Gephardt is a realist. He is a motivator and a leader. I have always found him to be very attentive to me as a Georgian and the needs of our state. I trust him, and I wholeheartedly endorse him for President of the United States.

Ed Jenkins

Ed Jenkins

Congressman, 9th District
of Georgia

Dick Gephardt

This ad is paid for by the Jenkins for Congress Committee, and is not authorized by any candidate

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JENKINS FOR CONGRESS

Ed Jenkins

Dear Fellow Georgians,

Over the past six months, many of you have asked why I am supporting **Dick Gephardt** for President. Serving on the House Ways & Means Committee with him for the past 11 years has given me many opportunities to see the depth of his commitment to America. As a grassroots worker and moderate Democrat, Dick and I share many common values and goals. As a candidate for President of the United States, he is the best.

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Ed Jenkins

Ed Jenkins

Congressman, 9th District of Georgia

Dick Gephardt

This ad is paid for by the Jenkins for Congress Committee, and is not authorized by any candidate.

Exhibit D

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JENKINS FOR CONGRESS

Campaign Committee, P.O. Box 1015, Gainesville, GA 30503

February 26, 1988

Office of Records and Registration
Office of the Clerk of the House
Room 1036, Longworth House Office Building
Washington, D. C. 20515

Dear Sir:

This is to advise you that the Ed Jenkins for Congress Committee, I. D. No. 055603, has made the following independent expenditures today in support of the Gephardt Presidential Campaign Committee. All of these expenditures are for newspaper advertisements.

(1) The Anderson Independent-$166.32
P. O. Box 462
Lavonia, Georgia 30553

(2) The Albany Herald-$308.44
P. O. Box 48
Albany, Georgia 31703

(3) The Americus Times-Recorder-$163.19
P. O. Box 1247
Americus, Georgia 31709

(4) The Athens Daily News-$353.78
P. O. Box 1727
Athens, Georgia 30613

(5) The Atlanta Constitution-$2,444.02
P. O. Box 4689
Atlanta, Georgia 30302

(6) The Augusta Chronicle-$1,014.30
P. O. Box 1928
Augusta, Georgia 30913

(7) The Brunswick News-$145.53
P. O. Box 1557
Brunswick, Georgia 31521

(8) The Times Georgian-$258.30
P. O. Box 460
Carrollton, Georgia 30117

(9) The Tribune-News-$128.04
P. O. Box 70
Cartersville, Georgia 30120

(10) The Columbus Enquirer & Ledger-$672.74
P. O. Box 711
Columbus, Georgia 31994

(11) The Rockdale Citizen-$148.35
P. O. Box 136
Conyers, Georgia 30207

(12) The Cordele Dispatch-$166.65
P. O. Box 1058
Cordele, Georgia 31015

(13) The Citizen-News-$767.00
P. O. Box 1167
Dalton, Georgia 30720

(14) The Courier-Herald-$175.76
Drawer B, Court Square Station
Dublin, Georgia 31040

(15) The Times-$318.45
P. O. Box 338
Gainesville, Georgia 30503

(16) The Griffin Daily News-$220.81
P. O. Drawer M
Griffin, Georgia 30224

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Exhibit E

(17) The Clayton News/Daily-$158.03
138 Church Street
Jonesboro, Georgia 30236

(18) The LaGrange Daily News-$193.50
P. O. Box 929
LaGrange, Georgia 30241

(19) The Gwinnett Daily News-$377.35
394 Clayton Street
Lawrenceville, Georgia 30245

(20) The Macon Telegraph and News-$797.22
P. O. Box 4167
Macon, Georgia 31213

(21) The Marietta Daily Journal-$396.90
P. O. Box 449
Marietta, Georgia 30060

(22) The Union-Recorder-$189.00
P. O. Box 520
Milledgeville, Georgia 31061

(23) The Moultrie Observer-$176.41
P. O. Box 889
Moultrie, Georgia 31768

(24) The Rome News-Tribune-$354.75
P. O. Drawer F
Rome, Georgia 30161

(25) The Savannah News-Press-$995.56
P. O. Box 1088
Savannah, Georgia 31402

(26) The Statesboro Herald-$179.55
P. O. Box 888
Statesboro, Georgia 30458

(27) The Thomasville Times-Enterprise-$216.[illegible]
P. O. Box 650
Thomasville, Georgia 31799

(28) The Tifton Gazette-$217.37
P. O. Box 708
Tifton, Georgia 31793

(29) The Valdosta Daily Times-$213.57
P. O. Box 968
Valdosta, Georgia 31601

(30) The Warner Robins Sun-$251.55
P. O. Drawer 2768
Warner Robins, Georgia 31099

(31) The Waycross Journal-$144.00
P. O. Box 219
Waycross, Georgia 31501

The foregoing information is being reported pursuant to Federal Election Commission guidelines on last minute independent expenditures.

Sincerely,

Hollis Q. Lathem

Hollis Q. Lathem
Treasurer
Ed Jenkins for Congress Committee
FEC I. D. No. 055603

cc: Secretary of State
Atlanta, Georgia

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RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 AUG -2 PM 4:27

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
)
Ed Jenkins for Congress Committee) MUR 2841
and Hollis Lathem, as treasurer)

GENERAL COUNSEL'S REPORT

I. GENERATION OF THE MATTER

On March 28, 1989, the Commission found reason to believe that the Ed Jenkins for Congress Committee (the "Jenkins Committee"), the principal campaign committee of Edgar L. Jenkins, the Representative from the Ninth Congressional District, and Hollis Lathem, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) by making excessive in-kind contributions to the Gephardt for President Committee (the "Gephardt Committee") in connection with newspaper advertisements in support of Gephardt and 2 U.S.C. § 441d(a) by failing to include the appropriate disclaimer on the newspaper advertisements. At the same time, the Commission approved and sent interrogatories to the Jenkins Committee. On April 24, 1989, the Jenkins Committee submitted a response to the Commission's interrogatories.

On November 20, 1989, this Office circulated a General Counsel's Report recommending that the Commission find reason to believe that the Gephardt for President Committee and S. Lee King, as treasurer, violated 2 U.S.C. § 441a(f) by accepting in-kind contributions from the Jenkins Committee in excess of the limitations of 2 U.S.C. § 441a(a)(1)(A). On December 5, 1989, the Commission returned this report to this Office for further analysis.

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II. FACTUAL AND LEGAL ANALYSIS

On June 3, 1987, the Jenkins Committee made a $1,000 contribution to the Gephardt Committee for its primary election. As part of its 1988 April Quarterly Report, the Jenkins Committee filed an FEC Form 3X reporting independent expenditures totaling $12,312.52 made on behalf of Richard Gephardt for President. The 1988 April Quarterly Report indicated that the Jenkins Committee, on February 26, 1988, purchased advertisements in several Georgia newspapers supporting Gephardt. The Georgia Presidential Primary was held on March 8, 1988. Subsequent filings by the Jenkins Committee disclosed no further disbursements as independent expenditures. The advertisements were a letter on a facsimile of "Jenkins for Congress" stationery from Congressman Jenkins to his constituents explaining that he was supporting Gephardt for President because he has served with Gephardt for the past eleven years on the House Ways and Means Committee and has witnessed the "depth of his commitment to America. ... I wholeheartedly endorse him for President of the United States." The advertisements included photographs of Congressmen Jenkins and Gephardt. Moreover, they expressly advocated the nomination of Richard Gephardt for President.

In response to the Commission's interrogatories, the Jenkins Committee indicated that there were discussions between staff from the Jenkins Committee and staff from the Gephardt Committee concerning Congressman Jenkins' support for Gephardt. These discussions involved a joint appearance of Jenkins and Gephardt and included scheduling information, key contact individuals and

9304093062 4

campaign strategy. The Jenkins Committee noted that there were no discussions between either the Congressmen or their respective committees concerning independent expenditures.

According to the Jenkins Committee response, Congressmen Jenkins and Gephardt made two joint appearances together on April 20, 1987 before the Dekalb County Democratic Party and on February 26, 1988 at the Annual Jefferson-Jackson Day Dinner. The Jenkins Committee further indicated that Congressman Jenkins formally endorsed Gephardt for President in a press release dated February 26, 1988. This Office notes that the 1988 April Quarterly Report indicates that the Jenkins Committee purchased the advertisements in various Georgia newspapers supporting Gephardt on February 26, 1988. The advertisements were published in thirty-one (31) newspapers in Georgia on March 4, 1988.

The Federal Election Campaign Act of 1971, as amended (the "Act"), defines the term "authorized committee" as the principal campaign committee or any other political committee authorized by a candidate under 2 U.S.C. § 432(e)(1) to receive contributions or make expenditures on behalf of the candidate. 2 U.S.C. § 431(6). The Act provides that each candidate for federal office shall designate in writing a political committee to serve as his or her principal campaign committee. 2 U.S.C. § 432(e)(1). The primary role of a principal campaign committee under the Act is to further the election of a designated candidate by ensuring that the candidate's campaign activities are disclosed through one centralized committee and by informing contributors that their donations will be used to further the

9304093062 5

election of that candidate.

The Act requires that no political committee which supports or has supported more than one candidate may be designated as an authorized committee. 2 U.S.C. § 432(e)(3)(A). Pursuant to this section, the term "support" does not include a contribution of $1,000 or less by an authorized committee to an authorized committee of another candidate. 2 U.S.C. § 432(e)(3)(B). Congress enacted these provisions as part of the 1979 Amendments to the Act. Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (1979). Prior to these amendments, section 432(e)(1) provided that "[a]ny occasional, isolated or incidental support of a candidate shall not be construed as support." See Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-433, 88 Stat. 1263 (1974).

Commission Regulations implementing the 1974 Act interpreted the "support" exemption to permit "contributions to, or expenditures on behalf of, a candidate ... not exceeding $1,000 for any election." 11 C.F.R. § 102.11(c)(2) (1977). Current Commission Regulations state that the term "support" does not include contributions by an authorized committee in amounts aggregating $1,000 or less per election to an authorized committee of another candidate. 11 C.F.R. § 102.12(c)(2). See also Advisory Opinion 1986-36. By specifically exempting only contributions of $1,000 or less and not expenditures from the definition of "support," the Act and Commission Regulations recognize Congressional intent to limit support by principal campaign committees to contributions of $1,000 or less.

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The Act further provides that a person may make up to $1,000 in contributions to any candidate for federal office or his or her authorized committee. 2 U.S.C. § 441a(a)(1)(A). Pursuant to the Act, the term "person" includes a principal campaign committee of a federal candidate. 2 U.S.C. § 431(11). The term "contribution" refers to any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A)(i).

The term "contribution," however, does not include the payment of the costs of certain specified campaign materials by a candidate, or his or her authorized committee, which include information on or reference to any other federal candidate. 2 U.S.C. § 431(8)(B)(xi). In order to fall within this "coattail" exemption, the campaign materials must be limited to items such as pins, bumper stickers, brochures and posters and must be used in connection with volunteer activities. Id. However, if the payment is for the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising, it does not fall within the exemption and constitutes a contribution or expenditure under the Act. 11 C.F.R. §§ 100.7(a)(16) and 100.8(b)(17) (Emphasis added). Payment for this type of activity is, therefore, subject to contribution and expenditure limitations under the Act.

This Office notes that at the same time Congress narrowed the exemption for "support," it added the "coattail" provision

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described above. Therefore, it appears that the Act recognizes a limited range of permissible activities on behalf of other candidates through the exemption from the term "support" and the "coattail" provision. Independent expenditures, however, can greatly exceed the $1,000 contribution limits and do not qualify for the "coattail" exemption if made through general public political advertising.

The Act defines an independent expenditure as an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without the cooperation or consultation with any candidate, or any authorized committee or agent of the candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of the candidate. 2 U.S.C. § 431(17). For purposes of this section, the term "person" includes a partnership, committee, association, or any organization or group of persons. 11 C.F.R. § 109.1(b)(1). Pursuant to the Act, "clearly identified" means that the name or a photograph or drawing of the candidate involved appears, or the identity of the candidate is apparent by unambiguous reference. 2 U.S.C. § 431(18). Commission Regulations indicate that the term "expressly advocating" refers to a communication which includes expressions such as "vote for," "elect" and "support". 11 C.F.R. § 109.1(b)(2). Commission Regulations explain that "made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate"

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means any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. 11 C.F.R. § 109.1(b)(4)(i). Commission Regulations further provide that an expenditure will be presumed to be coordinated with the candidate when it is based on information about the candidate's plans, projects or needs provided to the expending person by the candidate, or by the candidate's agents with a view toward having the expenditure made or when it is made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent. 11 C.F.R. § 109.1(b)(4)(i)(A) and (B).

In Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court struck down a provision of the Act limiting the amount of money that could be spent on independent expenditures. The Court stated that the contribution ceilings of the Act, rather than the expenditure limitation, prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions. 424 U.S. 47. Therefore, the Court drew a distinction between expenditures made "totally independently of the candidate and his campaign" and "prearranged or coordinated expenditures." Id. The Court held that while the independent expenditure ceiling failed to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process, it heavily burdened core First Amendment

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expression. 424 U.S. 47-48. Accordingly, the Court held that the limitation on independent expenditures was unconstitutional. 424 U.S. 51.

In the present matter, the Jenkins Committee placed advertisements supporting Gephardt in thirty-one (31) newspapers in Georgia on March 4, 1990. Because the payments by the Jenkins Committee were for newspaper advertisements, these payments do not fall within the "coattail exemption" pursuant to 11 C.F.R. § 100.7(a)(16). Therefore, these newspaper advertisements must be considered either in-kind contributions or independent expenditures under the Act.

At the Commission meeting on December 5, 1989, the Commissioners proposed two alternative theories to analyze the issue of whether the principal campaign committee of one federal candidate may make expenditures on behalf of another federal candidate.

A. Theory 1

Theory 1 gives a strict reading of the statutory definition of "support" as excluding only contributions of $1,000 or less. Therefore, because only $1,000 in contributions is excluded from the definition of support, payments on behalf of other federal candidates up to $1,000 would be presumed to be a contribution and any support of another federal candidate in excess of $1,000 would be presumed to be an excessive contribution.[1] Therefore,

1. Under this theory, because payments on behalf of other federal candidates are presumed to be contributions, the Commission does not have to look at whether the expenditures were independent.

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any expenditure in excess of $1,000 will be treated as an excessive contribution in violation of 2 U.S.C. § 441a(a)(1)(A). This theory uses 2 U.S.C. § 432(e)(3)(A) only as a basis for finding a violation of 2 U.S.C. § 441a(a)(1)(A), and would not find a violation of that section of the Act. Therefore, this theory does not address the issue of whether an authorized committee that expends over $1,000 in support of another federal candidate will lose its status as an authorized committee.

In the present matter, the Jenkins Committee made a $1,000 contribution on June 3, 1987 to the Gephardt Committee for its primary election. Accordingly, under Theory 1, the Commission would treat the entire payment of $12,312.52 for the newspaper advertisements in question as an excessive in-kind contribution from the Jenkins Committee to the Gephardt Committee. Therefore, the Jenkins Committee would be in violation of 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions totaling $12,312.52 to the Gephardt Committee.[2]

This Office sees several problems raised by pursuing Theory 1. First, neither the Act nor Commission Regulations specifically prohibit authorized committees from making independent expenditures on behalf of other federal candidates if such payments meet the other requirements for independent expenditures. This Office notes that Commission Regulations deem party committees incapable of making independent expenditures on behalf of their candidates because of a presumption of

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2. The Factual and Legal Analysis explaining Theory 1 appears at Attachment 1.

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coordination or arrangement. 11 C.F.R. § 110.7(b)(4). Theory 1 would treat authorized committees of the same party in a similar manner as party committees based on their role in federal elections and their relationship vis a vis each other. There is, however, no specific Regulation prohibiting authorized committees from making independent expenditures on behalf of other federal candidates or creating a presumption of coordination as there is regarding party committees. Thus, because Theory 1 has the effect of prohibiting independent expenditures without any statutory or regulatory authority, this Office believes Theory 1 may be problematic under Buckley v. Valeo.

Second, pursuant to 2 U.S.C. § 432(e)(3)(A), no committee that supports or has supported other federal candidates by contributions of over $1,000 each can be designated as an authorized committee. Consequently, under Theory 1, once an authorized committee which makes contributions in excess of $1,000 on behalf of another federal candidate, that committee would be in violation of the support provision of 2 U.S.C. § 432(e)(3)(A) as well as 2 U.S.C. § 441a(a)(1)(A). Therefore, the conclusion that the committee should be in jeopardy of losing its authorized committee status cannot be avoided. Accordingly, under this theory, an authorized committee should be converted into an unauthorized committee by making these expenditures, and all the activity conducted by the "former" authorized committee on behalf of the candidate who had originally designated it as an authorized committee should then be considered in-kind contributions to that candidate. Pursuant to 2 U.S.C.

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§ 441a(a)(1)(A), an unauthorized committee may make up to $1,000 per election (or $5,000 if the committee qualifies as a multicandidate committee) in contributions to any candidate for federal office. Accordingly, any amount over $1,000 (or $5,000 if a multicandidate committee) expended by the "former" authorized committee on behalf of this candidate would be considered an excessive contribution.

B. Theory 2

In contrast to Theory 1, Theory 2 would not presumptively treat payments by authorized committees on behalf of other federal candidates as contributions. Under this theory, such support could qualify as independent expenditures or contributions. Pursuant to this theory, however, authorized committees that make independent expenditures on behalf of other federal candidates could run afoul of 2 U.S.C. § 432(e)(3)(A), because an authorized committee cannot "support" more than one candidate.[3] Therefore, the Commission, under this theory, would find at a minimum a violation of 2 U.S.C. § 432(e) by the committee for mischaracterizing itself as an authorized committee when it in fact provided "support" to more than one federal candidate. Moreover, pursuant to Theory 2, an authorized committee could lose its status as an authorized committee by

3. Pursuant to this section, the term "support" does not include a contribution of $1,000 or less by an authorized committee to an authorized committee of another candidate. 2 U.S.C. § 432(e)(3)(B). This section does not exempt an independent expenditure of $1,000 or less, only a contribution.

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supporting more than one federal candidate.[4]

Under Theory 2, the Commission would first look to see if the expenditures were truly independent. If the expenditures were independent, then the Committee would run afoul of the support provisions of the Act and jeopardize its status as an authorized committee because the exemption from "support" only includes a contribution of $1,000 or less. If the expenditures were not truly independent, but coordinated with the candidate or his or her committee, then the authorized committee would also be in violation of 2 U.S.C. § 441a(a)(1)(A) for making an excessive contribution under the Act. The first $1,000 of the contribution would be permissible under 2 U.S.C. § 432(e)(3)(B). The remaining amount over $1,000 would then be considered a contribution in excess of the limits of the Act.[5]

This Office also sees problems with regard to Theory 2. As noted earlier, the Commission would allow the Jenkins Committee in this particular matter to maintain its status as an authorized committee. In this Office's view, this result has the effect of penalizing the Jenkins Committee for making independent expenditures. Therefore, Theory 2 would also raise questions under Buckley v. Valeo. Instead, we recommend that under

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4. This Office notes that during the table discussion, the Commission indicated that because the scope of the violation in the present matter stemmed from one transaction, for purposes of conciliation, the Commission would require the Jenkins Committee to pay a civil penalty for that transaction, but allow the Committee to maintain its status as an authorized committee.

5. The Factual and Legal Analysis explaining Theory 2 appears at Attachment 2.

Theory 2, the committee should lose its status as an authorized committee when it supports more than one candidate. See also Discussion above regarding loss of authorized committee status.

C. Conclusion

Based on the foregoing analysis, this Office recommends that the Commission adopt Theory 2 in this matter because this theory more closely follows the language of the Act.

In proceeding under Theory 2, this Office notes that the response of the Jenkins Committee indicates that there were some discussions between the Jenkins Committee and the Gephardt Committee concerning Congressman Jenkins' support of Gephardt including scheduling information for a joint appearance, key contact individuals and campaign strategy. Moreover, Jenkins issued a press release endorsing Gephardt, the two Congressmen made a joint appearance at the Annual Jefferson-Jackson Day Dinner and the Jenkins Committee purchased the newspaper advertisements totaling $12,312.52 all on the same date, February 26, 1988. Therefore, in this Office's view, there is sufficient evidence to preclude the expenditures from being "totally" independent from Gephardt and his Committee. Thus, the Jenkins Committee has provided support in excess of $1,000 to more than one federal candidate.

Accordingly, based on the foregoing analysis, this Office recommends that the Commission find reason to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 432(e)(3)(A) by supporting more than one

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federal candidate.[6] This Office also recommends that the Commission approve and send the Factual and Legal Analysis based on Theory 2 to the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer.

III. RECOMMENDATIONS

1. Find reason to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 432(e)(3)(A).

2. Approve the Factual and Legal Analysis at Attachment 2 and attached letter to be sent to the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer.

Date 8/2/90

Lawrence M. Noble
General Counsel

Attachments

1. Factual and Legal Analysis based on Theory 1
2. Factual and Legal Analysis based on Theory 2 and letter

6. This Office notes that on March 28, 1989, the Commission found reason to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS DH
COMMISSION SECRETARY

DATE: AUGUST 8, 1990

SUBJECT: MUR 2841 - GENERAL COUNSEL'S REPORT DATED AUGUST 2, 1990.

The above-captioned document was circulated to the Commission on Friday, August 3, 1990 at 12:00 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, AUGUST 14, 1990.

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

93040930637

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2841
Ed Jenkins for Congress Committee	)	
and Hollis Latham, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 16, 1990, do hereby certify that the Commission took the following actions in MUR 2841:

1. Decided by a vote of 6-0 to reject the recommendations contained in the General Counsel's report dated August 2, 1990, and direct the Office of the General Counsel to proceed under the finding previously made under 2 U.S.C. § 441a(a)(1)(A).

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

2. Decided by a vote of 6-0 to reconsider the vote taken this date.

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

(continued)

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3. Decided by a vote of 6-0 to defer action on MUR 2841 until the Commission has had an opportunity to review the Factual and Legal Analysis.

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

Attest:

8-24-90
Date

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

93040930639

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2841
Ed Jenkins for Congress Committee	)	
and Hollis Latham, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on October 16, 1990, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 2841:

1. Reject the recommendations contained in the General Counsel's report dated August 2, 1990, and direct the Office of the General Counsel to proceed under the finding previously made under 2 U.S.C. § 441a(a)(1)(A) against Ed Jenkins for Congress Committee and Hollis Latham, as treasurer.

2. Find reason to believe the Gephardt for President Committee and S. Lee King, as treasurer, violated 2 U.S.C. § 441a(f) by accepting an excessive contribution, but take no further action and close the file as to this violation.

(continued)

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3. Send the appropriate Factual and Legal Analysis and appropriate letters pursuant to the actions noted above.

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

Attest:

10-19-90
Date

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

93040930641

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 24, 1990

S. Lee Kling, Treasurer
Gephardt for President Committee
80 F Street, N.W. - 8th Floor
Washington D.C. 20001

RE: MUR 2841
Gephardt for President
Committee and S. Lee
Kling, as treasurer

Dear Mr. Kling:

On October 16, 1990, the Federal Election Commission found that there is reason to believe that the Gephardt for President Committee ("Committee") and you, as treasurer, violated 2 U.S.C. § 441a(f), 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 as it pertains to the Committee and you, as treasurer. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that knowingly accepting excessive in-kind contributions appears to be a violation of 2 U.S.C. § 441a(f). You should take immediate steps to insure that this activity does not occur in the future.

The file will be made part of the public record within 30 days after this matter has been closed with respect to all other respondents involved. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

The confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed. 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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If you have any questions, please direct them to Mary Taksar, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosure
Factual and Legal Analysis

9304093064 3

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Gephardt for President Committee and S. Lee Kling, as treasurer **MUR: 2841**

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that a person may make up to $1,000 in contributions to any candidate for federal office, or to his or her authorized committee. 2 U.S.C. § 441a(a)(1)(A). Under the Act, the term "person" includes a principal campaign committee of a federal candidate.[1] 2 U.S.C. § 431(11). Contribution is defined to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A)(i). Commission regulations explain that "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A).

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1. The Act further states that no political committee which supports or has supported more than one candidate may be designated as an authorized committee. 2 U.S.C. § 432(e)(3)(A). This provision, however, defines support as not including a contribution of $1,000 or less by an authorized committee to the authorized committee of another candidate. 2 U.S.C. § 432(e)(3)(B). Thus, this provision in conjunction with Section 441a(a)(1) permits an authorized committee to contribute to other candidates for federal office, within the applicable limitations, in the same manner as any other person.

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Political committees may not knowingly accept contributions in excess of the Act's limitations. 2 U.S.C. § 441a(f). Expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate or his authorized political committees, or their agents, shall be considered to be a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B). Thus the Act distinguishes between payments that are made "totally independently of the candidate and his campaign" and those that are "prearranged or coordinated." Buckley v. Valeo, 424 U.S. 1, 47 (1976).

Commission regulations explain that expenditures will not be considered independent if they are made through any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. 11 C.F.R. § 109.1(b)(4)(i). The regulations further explain that an expenditure will be presumed to be coordinated with the candidate when it is based on information about the candidate's plans, projects or needs provided to the expending person by the candidate, or by the candidate's agents with a view toward having the expenditure made or when it is made by or through any person who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent. 11 C.F.R. § 109.1(b)(4)(i)(A) and (B).

On June 3, 1987, the Ed Jenkins for Congress Committee made a $1,000 contribution to the Gephardt Committee for its primary

9304093064 5

election. As part of its 1988 April Quarterly Report, the Jenkins Committee filed an FEC Form 3X reporting independent expenditures totaling $12,312.52 made on behalf of Richard Gephardt for President. The 1988 April Quarterly Report indicated that the Jenkins Committee, on February 26, 1988, purchased advertisements in several Georgia newspapers supporting Representative Gephardt. The Georgia Presidential Primary was held on March 8, 1988. Subsequent filings by the Jenkins Committee disclosed no further disbursements as independent expenditures. The advertisements were a letter on a facsimile of "Jenkins for Congress" stationery from Congressman Jenkins to his constituents explaining that he was supporting Gephardt for President because he has served with Gephardt for the past eleven years on the House Ways and Means Committee and has witnessed the "depth of his commitment to America. ... I wholeheartedly endorse him for President of the United States." The advertisements included photographs of Congressmen Jenkins and Gephardt. Moreover, they expressly advocated the nomination of Richard Gephardt for President.

Prior to the placing of these advertisements, discussions took place between staff from the Jenkins Committee and the staff from the Gephardt Committee concerning Congressman Jenkin's support for Gephardt. These discussions involved a joint appearance of Representatives Jenkins and Gephardt and included scheduling information, key contact individuals and campaign strategy. Nevertheless, it appears that there were no discussions between either the Congressmen or their respective

93040930646

committees concerning the making of independent expenditures.

Congressmen Jenkins and Gephardt made two joint appearances together on April 20, 1987 before the DeKalb County Democratic Party and on February 26, 1988 at the annual Jefferson-Jackson Day Dinner. Congressman Jenkins formally endorsed Representative Gephardt for President in a press release dated February 26, 1988. The 1988 April Quarterly Report indicates that the Jenkins Committee purchased the advertisements in various Georgia newspapers supporting Representative Gephardt on February 26, 1988. The advertisements were published in thirty-one (31) newspapers in Georgia on March 4, 1988. Therefore, the facts indicate that it appears that the advertisements placed by the Jenkins Committee were made in cooperation or concert with the Gephardt for President Committee, either by arrangement or coordination or based on knowledge of the candidate's plans provided by the candidate's committee. Therefore, the expenditures were not made "totally independently" of the Gephardt campaign and are, thus, in-kind contributions to the Gephardt for President Committee. These expenditures exceed the limitations in the Act by $12,312.52.

Accordingly, there is reason to believe that the Gephardt for President Committee has knowingly accepted these excessive contributions in violation of 2 U.S.C. § 441a(f).

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Ed Jenkins for Congress Committee and Holly Lathem, as treasurer	)	MUR 2841

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to the Ed Jenkins for Congress Committee and Holly Lathem, as treasurer, based on the assessment of the information presently available.

Date 11/2/90

Lawrence M. Noble
General Counsel

93040930648

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 9, 1990

Holly Lathem, Treasurer
Ed Jenkins for Congress Committee
P.O. Box 70
Jasper, GA 30143

RE: MUR 2841
Ed Jenkins for Congress
Committee and Holly
Lathem, as treasurer

Dear Ms. Lathem:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on March 28, 1989, the Federal Election Commission found reason to believe that the Ed Jenkins for Congress Committee ("Committee") and you, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A) and 441d(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 violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

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 Mary Taksar, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

LM Noble (MT)

Lawrence M. Noble
General Counsel

Enclosure
Brief

23040930650

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Ed Jenkins for Congress Committee and Holly Lathem, as treasurer	)	MUR 2841

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities pursuant to Section 437g(a)(2) of the Federal Election Campaign Act of 1971, as amended ("the Act").

On June 3, 1987, the Ed Jenkins for Congress Committee ("Jenkins Committee") made a $1,000 contribution to the Gephardt for President Committee ("Gephardt Committee") for the primary election.[1] As part of its 1988 April Quarterly Report, the Jenkins Committee filed an FEC Form 3X reporting independent expenditures totaling $12,312.52 made on behalf of Richard Gephardt for President. The 1988 April Quarterly Report indicated that on February 26, 1988, the Jenkins Committee purchased advertisements in several Georgia newspapers

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1. "Primary election" means an election, including a runoff election or a nominating convention or caucus held by a political party, for the the selection of delegates to a national nominating convention of a political party, or for the expression of a preference for the nomination of persons for election to the office of President of the United States. 26 U.S.C. § 9032(7). The limitations on contributions to a candidate imposed by paragraphs (1) and (2) of 2 U.S.C. § 441a shall apply separately with respect to each election, except that all elections held in any calendar year for the President of the United States (except a general election for such office) shall be considered to be one election. 2 U.S.C. § 441a(a)(6).

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supporting Richard Gephardt.

On March 28, 1989, the Commission found reason to believe that the Ed Jenkins for Congress Committee and Holly Lathem, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) by making excessive in-kind contributions to the Gephardt for President Committee and 2 U.S.C. § 441d(a) by failing to include the appropriate disclaimer in newspaper advertisements and initiated an investigation in this matter.

II. ANALYSIS

A. Excessive Contributions

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that a person may make up to $1,000 in contributions to any candidate for federal office, or to his or her authorized committee. 2 U.S.C. § 441a(a)(1)(A). Under the Act, the term "person" includes a principal campaign committee of a federal candidate.[2] 2 U.S.C. § 431(11). Contribution is defined to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A)(i). Commission regulations explain that "anything

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2. The Act further states that no political committee which supports or has supported more than one candidate may be designated as an authorized committee. 2 U.S.C. § 432(e)(3)(A). This provision, however, defines support as not including a contribution of $1,000 or less by an authorized committee to the authorized committee of another candidate. 2 U.S.C. § 432(e)(3)(B). Thus, this provision in conjunction with Section 441a(a)(1) permits an authorized committee to contribute to other candidates for federal office, within the applicable limitations, in the same manner as any other person.

of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A).

Expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate or his authorized political committees, or their agents, shall be considered to be a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B). Thus, the Act distinguishes between payments that are made "totally independently of the candidate and his campaign" and those that are "prearranged or coordinated." Buckley v. Valeo, 424 U.S. 1, 47 (1976).

Commission regulations explain that expenditures will not be considered independent if they are made through any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. 11 C.F.R. § 109.1(b)(4)(i). The regulations further explain that an expenditure will be presumed to be coordinated with the candidate when it is based on information about the candidate's plans, projects or needs provided to the expending person by the candidate, or by the candidate's agents with a view toward having the expenditure made. 11 C.F.R. § 109.1(b)(4)(i)(A). An expenditure will also be presumed to be coordinated when it is made by or through any person who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent. 11 C.F.R. § 109.1(b)(4)(i)(B).

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As noted earlier, on June 3, 1987, the Ed Jenkins for Congress Committee made a $1,000 contribution to the Gephardt Committee for the primary election. As part of its 1988 April Quarterly Report, the Jenkins Committee filed an FEC Form 3X reporting independent expenditures totaling $12,312.52 made on behalf of Richard Gephardt for President.[3] The 1988 April Quarterly Report indicated that the Jenkins Committee, on February 26, 1988, purchased advertisements in Georgia newspapers supporting Congressman Gephardt. The advertisements were published in thirty-one (31) newspapers in Georgia on March 4, 1988. The Georgia Presidential Primary was held on March 8, 1988.

The above-mentioned disbursements were for advertisements which consisted of a letter on a facsimile of "Jenkins for Congress" stationery from Congressman Jenkins to his constituents which explained that he was supporting Gephardt for President because he has served with Richard Gephardt for the past eleven years on the House Ways and Means Committee and which stated that Congressman Jenkins has witnessed the "depth of his commitment to America. . . . [and] I wholeheartedly endorse him for President of the United States." The advertisements included photographs of Congressmen Jenkins and

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3. According to the Reports Analysis Division, the Jenkins Committee called the Commission and asked how to report independent expenditures. Because there is no form for an authorized committee to report independent expenditures, the Committee was told to use FEC Form 3X. As part of its 1988 April Quarterly Report, the Jenkins Committee included an FEC Form 3X reporting independent expenditures.

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Gephardt. Moreover, they expressly advocated the nomination of Richard Gephardt for President. Subsequent filings by the Jenkins Committee disclosed no further disbursements as independent expenditures.

In its response to interrogatories, the Jenkins Committee indicated that prior to the placing of these advertisements, discussions took place between staff from the Jenkins Committee and the staff from the Gephardt Committee concerning Congressman Jenkin's support for Richard Gephardt. The Committee also indicated that these discussions involved a joint appearance of Congressmen Jenkins and Gephardt and included scheduling information, key contact individuals, and campaign strategy. The Jenkins Committee stated that there were no discussions between either the Congressmen or their respective committees concerning the making of specific independent expenditures and further asserted that these advertisements were placed without any knowledge, cooperation, or consultation with Congressman Gephardt, his principal campaign committee, or any agents of Congressman Gephardt.

Despite the Jenkins Committee's claim that the advertisements were not made with any knowledge, cooperation, or consultation with the Gephardt Committee, the facts indicate that the advertisements placed by the Jenkins Committee were made in cooperation or concert with the Gephardt for President Committee, either by arrangement or coordination or based on knowledge of the candidate's plans provided by the candidate's committee. As noted, there were discussions between the staffs

9304093065 5

of the Jenkins and Gephardt Committees regarding a joint appearance in Georgia, including scheduling, key contact individuals, and campaign strategy. Congressmen Jenkins and Gephardt made two joint appearances together on April 20, 1987 before the DeKalb County Democratic Party and on February 26, 1988 at the annual Jefferson-Jackson Day Dinner. Congressman Jenkins formally endorsed Representative Gephardt for President in a press release dated February 26, 1988. It was on this same day that the Jenkins Committee purchased thirty-one (31) advertisements, to run March 4, 1988 in several Georgia newspapers, in which Congressman Jenkins wholeheartedly endorsed Richard Gephardt for President. The Georgia Presidential Primary was held on March 8, 1988. Thus, the expenditures were not made "totally independently" of the Gephardt campaign and are, therefore, in-kind contributions to the Gephardt Committee.

Based on the aforementioned information provided by the Jenkins Committee, the in-kind contributions, totaling $12,312.52, made to the Gephardt for President Committee by the Jenkins Committee were excessive contributions in violation of 2 U.S.C. § 441a(a)(1)(a). Because the Jenkins Committee made a $1,000 contribution, on June 3, 1987, to the Gephardt Committee for its primary election, these later expenditures made on February 26, 1988 exceed the limitations in the Act by $12,312.52.

B. <u>Disclaimer Requirement</u>

The Act also requires that any expenditure for a communication which expressly advocates the election or defeat

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of a clearly identified candidate must state whether or not the communication was paid for by the candidate, an authorized political committee of the candidate, or agents of the candidate. 2 U.S.C. § 441d(a)(1) and (2). The term "clearly identified" means that the name of the candidate involved appears, a photograph or drawing of the candidate appears, or the identity of the candidate is apparent by unambiguous reference. 2 U.S.C. § 431(18). Moreover, if the communication is not authorized by the candidate, an authorized political committee, or agents of the candidate, it must clearly state the name of the person who paid for the communication and indicate that it was not authorized by the candidate or the candidate's committee. 2 U.S.C. § 441d(a)(3).

The advertisements submitted by the Jenkins Committee in response to the Production of Documents Request state that each advertisement was "paid for by the Jenkins for Congress Committee, and is not authorized by any candidate." Although the Jenkins Committee asserts that the advertisements were not specifically authorized by Richard Gephardt or the Gephardt Committee, the facts noted in the above discussion of excessive contributions indicate that the advertisements were made in cooperation or concert with the Gephardt for President Committee. Therefore, the disclaimer should have stated that the advertisement was authorized by the Gephardt for President Committee. Accordingly, the disclaimer appearing in the thirty-one (31) advertisements violates 2 U.S.C. § 441d(a).

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III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that the Ed Jenkins for Congress Committee and Holly Lathem, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A) and 441d(a).

11/9/90
Date

JMNoble (JPR)
Lawrence M. Noble
General Counsel

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ED JENKINS
CONGRESS

P.O. BOX 70 JASPER, GEORGIA 30143

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November 21, 1990

OVERNIGHT MAIL DELIVERY

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
Washington, D. C. 20463

Dear Mr. Noble:

Re: MUR 2841
Ed Jenkins for Congress
Committee and Hollis
Lathem, as treasurer

The undersigned, Ed Jenkins for Congress Committee, and Hollis Lathem as treasurer, hereby requests an extension of time of 20 days in which to file a responsive brief in the above-styled matter for the following reasons:

It is necessary for the Committee to obtain certain information from the Gephardt for President Committee before filing the necessary response, and said Gephardt for President Committee is presently inaccessible due to the absence of Representative Dick Gephardt from his Washington office. Also, the undersigned Committee needs to confer with Representative Ed Jenkins before filing such response, and this being a Congressional recess, he has been inaccessible and unavailable for such a conference.

It is necessary for the undersigned Committee to have such a conference with Representative Ed Jenkins and it is necessary to obtain information from the Gephardt for President Committee

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prior to making this response, therefore the undersigned requests an extension of time of 20 days (until December 18, 1990).

Thank you.

Sincerely,

Hollis Q. Lathem

Hollis Q. Lathem
Treasurer
Ed Jenkins for Congress Committee

HQL/ayd

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 29, 1990

Ms. Hollis Lathem, Treasurer
Ed Jenkins for Congress Committee
P.O. Box 70
Jasper, GA 30143

RE: MUR 2841
Ed Jenkins for Congress
Committee and Hollis
Lathem, as treasurer

Dear Ms. Lathem:

This is in response to your letter dated November 21, 1990, which we received on November 26, 1990, requesting an extension of 20 days to respond to the General Counsel's brief. 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 December 19, 1990.

If you have any questions, please contact Mary Taksar, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1110 VERMONT AVENUE, N.W. • WASHINGTON, D.C. 20005 • (202) 887-9030

90 DEC 19 P12:36

December 19, 1990

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

Re: MUR 2841 - Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer

Dear Ms. Taksar:

This letter is written to request an additional period of time to respond to the Commission's letter dated November 9, 1990. Due to the recent designation of Perkins Coie as counsel, the deadline of December 19 does not provide me with an adequate opportunity to review this letter with my client. In light of the holidays both next week and the week after, scheduling time to collect the necessary factual information to prepare a response and permit time for my client to review the materials prior to submission would be extremely difficult. Therefore, we request an extension of time until January 7, 1991, to respond to the Commission and to allow the necessary time for collecting relevant information, including the preparation of affidavits, and a response.

Sincerely,

B. Holly Schadler

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 2841

NAME OF COUNSEL: Robert F. Bauer and B. Holly Schadler

ADDRESS: Perkins Coie
1110 Vermont Avenue, N. W.
Washington, D. C. 20005

TELEPHONE: 202-956-5419

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.

12-18-90
Date

Hollis D. Lathem, Treasurer
Signature

RESPONDENT'S NAME: Ed Jenkins for Congress Committee

ADDRESS: P. O. Box 70
Jasper, GA 30143

HOME PHONE: 404-692-2059

BUSINESS PHONE: 404-692-2022

93040930663

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 21, 1990

B. Holly Schadler, Esq.
Perkins Coie
1110 Vermont Avenue, N.W.
Washington, D.C. 20005

RE: MUR 2841
Ed Jenkins for Congress
Committee and Holly Lathem,
as treasurer

Dear Ms. Schadler:

This is in response to your letter dated December 19, 1990, which we received on December 19, 1990, requesting an extension until January 7, 1991 to respond to the General Counsel's Brief. 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 January 7, 1991.

If you have any questions, please contact Mary Taksar, the staff member assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1110 VERMONT AVENUE, N.W. • WASHINGTON, D.C. 20005 • (202) 887-9030

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OFFICE OF GENERAL COUNSEL
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January 8, 1991

Ms. Mary Taksar
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 2841 - Ed Jenkins for Congress Committee and Hollis Lathem, as Treasurer

Dear Ms. Taksar:

Enclosed for filing is the response of the Ed Jenkins for Congress Committee and Hollis Lathem, as Treasurer, with regard to MUR 2841. The affidavits referred to in this letter will be filed later this week.

Sincerely,

B. Holly Schadler

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TELEX: 44-0277 PCSO UI • FACSIMILE (GP I, II, III): (202) 223-2088
OTHER OFFICES: ANCHORAGE, ALASKA • BELLEVUE, WASHINGTON • PORTLAND, OREGON • SEATTLE, WASHINGTON

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1110 VERMONT AVENUE, N.W. • WASHINGTON, D.C. 20005 • (202) 887-9030

January 7, 1991

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

Attention: Mary Taksar

Re: MUR 2841 - Ed Jenkins for Congress Committee and Hollis Lathem, as Treasurer

Dear Mr. Noble:

This letter constitutes the response of the Ed Jenkins for Congress Committee (the "Committee") and Hollis Lathem, as treasurer ("Respondents") to the General Counsel's brief recommending that the Commission find probable cause to believe that a violation of the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), occurred. Specifically, the General Counsel recommends that the Commission find probable cause to believe that the Respondents violated 2 U.S.C. §§ 441a(a)(1)(A) and 441d(a).

This response, and the accompanying affidavits of Mr. Samuel Smith and Congressman Ed Jenkins, demonstrate that there was no violation of the FECA and pursuant Regulations. The expenditures made by the Committee to place advertisements in thirty-one newspapers in Georgia were made totally independently of the Gephardt for President Committee ("Gephardt Committee"). Consequently, there was no limit on the amount the Committee was permitted to expend for the purpose of purchasing these advertisements. Moreover, the disclaimer printed on each advertisement was appropriate.

Factual Background

As the Committee's previous response indicated, while limited contact occurred between staff members of the Jenkins and Gephardt Committees and between Messrs. Jenkins and Gephardt, no conversation related to the independent

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TELEX: 44-0277 PCSO UI • FACSIMILE (GP I, II, III): (202) 223-2088
OTHER OFFICES: ANCHORAGE, ALASKA • BELLEVUE, WASHINGTON • PORTLAND, OREGON • SEATTLE, WASHINGTON

expenditures ever occurred. On two occasions Congressman Jenkins and Gephardt appeared together at public events in Georgia. On April 20, 1987, almost one year prior to the expenditures, the Congressmen attended a reception before a speech Mr. Gephardt delivered to the Dekalb County Democratic Party. They also attended the Jefferson-Jackson Day Dinner in Georgia on February 26, 1988. Messrs. Gephardt and Jenkins did not discuss, at any time, the Jenkins Committee making expenditures related to the Georgia primary or Congressman Gephardt's presidential campaign or specifically the proposal to place advertisements in Georgia newspapers. Jenkins Affidavit ¶ 5.

Prior to the February, 1988 event, Congressman Jenkins' staff spoke with the Gephardt Committee's scheduling staff in Washington, D.C. to organize the details of Congressman Gephardt's appearance. Smith Affidavit ¶ 3. These conversations focussed specifically on scheduling arrangements including: details of Congressman Gephardt's arrival and departure, and a discussion of key Democratic Party and local public leaders whom Mr. Gephardt should meet. Id. at ¶ 3. They also touched on, in the course of casual conversation, what subsequent campaign appearances Mr. Gephardt might have tentatively scheduled in the state and general national "campaign strategy."1/ No one on Congressman Jenkins's staff, including Mr. Smith, engaged in any conversation with the Gephardt Committee for the purpose of discussing or gathering information to use in connection with preparing or running the newspaper advertisements nor did the subject of these expenditures ever arise.

1/ In response to the Commission's Questions and Request for Production of Documents, the Committee stated that conversations with the Gephardt Committee centered on "scheduling, key contact individuals and campaign strategy". Some clarification is necessary regarding the Committee's use of the term "campaign strategy". "Campaign strategy" was a catchall phrase to describe the subject matter of a casual stage of the conversations, which occurred exclusively for the purpose of scheduling the upcoming event.

More precisely, the discussions of "campaign strategy" were political banter about how Gephardt was doing nationally and his prospects for Super Tuesday. The Gephardt staff involved were located in Washington, D.C. and had little or no knowledge about the Georgia campaign or the candidates needs or plans in the state, or nationally, other than the details of his schedule.

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The Jenkins Committee decided, totally independently, to place newspaper advertisements which explained the reasons for Mr. Jenkins's support for Mr. Gephardt in the presidential race. See Jenkins Affidavit and Smith Affidavit. This advertisement ran in thirty-one papers throughout Georgia. The ad was a note from Congressman Jenkins about his longstanding relationship with Mr. Gephardt, not reflective of any Gephardt campaign strategy or plan. Exhibit A. It discussed common values and goals shared by the Congressmen during their years of service together.

The Committee reviewed the requirements of the FECA and the Regulations prior to running the advertisements to ensure that any prior contact that had occurred with the Gephardt Committee would not destroy the independence of the expenditure. Smith Affidavit ¶ 5. To confirm his understanding of the law, Mr. Smith consulted the Commission staff regarding the specific factual situation. Id. at ¶ 6.

Applicable Law

The FECA and pursuant Regulations adopt the definition of "independent expenditure" articulated by the Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976), that is any expenditure which: (1) expressly advocates the election or defeat of a clearly identified candidate; 2/ and (2) is made without the cooperation, the prior consent of or in consultation with, or at the request or suggestion of any candidate or any agent or authorized committee of the candidate for whom the expenditure is made. 2 U.S.C. § 431(17); 11 C.F.R. § 109.1(a). Prior arrangement, coordination or direction by the candidate or his agent relative to the expenditure defeats the independence of that expenditure. The FEC Regulations establish a presumption that an expenditure is not independent if it is made "based on information about the candidate's plans, projects or needs provided by the candidate or his agent with a view toward having an expenditure made." (emphasis added). 11 C.F.R. § 109.1(b)(4)(i).

2/ There is no question that these expenditures were made for the purpose of expressly advocating Mr. Gephardt's nomination for President.

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Discussion

The General Counsel's Brief concludes that the Committee's expenditure must have been "made in cooperation or concert with the Gephardt for President Committee, either by arrangement or coordination or based on knowledge of the candidate's plans provided by the candidate's committee". (emphasis added) The facts do not support this conclusion, and they do not, in any case, support any suggestion that the candidate provided information "with a view toward having an expenditure made". The Gephardt campaign was not aware or informed of any proposed newspaper ads. There is no evidence, either based on the limited contacts between the Committee and Gephardt's campaign or the content and placement of the ads, that the Committee's independence was in any way compromised prior to making these expenditures.

A. No Factual Basis for Raising a Presumption of Nonindependence

A presumption of nonindependence arises only if: (1) the expenditure is "based on information" about the candidates plans, projects, or needs; and (2) the candidate, his committee or agent provides this information "with a view toward having the expenditure made". 11 C.F.R. § 109.1(a)(4)(i)(A). Therefore, even if the Gephardt Committee had imparted information to the Jenkins Committee about the campaign, which it did not, so long as such information was not provided with the intent of having the expenditure made, the presumption of nonindependence could not arise.

Running newspaper advertisements was the Committee's idea which was never discussed with or revealed to the Gephardt campaign. The only information provided to the Jenkins staff was that necessary to schedule Mr. Gephardt's trip to Georgia. The Gephardt campaign had no idea that the Committee was contemplating or had plans to place the newspaper advertisements or, for that matter, make any expenditure in support of Mr. Gephardt's candidacy. Therefore, the requisite intent by the Gephardt campaign to provide information to the Committee in order to make this expenditure did not exist. Without this intent, no presumption is raised.

Moreover, the advertisements themselves speak to their independence. They were notes to fellow Georgians from Mr. Jenkins about his relationship with Mr. Gephardt over the years they served together in the House of Representatives. This personal expression of support is not "based on information" from the campaign. Further, the placement of the advertisements throughout the state is evidence that

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distribution was not in any way based on targeting or demographic information provided by the campaign. The advertisements ran in every major newspaper in Georgia, not targetted to geographical areas or voter groups of key importance to the campaign. These expenditures do not even meet the first requirement--that they were made "based on information" from the Gephardt Committee--to trigger the presumption of nonindependence.

B. No Prior Arrangement or Coordination

The General Counsel states that the expenditure, if not "based on information" from the Gephardt campaign, was made subject to arrangement, coordination or direction by the Gephardt Committee prior to making the expenditure. As the Commissioners themselves have noted, "the making of [independent] expenditures always carries the opportunity for coordination between the maker of the expenditure and the candidate benefitted by them". MUR 2766, Statement of Reasons, Commissioner Josefiak. But there is no evidence, or any basis for inferring from the advertisements themselves, that the Committee took that opportunity here. Moreover, the two individuals who could have consulted or coordinated with the Gephardt Committee, attest that no such coordination or cooperation occurred.

The Act does not impose, nor has the Commission ruled that there is, a total bar on communications between an independent expenditure committee and the candidate, or his agent, that may benefit from that expenditure, so long as those communications do not relate to the independent expenditures themselves. Establishing such a strict standard, particularly in light of evidence including sworn affidavits that no such coordination or cooperation occurred, was never contemplated by the FECA or the Supreme Court in Buckley v. Valeo.

The Supreme Court, in defining the standard of requisite independence noted, if a person purchases billboard advertisements endorsing a candidate "completely on his own and not at the request or suggestion of the candidate or his agent's [sic] that would constitute an independent expenditure . . .". 424 U.S. at 47 n. 53; (quoting S. Rep. No. 689 93rd Cong., 2nd Sess. 18, reprinted in 1974, U.S. Code Cong. & Admin. News 5604. Similar circumstances are presented here. The Committee, completely on its own, with no request or suggestion of Congressman Gephardt or any agent, expended funds for the advertisements.

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Conclusion

There is no factual or legal basis to find that the Committee was not acting independently of the Gephardt campaign in designing and purchasing these advertisements. For all of the reasons stated above, the Commission should find no probable cause to believe that the Respondents violated any provision of the FECA.

Respectfully submitted,

Robert F. Bauer
B. Holly Schadler
Counsel for Respondents

Enclosure

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JENKINS
FOR CONGRESS

Ed Jenkins

Dear Fellow Georgians,

Over the past six months, many of you have asked why I am supporting **Dick Gephardt** for President. Serving on the House Ways & Means Committee with him for the past 11 years has given me many opportunities to see the depth of his commitment to America. As a grassroots worker and moderate Democrat, Dick and I share many common values and goals. As a candidate for President of the United States, he is the best.

Dick Gephardt and I have worked closely on major trade issues involving the textile and apparel industries, as well as on agricultural matters. We have fought for tough, fair trade policies that would correct imbalances with other countries. Simply put, we have sought to enforce the golden rule with our trade partners: treat us fairly and you'll get the same in return. He has worked diligently to preserve and support our agricultural bases and family farms.

The Gephardt Presidency will invest our resources in the greatest hope we have...our people...those who are beginning their careers, those who are established in the workplace and those who have retired. Dick Gephardt is a realist. He is a motivator and a leader. I have always found him to be very attentive to me as a Georgian and the needs of our state. I trust him, and I wholeheartedly endorse him for President of the United States.

Ed Jenkins

Ed Jenkins

Congressman, 9th District
of Georgia

Dick Gephardt

This ad is paid for by the Jenkins for Congress Committee, and is not authorized by any candidate.

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1110 VERMONT AVENUE, N.W. • WASHINGTON, D.C. 20005 • (202) 887-9030

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 JAN -9 PM 2:27

January 9, 1991

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

Attention: Mary Taksar

Re: MUR 2841 - Ed Jenkins for Congress Committee and Hollis Lathem, as Treasurer

Dear Mr. Noble:

Enclosed you will find the affidavits of Edgar L. Jenkins and Samuel F. Smith filed to accompany the letter submitted by the Ed Jenkins for Congress Committee and Hollis Lathem, as Treasurer, on January 8, 1991.

Sincerely,

Robert F. Bauer
B. Holly Schadler
Counsel to Respondents

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TELEX: 44-0277 PCSO UI • FACSIMILE (GP I, II, III): (202) 223-2088
OTHER OFFICES: ANCHORAGE, ALASKA • BELLEVUE, WASHINGTON • PORTLAND, OREGON • SEATTLE, WASHINGTON

BEFORE THE
FEDERAL ELECTION COMMISSION

IN THE MATTER OF
Ed Jenkins for Congress)
Committee and Hollis)
Lathem, as Treasurer)

MUR 2841

AFFIDAVIT OF SAMUEL F. SMITH

I, Samuel F. Smith, under penalty of perjury pursuant to Section 1746 of Title 28, declare as follows:

1. I have personal knowledge of the facts set forth herein and, if called upon to testify in this matter, I would testify as set forth herein.

2. I served as Administrative Assistant to Congressman Ed Jenkins during the years 1987 and 1988. I also served as campaign director of the Ed Jenkins for Congress Committee (the "Committee") for certain periods during 1987 and 1988.

3. I talked to the staff of the Gephardt for President Committee ("Gephardt Committee") for the purpose of arranging the details of Congressman Gephardt's trip to Georgia on February 26, 1988.

4. These conversations dealt specifically with Mr. Gephardt's schedule and other details related to his attendance at the Jefferson-Jackson Day Dinner.

5. I reviewed the requirements related to independent expenditures under the Federal Election Campaign Act of 1971, as amended, and the Regulations prior to the Committee placing the newspaper advertisements.

6. I contacted the Federal Election Commission to confirm my understanding of the law as it related to independent expenditures.

7. I did not consult with the Gephardt Committee staff, or any agent of the Gephardt Committee, about the newspaper advertisements or any proposal to make expenditures to advocate the nomination of Mr. Gephardt.

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8. I did not communicate directly or indirectly with the Gephardt Committee about its activities, strategies or needs as they related to the newspaper advertisements.

9. The Gephardt Committee never suggested or requested that the Jenkins Committee make an expenditure to place newspaper advertisements, or for any other purpose, in support of the nomination of Mr. Gephardt.

Further Affidavit sayeth not.

Samuel F. Smith

Samuel F. Smith

Subscribed and sworn to before me this 8th day of January, 1991.

Udine B. Henry

Notary

Notary Public, Hall County, Georgia
My Commission Expires April 11, 1992

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BEFORE THE
FEDERAL ELECTION COMMISSION

IN THE MATTER OF
Ed Jenkins for Congress)
Committee and Hollis) MUR 2841
Lathem, as Treasurer)

AFFIDAVIT OF EDGAR L. JENKINS

I, Edgar L. Jenkins, under penalty of perjury pursuant to Section 1746 of Title 28, declares as follows:

1. I have personal knowledge of the facts set forth herein and, if called upon to testify in this matter, I would testify as set forth herein.

2. I have served as a Member of Congress from Georgia since 1977.

3. On April 20, 1987, I appeared with Mr. Gephardt at a reception prior to Mr. Gephardt's speech to the Dekalb County Democratic Party.

4. I appeared with Mr. Gephardt at the Jefferson-Jackson Day Dinner in Georgia on February 26, 1988.

5. At no time during these joint appearances, or any time, did I discuss with Mr. Gephardt my Committee making independent expenditures related to the Georgia primary or Congressman Gephardt's presidential campaign or specifically the proposal to place advertisements in Georgia newspapers.

6. I did not consult with Mr. Gephardt, the Gephardt for President Committee ("Gephardt Committee"), or any agent of the Gephardt Committee, about the newspaper advertisements or any proposal to make expenditures to advocate the nomination of Mr. Gephardt.

7. I did not communicate directly or indirectly with Mr. Gephardt, or any agent of Mr. Gephardt or the Gephardt Committee, about its activities, strategies or needs as they related to the newspaper advertisements.

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8. The Gephardt Committee never suggested or requested that the Jenkins Committee make any expenditure to place newspaper advertisements, or for any other purpose, in support of the nomination of Mr. Gephardt.

Further Affidavit sayeth not.

Edgar L. Jenkins

Edgar L. Jenkins

Subscribed and sworn to before me this 8th day of January, 1991.

Ann Y. Dobson

Notary

My commission expires 11-5-93

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SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Ed Jenkins for Congress	)	MUR 2841
Committee and Hollis Lathem,	)	
as treasurer	)	

GENERAL COUNSEL'S REPORT

I. **BACKGROUND**

On November 9, 1990, the Office of the General Counsel mailed a brief and a letter notifying the Respondents of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe that the Ed Jenkins for Congress Committee ("Jenkins Committee") and Hollis Lathem, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A) and 441d(a).

II. **GENERAL COUNSEL'S BRIEF**

The General Counsel's brief notes that on June 3, 1987, the Jenkins Committee made a $1,000 contribution to the Gephardt Committee for the primary election. It also notes that when the Jenkins Committee later made expenditures, totaling $ 12,312.52, on behalf of Richard Gephardt for President, the Committee made excessive in-kind contributions in the amount of $12,312.52.[1]

The General Counsel's brief states that despite the Jenkins

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1. The Jenkins Committee reported making independent expenditures, totaling $12,312.52, on behalf of Richard Gephardt for President. On February 26, 1988, the Jenkins Committee purchased advertisements wholeheartedly supporting Richard Gephardt in thirty-one (31) Georgia newspapers. The Jenkins Committee reported the purchase of these advertisements to the Commission as independent expenditures in its 1988 April Quarterly Report.

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Committee's claim that the advertisements were not made with any knowledge, cooperation, or consultation with the Gephardt Committee, the facts indicate that the advertisements placed by the Jenkins Committee were made in cooperation or concert with the Gephardt for President Committee, either by arrangement or coordination or based on the knowledge of the candidate's plans provided by the candidate's committee. The General Counsel's brief indicates that there were discussions between the staffs of the Jenkins and Gephardt Committees regarding a joint appearance in Georgia, including scheduling, key contact individuals, and campaign strategy. Additionally, it states that on February 26, 1988, Congressman Jenkins formally endorsed Representative Gephardt for President in a press release, the two Congressmen made a joint appearance at the annual Jefferson-Jackson Day Dinner in Georgia, and the Jenkins Committee purchased advertisements endorsing Richard Gephardt for President in thirty-one (31) Georgia newspapers.

III. COMMITTEE'S RESPONSE

In their response to the General Counsel's brief, Respondents contend that the the Committee did not violate the Act or the Regulations. Respondents contend that the expenditures made by the Jenkins Committee for advertisements in thirty-one (31) Georgia newspapers were made totally independently of the Gephardt for President Committee. The Respondents further contend that because the expenditures were made independently, there was no limit on the amount that the Jenkins Committee was permitted to expend for the purchasing of

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these advertisements. Additionally, the Respondents argue that because the expenditures were made independently, the disclaimer printed on each advertisement was appropriate.

In their response, the Respondents indicate that there was limited contact between staff members of the Jenkins and Gephardt Committees and between the Congressmen and that no conversation relating specifically to independent expenditures took place. The Respondents state that prior to the February 26, 1988 event, Congressman Jenkins' staff spoke with the Gephardt Committee's scheduling staff in Washington, D.C. to organize the details of Congressman Gephardt's appearance. According to the Respondents, these conversations focused specifically on scheduling arrangements which included details of Congressman Gephardt's arrival and departure and a discussion of key Democratic Party and local public leaders whom Mr. Gephardt should meet.

The Respondents acknowledge that the Congressmen appeared together in Georgia at two events,[2] however, they state that the Congressmen did not specifically discuss, at the two events or at any time, the Jenkins Committee making expenditures related to the Georgia primary or placing advertisements in Georgia newspapers. The Respondents state that no one on Congressman Jenkin's staff engaged in any conversation with the Gephardt Committee for the purpose of discussing or gathering information

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2. On April 20, 1987, Congressmen Jenkins and Gephardt appeared before the DeKalb County Democratic Party and on February 26, 1988, they appeared at the Annual Jefferson-Jackson Day Dinner.

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to use in connection with preparing or running the newspaper advertisements and that the subject of making independent expenditures never arose.

The Respondents also acknowledge that when they answered the Commission's interrogatories, they stated that the Jenkins and Gephardt Committees discussed campaign strategy. In its response to the General Counsel's brief, the Jenkins Committee indicates that when the Committee used the term "campaign strategy," it used it in a casual manner to describe a casual stage of conversations which occurred for the purpose of scheduling the joint appearance of the Congressmen at the Jefferson-Jackson Day Dinner. See Attachment 2, page 3. Respondents also state that the newspaper advertisements at issue were not reflective of Congressman Gephardt's campaign strategy but discussed the values and goals shared by the Congressmen.

The Respondents contend that the Gephardt Committee's requisite intent to provide information to the Jenkins Committee in order to make the expenditure in question does not exist. The Respondents also argue that the Act does not impose nor has the Commission ruled that there is a total bar on communications between an independent expenditure committee and the candidate or agent benefiting from that expenditure so long as those communications do not relate to the independent expenditures.

IV. AFFIDAVITS

On January 9, 1991, the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, submitted affidavits from

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Congressman Ed Jenkins and Samuel F. Smith.[3] See Attachment 3. These affidavits followed the Committee's response brief submitted on January 8, 1991.

In his affidavit, Congressman Jenkins states that he did not discuss with Mr. Gephardt the Jenkins Committee's making expenditures on behalf of the Gephardt Committee and that he did not consult with Mr. Gephardt, the Gephardt for President Committee, or any agent of the Gephardt Committee regarding the newspaper advertisements. Congressman Jenkins avers that he did not communicate directly or indirectly with Mr. Gephardt or the Gephardt Committee about its activities, strategies, or needs as they related to newspaper advertisements. Congressman Jenkins also states that the Gephardt Committee never suggested or requested that the Jenkins Committee make any expenditure to place newspaper advertisements, or for any other purpose, in support of Richard Gephardt.

In his affidavit, Mr. Smith states that he talked to the staff of the Gephardt for President Committee for the purpose of arranging the details of Congressman Gephardt's trip to Georgia on February 26, 1988 and that these conversations dealt specifically with Mr. Gephardt's schedule and other details related to his attendance at the Jefferson-Jackson Day Dinner held on February 26, 1988. Mr. Smith also avers that he did not

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3. According to Mr. Smith's affidavit, he served as Administrative Assistant to Congressman Jenkins during the years 1987 and 1988. Mr. Smith's affidavit also states that he served as campaign director of the Ed Jenkins for Congress Committee for certain periods during 1987 and 1988.

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consult with the Gephardt Committee staff or any agent of the Gephardt Committee about the newspaper advertisements or any proposal to make expenditures to advocate the nomination of Mr. Gephardt. Like Congressman Jenkins, Mr. Smith states that he did not communicate directly or indirectly with the Gephardt Committee about its activities, strategies, or needs as they related to the newspaper advertisements.

V. **SUPPLEMENTAL BRIEF**

This Office still feels that there is evidence which supports a finding of probable cause to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, made in-kind contributions to the Gephardt campaign. In our view, the placing of the advertisements on the same day as the press conference and Representative Gephardt's appearance in Georgia demonstrate that the advertisements were placed in concert with the the Gephardt campaign notwithstanding the absence of any communication between the Jenkins and Gephardt Committees regarding these advertisements.

Nevertheless, the response has put into issue whether or not the Jenkins Committee could make independent expenditures on behalf of Richard Gephardt, another Federal candidate. We recognize that this issue has been discussed at several Commission meetings leading up to a consensus to proceed in this matter on the basis that the advertisements were in-kind contributions. Given the response, the issue whether one candidate can make independent expenditures on behalf of another must be addressed. Therefore, this Office believes it is

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appropriate to issue a supplemental brief addressing this issue and give the Respondents additional time to respond before preparing a report to the Commission with appropriate recommendations.

1/25/91
Date

Lawrence M. Noble
General Counsel

Attachments:
1. General Counsel's Brief
2. Response
3. Affidavits of Congressman Jenkins and Mr. Samuel Smith

Staff Assigned: Mary Taksar

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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January 22, 1992 **SENSITIVE**

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: MUR 2841- Ed Jenkins for Congress Committee
and Hollis Lathem, as treasurer

Attached for the Commission's review is a supplemental 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 January 22, 1992. 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

Staff Assigned: Mary Taksar

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 22, 1992

Robert F. Bauer, Esq.
B. Holly Schadler, Esq.
Perkins Coie
607 14th Street, N.W.
Suite 800
Washington, D.C. 20005-2011

RE: MUR 2841
Ed Jenkins for Congress Committee
and Hollis Lathem, as treasurer

Dear Mr. Bauer and Ms. Schadler:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found reason to believe that the Ed Jenkins for Congress Committee ("Committee") and Hollis Lathem, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A) and 441d(a), and instituted an investigation in this matter.

After considering all the evidence available to the Commission and your response of January 9, 1991 to the General Counsel's Brief dated November 11, 1990, the Office of the General Counsel has prepared a supplementary brief and is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a supplemental 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

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five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Mary Taksar, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2841
Ed Jenkins for Congress Committee and	)	
Hollis Lathem, as treasurer	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On March 28, 1989, the Commission found reason to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) by making excessive in-kind contributions to the Gephardt for President Committee and 2 U.S.C. § 441d(a) by failing to include the appropriate disclaimer in newspaper advertisements and initiated an investigation in this matter. On November 9, 1990, this Office mailed a brief to the respondents which notified them of the General Counsel's intent to recommend to the Commission a finding of probable cause to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A) and 441d(a). On January 8, 1991, respondents filed their response to the General Counsel's brief and presented additional evidence as support of their position that because the expenditures were made independently, there was no limit on the amount that the Jenkins Committee was permitted to expend for the purchase of the thirty-one (31) newspaper advertisements and that the disclaimer on each advertisement was appropriate.

Because the respondents submitted additional affidavits in response to the General Counsel's brief, the General Counsel has

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taken this additional evidence into account and prepared a revised review of the factual record in this matter as it now exists. The General Counsel still holds the opinion that the record supports a finding of probable cause to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, made in-kind contributions to the Gephardt for President campaign notwithstanding respondents' additional evidence. Nevertheless, if this additional evidence is viewed as establishing that the payments for the advertisements would qualify as independent expenditures, then the response has put into issue the question whether Representative Jenkins could make independent expenditures on behalf of Representative Gephardt. Thus, the General Counsel submits this supplemental brief to address this issue.

II. ANALYSIS

A. Facts

On June 3, 1987, the Jenkins Committee made a $1,000 contribution to the Gephardt Committee for the primary election. The Committee later made expenditures totaling $12,312.52 on behalf of Richard Gephardt for President. The Committee spent the $12,312.52 on advertisements which supported Richard Gephardt. These advertisements appeared in thirty-one (31) Georgia newspapers on March 4, 1988, four days prior to the Georgia Presidential Primary. The advertisements consisted of a letter on a facsimile of "Jenkins for Congress" stationery from Congressman Jenkins to his constituents which explained that he was supporting Richard Gephardt for President because he had served with Mr. Gephardt for eleven years on the House Ways and

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Means Committee and had witnessed the "depth of his commitment to America." Congressman Jenkins further stated in the letter that he "wholeheartedly endorse[d] him for President of the United States." The advertisements included photographs of Congressmen Jenkins and Gephardt.

Respondents acknowledged that there were discussions between the staffs of the Jenkins and Gephardt committees regarding a joint appearance in Georgia, including scheduling, key contact individuals, and campaign strategy. Additionally, on February 26, 1988, Congressman Jenkins formally endorsed Richard Gephardt for President in a press release and the two Congressman made a joint appearance at the annual Jefferson-Jackson Day Dinner in Georgia.

In its April 1988 Quarterly Report, the Committee reported the purchase of the newspaper advertisements as independent expenditures. The respondents continue to assert that the expenditures made by the Committee were made totally independently of the Gephardt for President Committee. According to the respondents, there was limited contact between staff members of the Jenkins and Gephardt Committees and between Messrs. Jenkins and Gephardt and that no specific conversation relating to the expenditures ever occurred. The respondents state that on two occasions, Congressmen Jenkins and Gephardt appeared together at public events in Georgia. Respondents also state that one year prior to the expenditures, the Congressmen attended a reception before a speech Mr. Gephardt delivered to the Dekalb County Democratic Party. Respondents indicate that the two Congressmen attended the Jefferson-Jackson Day Dinner in Georgia on

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February 26, 1988.

Respondents submitted an affidavit from Congressman Jenkins which states:

> At no time during these joint appearances, or any time, did I discuss with Mr. Gephardt my Committee making independent expenditures related to the Georgia primary or Congressman Gephardt's presidential campaign or specifically the proposal to place advertisements in Georgia newspapers.
>
> I did not consult with Mr. Gephardt, the Gephardt for President Committee ("Gephardt Committee"), or any agent of the Gephardt Committee, about the newspaper advertisements or any proposal to make expenditures to advocate the nomination of Mr. Gephardt.
>
> I did not communicate directly or indirectly with Mr. Gephardt or the Gephardt Committee, about its activities, strategies or need as they related to newspaper advertisements.

According to respondents, prior to the February 1988 event, Congressman Jenkins' staff spoke with the Gephardt Committee's scheduling staff in Washington, D.C. to organize the details of Congressman Gephardt's appearance. Respondents state that these conversations focused specifically on scheduling arrangements. Additionally, respondents indicate that the conversations touched on, "in the course of casual conversation, what subsequent campaign appearances Mr. Gephardt might have tentatively scheduled in the state and general national 'campaign strategy.'" Respondents state that no one on Congressman Jenkins' staff engaged in any conversation with the Gephardt Committee for the purpose of discussing or gathering information to use in connection with the newspaper advertisements.

Respondents submitted an affidavit from Samuel F. Smith who served as administrative assistant to Congressman Jenkins during

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1987 and 1988 and as campaign director for certain periods in 1987 and 1988. Mr. Smith stated the following in his affidavit:

> I talked to the staff of the Gephardt for President Committee ("Gephardt Committee") for the purpose of arranging the details of Congressman Gephardt's trip to Georgia on February 26, 1988.
>
> These conversations dealt specifically with Mr. Gephardt's schedule and other details related to his attendance at the Jefferson-Jackson Dinner....
>
> I did not consult with the Gephardt Committee staff, or any agent of the Gephardt Committee, about the newspaper advertisements or any proposal to make expenditures to advocate the nomination of Mr. Gephardt.
>
> I did not communicate directly or indirectly with the Gephardt Committee about its activities, strategies or needs as they related to the newspaper advertisements.
>
> The Gephardt Committee never suggested or requested that the Jenkins Committee make an expenditure to place newspaper advertisements, or for any other purpose, in support of the nomination of Mr. Gephardt.

B. Legal Framework

1. Principal Campaign Committees and Independent Expenditures

In fashioning the Federal Election Campaign Act and its amendments, Congress made some fundamental distinctions between political committees organized to support a specific candidate and authorized by that candidate to do so ("authorized committees") and all other types of political committees.

First, the Act provides a separate definition for an "authorized committee." The term "authorized committee" means the principal campaign committee or any other political committee authorized by a candidate under Section 432(e)(1) of Title 2 to receive contributions or make expenditures on behalf of such candidate. 2 U.S.C. § 431(6). The Act states that no political

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committee which supports or has supported more than one candidate may be designated as an authorized committee. 2 U.S.C. § 432(e)(3). The term "support" does not include a contribution by an authorized committee in amounts of $1,000 or less to an authorized committee of any other candidate.[1] 2 U.S.C. § 432(e)(3)(B). An "unauthorized committee" is a political committee which has not been authorized in writing by a candidate to solicit or receive contributions or make expenditures on behalf of such candidate, or which has been disavowed pursuant to 11 C.F.R. § 100.3(a)(3). The Act requires each candidate for Federal office to designate in writing a political committee to serve as the principal campaign committee of the candidate within 15 days of becoming a candidate. 2 U.S.C. § 432(e)(1). The Act permits a candidate to designate other committees to serve as authorized committees if designations are in writing and filed with the principal campaign committee of such candidate. 2 U.S.C. § 432(e)(1).

Second, the Act distinguishes between authorized and unauthorized committees regarding the method of filing reports and other documents. Authorized committees of a candidate must file designations, statements, or reports of receipts or disbursements made by the authorized committee of a candidate with the

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1. These conditions allow a candidate for the office of President to designate the national committee of such political party as a principal campaign committee provided that the national committee maintains separate books of account with respect to its functions as a principal campaign committee and candidates may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee.

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candidate's principal campaign committee so that the principal campaign committee can compile and file such designation, statements, and reports as required by the Act. 2 U.S.C. § 432(f). Designations, statements, and reports required for a candidate or by an authorized committee of a candidate for the House of Representatives, or Delegate or Resident Commissioner to Congress, and by the principal campaign committee of such candidate must be filed with the Clerk of the House of Representatives, as custodian for the Commission. 2 U.S.C. § 432(g). Designations, statements, and reports required to be filed by a candidate for the office of Senate, and by the principal campaign committee of such candidate must be filed with the Secretary of the Senate, as custodian for the Commission. Id. Unauthorized committees, however, are required to file statements and reports directly with the Commission.

Third, the Act requires more expedited forwarding of contributions to authorized committees than it does for unauthorized committees. The Act requires that every person who receives a contribution for an authorized political committee must forward it to the treasurer within 10 days of receipt regardless of the amount of the contribution. 2 U.S.C. § 432(b)(1). The Act also requires that the name and address of the person making the contribution and the date of receipt be sent to the authorized committee within 10 days for contributions exceeding $50. 2 U.S.C. § 432(b)(1). In the case of unauthorized committees, however, every person who receives a contribution for $50 or less must forward the contribution to the treasurer within 30 days of

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receipt. 2 U.S.C. § 432(b)(2). If the amount of the contribution exceeds $50, every person who receives such contribution must forward the contribution and the name and address of the contributor and the date of receipt to the treasurer within 10 days of receipt. Id.

Fourth, the Act also makes distinctions between authorized and unauthorized committee regarding contribution limits and the period of time upon which the limit is based. In the case of authorized committees, no person may make contributions to an authorized committee with respect to any election which exceeds an aggregate of $1,000. 2 U.S.C. § 441a(a)(1). However, in the case of unauthorized committees, no person may make contributions to such a committee in any calendar year which in the aggregate exceed $5,000. Id.

Fifth, the Act also places different disclaimer requirements on authorized and unauthorized committees. When an authorized committee makes an expenditure for communications expressly advocating the election of a candidate or solicits any contribution through direct mail or general public political advertising, the communication must clearly state that it is paid for by the authorized political committee. 2 U.S.C. § 441d(a)(1). When an unauthorized committee makes an expenditure for communicating the election or defeat of a clearly identified candidate or solicits any contribution through direct mail or general public political advertising, the communication must clearly state the name of the person who paid for the communication and state whether or not the communication is

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authorized by any candidate or candidate's committee. 2 U.S.C. §§ 441d(a)(2) and 441d(a)(3).

Sixth, the Act distinguishes between authorized and unauthorized committees for reporting purposes. In an election year, if a political committee is the principal campaign committee of a candidate running for the House of Representatives or for the Senate, the treasurer must file a pre-election report no later than 12 days preceding an election, a post-general report filed no later than 30 days after the general election, and quarterly reports which must be filed no later than the 15th day after the last day of each calendar quarter. 2 U.S.C. § 434(a)(2). In a non-election year, a principal campaign committee of a candidate for the House or Senate is required to file a Mid-Year Report and a Year-End Report. A principal campaign committee must also notify in writing the Clerk, the Secretary, or the Commission and the Secretary of State, as appropriate of any contribution of $1,000 or more received by an authorized committee after the 20th day, but no more than 48 hours before any election. 2 U.S.C. § 434(6)(A).

An unauthorized political committee may select quarterly or monthly reporting. If an unauthorized political committee selects monthly reporting, it must file pre-election and post-election reports in lieu of the November and December Monthly Reports in an election year. In an election year, an unauthorized committee which has selected quarterly reporting must file a report no later than the 15th day after the last day of the quarter except that for the quarter ending December 31, the report must be filed no

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later than January 31. Additionally, in an election year, quarterly filers must file a pre-election report no later than the 12th day before an election in which the committee makes a contribution or expenditure on behalf of the candidate and a post-election report no later than the 30th day after the the general election. In a non-election year, quarterly filers must file a report covering January 1 through June 30 by July 31 and a report covering July 1 through December 31 by January 31 of the following calendar year. In addition, unauthorized committees are also required to report independent expenditures aggregating $1,000 or more that are made after the 20th day but more than 24 hours before 12:01 A.M of the day of the election within 24 hours. 11 C.F.R. § 104.4(b).

Seventh, important distinctions also exist in the contents of reports filed by authorized and unauthorized committees. Both must disclose the total amount of disbursements for the reporting period and calendar year including: expenditures to meet candidate or committee operating expenses; transfers to affiliated committees; repayment of loans; contribution refunds; and other offsets to contributions. Authorized committees must also disclose transfers to other committees authorized by the same candidate, repayment of loans made or guaranteed by the candidate, and any other disbursements. Unauthorized committees, however, must disclose contributions made to other political committees, loans made by the reporting committee, <u>independent expenditures</u>, expenditures made under section 441a(d), and any other disbursements. 2 U.S.C. § 434(b)(4). Thus, the Act does

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not make any provision for the reporting of independent expenditures by authorized committees.

Eighth, the Act also makes distinctions on how authorized committees may expend its funds. The Act provides that an authorized committee may spend its funds for certain types of campaign materials that include references to other candidates without the materials being considered contributions or expenditures on behalf of the other candidate. There is no similar exception for unauthorized committees. Additionally, the Act makes distinctions as to how authorized and unauthorized committees may use excess campaign funds. Unauthorized committees may expend its excess funds for for any lawful purpose consistent with the Act and Commission regulations. See Advisory Opinion 1991-21. However, in the case of authorized committees, the Act specifically limits the use of funds received by a candidate as contributions which are in excess of any amount necessary to defray expenditures. The Act states that the funds may be used to defray any ordinary and necessary expenses incurred in connection with the duties of the officeholder. Additionally, such funds may be contributed to an organization described in section 170(c) of Title 26 or may be used for any other lawful purpose. The term "any lawful purpose" excludes using the funds for personal use except to defray any ordinary and necessary expenses incurred in connection with the duties of an officeholder. 2 U.S.C. § 439a.

As this review demonstrates, Congress has accorded authorized committees special status, privileges, and restrictions and

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materially distinguished them from unauthorized committees. The crucial distinction is in the very definition of an authorized committee as one that (1) is designated by a candidate and (2) does not support more than one candidate. 2 U.S.C. §§ 431(6) and 432(e)(3). Support does not include contributions of $1,000 or less to another authorized committee. Thus, a committee that has been designated as an authorized committee cannot make contributions in excess of $1,000 to other authorized committees or make independent expenditures in any amount and still retain its status as an authorized committee.

Counsel asserts that the expenditures made by the Jenkins Committee were made totally independently of the Gephardt campaign. Counsel argues that because the expenditures were independent expenditures, there was no limit on the amount the Jenkins Committee was permitted to expend for these advertisements.

The General Counsel recognizes that the Supreme Court has found limits on independent expenditures to be unconstitutional. See Buckley v. Valeo, 424 U.S. 1 (1976) and FEC v. NCPAC, 470 U.S. 480 (1985). Although the language in these opinions may seem broad enough to include independent expenditures by authorized committees, neither case involved factual circumstances where an authorized committee had claimed to have made independent expenditures. Thus, the General Counsel does not find those decisions to be controlling in this matter. As noted, the circumstances in this matter are not simply whether a person or committee in general can make independent expenditures but whether

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authorized committees can make independent expenditures or contributions in excess of $1,000 and still retain its status as an authorized committee. In the General Counsel's view, Congress had clearly precluded authorized committees from "supporting" other candidates in such a manner. Therefore, even if the payments by the Jenkins Committee for the March 4, 1988 advertisements are treated as independent expenditures, the Jenkins Committee would be viewed as having supported more than one candidate in violation of the Act.

On this basis, there is probable cause to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 432(e)(3).

2. In-Kind Contributions

The General Counsel continues to view the facts as showing that the advertisements placed in the Georgia newspapers were made in concert with the Gephardt campaign. Congressmen Jenkins and Gephardt were both members of the House and the same political party, in addition to being on the same committee, the House Ways and Means Committee. A series of events and actions occurred in the weeks preceding the Georgia Presidential Primary which negates the Jenkins Committee's assertion that the expenditures were independent. Staff of the two committees discussed scheduling, key contact individuals, and campaign strategy regarding the February 26, 1988 joint appearance in Georgia. On February 26, 1988, the Congressmen appeared together at the Jefferson-Jackson dinner, a fundraiser for Richard Gephardt, and at a joint press conference during which Congressman Jenkins endorsed Richard

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Gephardt for President.[2] Less than a week later and four days before the March 8, 1988 Georgia Presidential Primary, the Jenkins Committee placed newspaper advertisements wholeheartedly supporting Richard Gephardt for President in 31 Georgia newspapers.

These contacts preclude any conclusion that the advertisements were made "totally independently" of the Gephardt campaign. Instead, these advertisements were coordinated expenditures and, thus, in-kind contributions. This Office notes that the fact that there may have been no specific or explicit discussion of the particular advertisements at issue is not controlling. The facts adequately show that the Jenkins Committee had knowledge of the campaign plans and strategy of the Gephardt campaign even if only limited to Georgia or to the February 26 appearances and press conferences including the endorsement and that the arrangement or coordination occurred prior to the placement of the advertisements in the 31 Georgia newspapers.[3]

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2. The March monthly report for the Gephardt for President Committee disclosed that several contributions were received by the Committee on February 26, 1988, the date of the Jefferson-Jackson Dinner.

3. Counsel cites 11 C.F.R. § 109.1(a)(4)(i)(A) and asserts that a presumption of nonindependence arises only if, with a view toward having an expenditure made, the expenditure is based on information about the candidate's plans, projects, or needs and the candidate, his committee, or agent provides such information. This Office notes that according to 11 C.F.R. § 109.1(a)(4)(i), the term "made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee" means "any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication." Therefore, we note that arrangement, coordination, and direction

Thus, the General Counsel still views these expenditures as constituting in-kind contributions to the Gephardt campaign in violation of 2 U.S.C. § 432(e)(3).

It therefore also follows that the disclaimer should have stated that the advertisement was authorized by the Gephardt for President Committee. Because the disclaimer stated "paid for by the Jenkins for Congress Committee, and is not authorized by any candidate," it violates 2 U.S.C. § 441d(a).

C. Conclusion

Therefore, the General Counsel recommends that the Commission find probable cause to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. §§ 432(e)(3) and 441d(a).

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 432(e)(3) and 441d(a).

1/21/92
Date

Lawrence M. Noble
General Counsel

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(Footnote 3 continued from previous page)
by the candidate or his or her agent is not limited to those circumstances identified by counsel and listed in 11 C.F.R. § 109.1(a)(4)(i)(A) but can be accomplished by additional means.

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Ed Jenkins for Congress Committee and Hollis Lathem, as Treasurer	)	
v.	)	MUR 2841
Federal Election Commission	)	

RESPONSE TO THE SUPPLEMENTAL "PROBABLE CAUSE" BRIEF OF THE GENERAL COUNSEL

The General Counsel has revised his first General Counsel brief and submitted another. His original conclusion, that Committee did not make truly "independent" expenditures, remains unshaken. He also presents a new argument, effectively mooting any conflict over evidence, that authorized committees may not <u>as a matter of law</u> make independent expenditures. These arguments fail the test of both precedent and logic. The Committee addresses each below in the same order as they appear in the Counsel's brief.

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The General Counsel's Contention That Authorized Committees May Not Make Independent Expenditures Cannot Stand Under Prevailing Constitutional Legal Standards.

The General Counsel claims that authorized committees may not make independent expenditures because, as highly restricted vehicles for political communication, their "privileges" do not include the right to make such expenditures. He builds this case out of sparse material, utilizing tenuous inferences from unrelated statutory provisions. Of particular note in a matter involving independent expenditures, the General Counsel neglects the constitutional standards, articulated by the Supreme Court, which determine when Government may restrict this type of speech.

For several pages the General Counsel notes that the regulations distinguish for a variety of purposes between authorized and unauthorized committees. See G.C. Brief at 5-11. This is true, but it does not contribute meaningfully to the resolution of central issue in this matter. The distinction between authorized and unauthorized committees, for reporting, accounting, and other purposes, has nothing to do with the right of these committees to make independent expenditures.

For example, the General Counsel notes that the contribution limits are different for authorized and

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unauthorized committees. See G.C. Brief at 8. How this difference in the treatment of contributions relates to the authority to make independent expenditures is left unstated. A clear statement would not help. The problem with this line of argument is its neglect of the critical difference, emphasized by the Supreme Court, between contributions and expenditures. Buckley v. Valeo, 424 U.S. 1 (1976). There, the Court stated:

> "By contrast with limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage free communication . . . ." Buckley v. Valeo at 20.
>
> ". . . the act expenditure limitations pose far greater restrains on the freedom on speech and association than do its contribution limitations." Buckley v. Valeo at 45.

The approaches used by Congress in structuring contribution limits have no bearing on the larger constitutional questions surrounding independent expenditures, in particular.[1]

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[1] It is similarly unclear how the different reporting, accounting, disclaimer, and other requirements are appropriately cited in support of the General Counsel's position. The Counsel's zeal in developing this argument also leads him (though it hardly matters) to contrive differences where they bearly exist. See G.C. Brief at 11 where there appears discussion of a purportedly significant difference in the lawful disposition that authorized and unauthorized committees may make of surplus funds.

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The distinction the General Counsel ignores -- between contributions and expenditures -- haunts the other principal argument presented in his new Brief. He argues that a political committee can only qualify as "authorized" if it supports only one candidate. "Support," he notes, is defined by regulation as no more than $1,000 in contributions to another candidate in any election. 11 C.F.R. § 102.13(c)(2). This answers his argument, inasmuch as the "support" to which authorized committees are limited consist of contributions. No mention is made of expenditures which by law are treated as generically different in character and subject to a sharply different constitutional analysis.

The controlling constitutional precedent distinguishing between contributions and expenditures also establishes the test for determining the permissibility of Government infringement on political speech. The General Counsel also ignores this dimension of the law. Restrictions on political spending may withstand constitutional scrutiny only if they serve a compelling state interest and are narrowly drawn to achieve that purpose. Buckley v. Valeo at 25. Moreover, the Court has limited the compelling interest which may be asserted to the prevention of actual or apparent corruption.[2]

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[2] Thus, for example, an attempt by Congress or the FEC to redress resource imbalances between the wealthy and the less so is impermissible.

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Federal Election Commission v. National Conservative Political Action Committee, 470 U.S. 480, at 496-497 (1985); see also Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, at 296-297 (1981). Only by this stringent standard could Congress conclude that it possesses the constitutional authority to limit independent expenditures by any group or person, including authorized committees.

There is little ground for assuming that a successful argument in favor of a restriction on authorized committees could be made or would be sustained upon review by the Court. Nowhere does Congress suggest that a voluntary association supporting the candidacy of an individual is somehow constitutionally disfavored. While the General Counsel suggests that "Congress clearly" intended this result, G.C. Brief at 13, he has built his case by all means other than direct citation to the statute of legislative history. Yet, no regulatory agency can responsibly infer, suppose intuit, presume or, in some similar way, guess, that Congress intended to limit speech by a voluntary political association in apparent violation of constitutional guarantees.

If Congress set out to do so, it would have to base its action on the only relevant i.e., compelling, interest -- the potential for "corruption." This would be no small achievement. Protecting speech by one candidate for the

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benefit of another will hardly unleash speech with the potential to corrupt, in fact or in appearance. This type of speech is not inherently corrupting -- certainly not within the meaning of the law as it now stands.

There is the additional factor, noted in sworn affidavits, that Mr. Jenkins considered his support of Mr. Gephardt to be beneficial to his own campaign as well. The statute recognizes that a campaign may seek support from allying itself with another and it has made allowance for the one method by which this is done, 2 U.S.C. § 431(8)(B)(xi). The independent expenditures in favor of Gephardt represented, in Mr. Jenkins' best judgement, another such method and nowhere does the statute appear to prohibit it.

The Counsel's position also produces the anomalous position that an authorized committee can make a contribution, but not independent expenditures, of $1,000 on behalf of a favored candidate in any election. And, in fact, such a committee may make exempt expenditures under § 431(8)(B)(xi) without limitation for the benefit of another candidate -- but not a penny of independent expenditures. Then, too, an authorized committee may wish to criticize or "attack" another candidate, seeking his defeat, and the victim obviously will not "consent" to or "coordinate" the effort. This necessarily

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independent expenditure will be disallowed by the General Counsel's position.

The Congress has always assumed that except in extreme circumstances it should not seek to resolve the constitutional issues raised by its decisions, rather than leaving these to the resolution of the federal judiciary. This agency's responsibility is different, as it has on occasion recognized. The General Counsel's brief simply lacks a thoroughgoing consideration of the constitutional issues raised by the position that he takes: that an entire body of voluntary political associations known as "authorized committees" is precluded in all circumstances, as well as on the facts of this case, from making independent expenditures.

<u>The Facts Do Not Show Coordination Which Would Defeat The Jenkins Committee's Claim to Independence.</u>

The General Counsel builds his case on the facts against independence by pointing to the following relationships or contacts:

1. The concurrent service of Mr. Jenkins and Mr. Gephardt in the Congress and particularly on the Ways and Means Committee.

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2. Mr. Jenkins' appearance a year before the expenditures in Georgia at a fundraising event with Mr. Gephardt.

3. Mr. Gephardt's appearance with Mr. Jenkins at an event in Georgia, four days before the expenditures were made, at which Mr. Jenkins endorsed Gephardt for President.

These relationships appear in the General Counsel's view to overwhelm in probative significance the specific denials by affidavit presented by Respondents. This evaluation of the evidence is not consistent with either the Commission's resolution of other, considerably more prominent independent expenditure cases, or the brief experience of the Supreme Court in factual analyses bearing on the existence of "independence."

The concurrent service of Gephardt and Jenkins in the House of Representatives proves nothing. It is no more significant than, for example, a trade association's relationship to a Member of Congress over a the course of a congressional term when, thereafter, the trade association PAC makes independent expenditures for the Member's benefit. Some prior, unrelated association has never alone been invoked to defeat a claim of independence. There is no evidence that in the course of their concurrent service they sat side-by-side

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on the House floor to map out a program of Jenkins independent expenditures supporting Gephardt's Presidential candidacy.

As various Commissioners have noted on more than a few occasions, contacts may provide the "opportunity" to coordinate the making of independent expenditures, but the existence of the opportunity does not suffice in making the case. See MUR 2766 (1990), Statement of Reasons of Commissioners Elliott, Aikens and Josephiak, at 2; see also MUR 3069 (1991), Statement of Reasons of Commissioners Elliott, Aikens and Josephiak. What matters is the presence of evidence that such coordination took place -- that the opportunity was used to accomplish the illegal purpose. The General Counsel does not attempt with any such showing but simply asserts a concurrent service which suggest the "opportunity" but does not establish the use.

The Commission regulations do not focus on opportunities but rather on coordination or collaboration around the making of specific expenditures. The threshold definition of "independent expenditures" means an expenditure -- a specific expenditure -- "not made with the cooperation or with the prior consent of . . . any candidate." 11 C.F.R. § 109.1, Subsection (b)(4), defining the character of prohibited cooperation or consent, also focuses on the specific expenditure:

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> Any arrangement, coordination, or direction by the candidate . . . prior to the publication, distribution, display or broadcast of the communication. (emphasis added).

None of the regulatory prohibitions are developed out of a simple fact of prior or even concurrent association or contact. These type of relationships are legally significant in only two ways: first, where they suggest the need for further inquiry to determine whether there was concrete arrangement or coordination; second, where the association consists of some formal or paid relationship of a person involved in making the independent expenditure with the authorized committee of the candidate. And, even in this second case, only a rebuttable "presumption" of coordination is raised, inviting Respondents to show that as a matter of fact, no coordination occurred. 11 C.F.R. § 109.1(b)(4)(i).

Presumptive coordination is not present here. So the inquiry returns to its starting point: was there in the prior association of Gephardt with Jenkins, or in any contacts they made around the time of the expenditures, communications in which information was exchanged "with a view toward having an expenditure made."

This has been flatly refuted by sworn testimony. There is, moreover, in the General Counsel's brief and in the record of the case no other evidence to undermine the credibility of

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these denials. There is nothing ambiguous in the denials; nothing omitted in the affidavits which would give rise to further suspicion. Congressman Jenkins and his staff have made clear that the independent expenditures were devised by them alone, and for reasons as much related to their, as to Gephardt's, political objectives.

The General Counsel, dismissing constitutional precedent, particularly overlooks the significance of Federal Election Commission v. National Conservative Political Action Committee. There the Supreme Court confronted a case presenting on the facts a range of relationships between representatives of independent expenditure committees and those of the Presidential campaign on whose behalf independent expenditures were subsequently made. See Democratic Party of the United States v. National Conservative Political Action Committee, 578 F. Supp. 797 at 824-834 (1983). The plaintiffs conceded that the case was circumstantial, consisting largely of opportunities for the receipt by the independent expenditure committee of significant strategic information. The three-judge district court below dismissed this showing as insufficient, and the Supreme Court affirmed.[3]

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[3] The Court noted at 498 that "[on] this record . . . an exchange of political favors remains a hypothetical possibility and nothing more."

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Perhaps most fundamentally, the lower court in Democratic Party had weighed the plaintiffs' showing against the statutory goals at stake. It invalidated the provision in question, purportedly prohibiting independent expenditures in connection with publicly financed Presidential campaigns, on the grounds that":

> [It] deters protected speech without potential to corrupt and is largely unnecessary to prevent protected speech conceivably capable of creating the appearance of corruption.

Democratic Party of the United States v. National Conservative Political Action Committee, supra, at 839. Hereto we have speech "without potential to corrupt" -- speech which is in principle protected but which the General Counsel would have the Commission shut down. No one suggests that the concern with independent expenditures is directed toward the possible undue influence by one Member of Congress or candidate over another. An appearance of corruption is hardly even possible in these circumstances.

At most, the General Counsel's analysis might lead him to the conclusion that the Commission should promulgate a regulation addressing in greater detail the concerns with authorized committees "supporting" more than one candidate. Should the Commission choose to concern itself with the support regulation, then it is certainly entitled to do so.

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But there is no cause here for finding that the Jenkins' committee could not make independent expenditures or for that matter, on the facts, did not. The General Counsel's brief does not apply the proper law or reach an appropriate conclusion.

For these reason, the case against Congressman Jenkins should be dismissed.

Respectfully submitted,

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Attorney for Ed Jenkins for
Congress Committee

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 2841 **SENSITIVE**
Ed Jenkins For Congress Committee)
and Hollis Lathem, as treasurer)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On March 28, 1989, the Commission found reason to believe that the Ed Jenkins for Congress Committee ("Committee") and Hollis Lathem, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) by making excessive in-kind contributions to the Gephardt for President Committee and 2 U.S.C. § 441d(a) by failing to include the appropriate disclaimer in the newspaper advertisements which the Committee purchased. After investigating this matter, the General Counsel prepared a brief recommending that the Commission find probable cause to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) and 441d(a). In their response brief, respondents argue that the expenditures made for the newspaper advertisements in question were independent expenditures and were not done in coordination with or concert with the Gephardt Committee. Despite respondents' contention that the expenditures were not coordinated with the Gephardt Committee, this Office still believed that there is evidence supporting a finding that the expenditures were made in coordination or concert with the Gephardt Committee.

Nevertheless, respondent's brief also put into issue whether or not the Jenkins Committee could make independent expenditures on

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behalf of Richard Gephardt, another Federal candidate. Respondents state that because the expenditures were independent expenditures, there was no limit on the amount that the Committee was permitted to expend for the purpose of purchasing the advertisements in question. Given this response, this Office noted that the issue whether one candidate can make independent expenditures on behalf of another needed to be addressed.

Therefore, this Office prepared a supplementary brief addressing this issue and recommending that the Commission find probable cause to believe that the Committee and its treasurer violated 2 U.S.C. §§ 432(e)(3) and 441d(a). We received a response to the supplementary brief on February 10, 1992. The following is a discussion of the two issues involved in this matter.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

1. Excessive Contribution

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that a person may make up to $1,000 in contributions to any candidate for Federal office, or to his or her authorized committee. 2 U.S.C. § 441a(a)(1)(A). Under the Act, the term "person" includes a principal campaign committee of a Federal candidate. 2 U.S.C. § 431(11). The Act further states that no political committee which supports or has supported more than one candidate may be designated as an authorized committee. 2 U.S.C. § 432(e)(3)(A). This provision, however, defines support as not including a contribution of

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$1,000 or less by an authorized committee to the authorized committee of another candidate. 2 U.S.C. § 432(e)(3)(B). Thus, this provision in conjunction with Section 441a(a)(1) permits an authorized committee to contribute to other candidates for Federal office, within the applicable limitations, in the same manner as any other person.

Contribution is defined to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a Federal election. 2 U.S.C. § 431(8)(A)(i). Commission regulations explain that "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A).

Expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate or his authorized political committees, or their agents, shall be considered to be a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B). Thus, the Act distinguishes between payments that are made "totally independently of the candidate and his campaign" and those that are "prearranged or coordinated." Buckley v. Valeo, 424 U.S. 1, 47 (1976).

Commission regulations explain that expenditures will not be considered independent if they are made through any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. 11 C.F.R. § 109.1(b)(4)(i). The regulations further provide examples of when an expenditure

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will be presumed to be coordinated. For example, an expenditure will be presumed to be coordinated with the candidate when it is based on information about the candidate's plans, projects or needs provided to the expending person by the candidate, or by the candidate's agents with a view toward having the expenditure made. 11 C.F.R. § 109.1(b)(4)(i)(A). An expenditure will also be presumed to be coordinated when it is made by or through any person who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent. 11 C.F.R. § 109.1(b)(4)(i)(B).

2. Disclaimer

The Act also requires that any expenditure for a communication which expressly advocates the election or defeat of a clearly identified candidate must state whether the communication was paid for by the candidate, an authorized political committee of a candidate, or agents of the candidate. 2 U.S.C. § 441d(a)(1) and (2). The term "clearly identified" means that the name of the candidate involved appears, a photograph or drawing of the candidate appears, or the identity of the candidate is apparent by unambiguous reference. 2 U.S.C. § 431(18). Moreover, if the communication is not authorized by the candidate, an authorized committee, or agents of the candidate, it must clearly state the name of the person who paid for the communication and indicate that it was not authorized by the candidate or the candidate's committee. 2 U.S.C. § 441d(a)(3).

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3. Authorized Committees v. Unauthorized Committees

In fashioning the Federal Election Campaign Act and its amendments, Congress made some fundamental distinctions between political committees organized to support a specific candidate and authorized by that candidate to do so ("authorized committees") and all other types of political committees.

First, the Act provides a separate definition for an "authorized committee." The term "authorized committee" means the principal campaign committee or any other political committee authorized by a candidate under Section 432(e)(1) of Title 2 to receive contributions or make expenditures on behalf of such candidate. 2 U.S.C. § 431(6). As noted earlier, the Act states that no political committee which supports or has supported more than one candidate may be designated as an authorized committee.[1] 2 U.S.C. § 432(e)(3). The term "support" does not include a contribution by an authorized committee in amounts of $1,000 or less to an authorized committee of any other candidate. 2 U.S.C. § 432(e)(3)(B). An "unauthorized committee" is a political committee which has not been authorized in writing by a candidate to solicit or receive contributions or make expenditures on behalf of such candidate, or which has been disavowed pursuant to 11 C.F.R. § 100.3(a)(3).

---

1. However, a candidate for the office of President may designate the national committee of a political party as a principal campaign committee provided that the national committee maintains separate books of account with respect to its functions as a principal campaign committee. A candidate may also designate a political committee established solely for the purpose of joint fundraising by such candidate as an authorized committee.

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The Act requires each candidate for Federal office to designate in writing a political committee to serve as the principal campaign committee of the candidate within 15 days of becoming a candidate. 2 U.S.C. § 432(e)(1). The Act permits a candidate to designate other committees to serve as authorized committees if designations are in writing and filed with the principal campaign committee of such candidate. 2 U.S.C. § 432(e)(1).

Second, the Act distinguishes between authorized and unauthorized committees regarding the method of filing reports and other documents. Third, the Act requires more expedited forwarding of contributions to authorized committees than it does for unauthorized committees. Fourth, the Act also makes distinctions between authorized and unauthorized committees regarding contribution limits and the period of time upon which the limit is based. Fifth, the Act also places different disclaimer requirements on authorized and unauthorized committees. Sixth, the Act distinguishes between authorized and unauthorized committees for reporting purposes. Seventh, important distinctions also exist in the contents of reports filed by authorized and unauthorized committees. A detailed discussion of the above-noted distinctions appear in the General Counsel's Supplementary Brief, dated January 21, 1992, and are incorporated here by reference.

As this review demonstrates, Congress has accorded authorized committees special status, privileges, and restrictions and materially distinguished them from unauthorized committees.

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B. Facts

On June 3, 1987, the Jenkins Committee made a $1,000 contribution to the Gephardt for President Committee for the primary election. The Committee later made expenditures totaling $12,312.52 for advertisements which supported Richard Gephardt for President. These advertisements appeared in thirty-one (31) Georgia newspapers on March 4, 1988, four days prior to the Georgia Presidential Primary. The Committee reported the purchase of the newspaper advertisements as independent expenditures in its 1988 April Quarterly Report to the Commission.

The advertisements consisted of a letter on a facsimile of "Jenkins for Congress" stationery from Congressman Jenkins to his constituents which explained that he was supporting Richard Gephardt for President because he had served with Mr. Gephardt for eleven years on the House Ways and Means Committee and had witnessed the "depth of his commitment to America." Congressman Jenkins further stated in the letter that he had "always found him [Richard Gephardt] to be very attentive to me as a Georgian and the needs of our state" and that he "wholeheartedly endorse[d] [Richard Gephardt] him for President of the United States." The advertisements included photographs of Congressmen Jenkins and Gephardt. The disclaimer that appeared in the advertisements stated "[t]his ad is paid for by the Jenkins for Congress Committee, and is not authorized by any candidate."

Respondents acknowledged that prior to placing the advertisements in 31 Georgia newspapers, there were discussions between the staffs of the Jenkins and Gephardt Committees

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regarding a joint appearance in Georgia, including scheduling, key contact individuals, and campaign strategy. According to respondents, prior to the February 1988 event, Congressman Jenkins' staff spoke with the Gephardt Committee's scheduling staff in Washington, D.C. to organize the details of Congressman Gephardt's appearance. Respondents state that these conversations focused on (1) scheduling arrangements, (2) what subsequent campaign appearances Mr. Gephardt might have tentatively scheduled in the state, (3) general national campaign strategy regarding Super Tuesday, and (4) what key Democratic and local public leaders Mr. Gephardt should meet. Respondents state that no one on Congressman Jenkins' staff engaged in any conversation with the Gephardt Committee for the purpose of discussing or gathering information to use in connection with the newspaper advertisements and that Congressmen Jenkins and Gephardt never discussed the expenditures.

The respondents state that on two occasions, Congressmen Jenkins and Gephardt appeared together at public events in Georgia. According to respondents, one year prior to the expenditures, the Congressmen attended a reception before a speech Mr. Gephardt delivered to the Dekalb County Democratic Party. Respondents indicate that the two Congressmen also attended the Jefferson-Jackson Day Dinner in Georgia on February 26, 1988, the same day that Congressmen Jenkins and Gephardt appeared at a joint press conference during which Congressman Jenkins endorsed Richard Gephardt for President and on the same day that the Jenkins Committee purchased advertisements

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wholeheartedly supporting Richard Gephardt for President in 31 Georgia newspapers.

Respondents submitted an affidavit from Congressman Jenkins which stated that he did not discuss with Mr. Gephardt the Jenkins Committee's making expenditures on behalf of the Gephardt Committee and that he did not consult with Mr. Gephardt, the Gephardt for President Committee, or any agent of the Gephardt Committee regarding the newspaper advertisements. Congressman Jenkins avers that he did not communicate directly or indirectly with Mr. Gephardt or the Gephardt Committee about its activities, strategies, or needs as they related to newspaper advertisements. Congressman Jenkins also states that the Gephardt Committee never suggested or requested that the Jenkins Committee make any expenditure to place newspaper advertisements, or for any other purpose, in support of Richard Gephardt. His affidavit stated the following:

> At no time during these joint appearances, or any time, did I discuss with Mr. Gephardt my Committee making independent expenditures related to the Georgia primary or Congressman Gephardt's presidential campaign or specifically the proposal to place advertisements in Georgia newspapers.
>
> I did not consult with Mr. Gephardt, the Gephardt for President Committee ("Gephardt Committee"), or any agent of the Gephardt Committee, about the newspaper advertisements or any proposal to make expenditures to advocate the nomination of Mr. Gephardt.
>
> I did not communicate directly or indirectly with Mr. Gephardt or the Gephardt Committee, about its activities, strategies or need as they related to newspaper advertisements.

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The respondents also submitted an affidavit from Mr. Samuel F. Smith who served as administrative assistant to Congressman Jenkins during 1987 and 1988 and as campaign director for certain periods in 1987 and 1988. Mr. Smith states that he talked to the staff of the Gephardt for President Committee for the purpose of arranging the details of Congressman Gephardt's trip to Georgia on February 26, 1988 and that these conversations dealt specifically with Mr. Gephardt's schedule and other details related to his attendance at the Jefferson-Jackson Day Dinner held on February 26, 1988. Mr. Smith also avers that he did not consult with the Gephardt Committee staff or any agent of the Gephardt Committee about the newspaper advertisements or any proposal to make expenditures to advocate the nomination of Mr. Gephardt. Like Congressman Jenkins, Mr. Smith states that he did not communicate directly or indirectly with the Gephardt Committee about its activities, strategies, or needs as they related to the newspaper advertisements. Mr. Smith stated the following in his affidavit:

> I talked to the staff of the Gephardt for President Committee ("Gephardt Committee") for the purpose of arranging the details of Congressman Gephardt's trip to Georgia on February 26, 1988.
>
> These conversations dealt specifically with Mr. Gephardt's schedule and other details related to his attendance at the Jefferson-Jackson Dinner....
>
> I did not consult with the Gephardt Committee staff, or any agent of the Gephardt Committee, about the newspaper advertisements or any proposal to make expenditures to advocate the nomination of Mr. Gephardt.
>
> I did not communicate directly or indirectly with the Gephardt Committee about its activities,

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> strategies or needs as they related to the newspaper advertisements.
>
> The Gephardt Committee never suggested or requested that the Jenkins Committee make an expenditure to place newspaper advertisements, or for any other other purpose, in support of the nomination of Mr. Gephardt.

Respondents continue to assert that the expenditures made by the Committee were made independently of the Gephardt for President Committee. According to the respondents, there was limited contact between staff members of the Jenkins and Gephardt Committees and between Messrs. Jenkins and Gephardt and that no specific conversation relating to the expenditures occurred.

B. Analysis

1. Coordination

Despite respondents' contention that there was no coordination or cooperation between the Committees or the Congressmen in regard to the newspaper advertisements which the Jenkins Committee purchased, this Office concludes that the facts do not support this conclusion. Congressmen Jenkins and Gephardt were both members of the House and the same political party, in addition to being on the same committee, the House Ways and Means Committee, for eleven years. A series of events and actions occurred in the weeks preceding the Georgia Presidential Primary which negates the Jenkins Committee's assertion that the expenditures for the newspaper advertisements were independent. Staff of the two committees discussed scheduling, key contact individuals, and campaign strategy regarding the February 26, 1988

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joint appearance in Georgia. On February 26, 1988, the Congressman appeared together at the Jefferson-Jackson Dinner, a fundraiser for Richard Gephardt, and at a joint press conference during which Congressman Jenkins endorsed Richard Gephardt for President.[2] On this same day as the Jefferson-Jackson Dinner and the press conference, the Jenkins Committee purchased advertisements wholeheartedly supporting Richard Gephardt in 31 Georgia newspapers. Less than a week later and four days before the March 8, 1988 Georgia Presidential Primary, the Jenkins Committee newspaper advertisements wholeheartedly supporting Richard Gephardt for President appeared in 31 Georgia newspapers.

This Office continues to view these facts as showing that the advertisements placed in the Georgia newspapers were made in cooperation or concert with the Gephardt Committee. This Office finds the denial of cooperation or coordination inadequate because the respondents do not deny that there were discussions of strategy in general. We do not agree with respondents that there had to be coordination regarding the specific expenditures.

The contacts preclude any conclusion that the advertisements were made "totally independently" of the Gephardt campaign. In our view, the placing of the advertisements on the same day as the press conference and Representative Gephardt's appearance in Georgia demonstrate that the advertisements were placed in concert with the Gephardt campaign, notwithstanding the absence of any

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2. The March monthly report for the Gephardt for President Committee disclosed that several contributions were received by the Committee on February 26, 1988, the date of the Jefferson-Jackson Dinner.

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specific communication between the Jenkins and Gephardt Committees regarding these specific advertisements. The advertisements which the Jenkins Committee placed in the 31 Georgia newspapers appears to be no more than a republication of Congressman Jenkins' endorsement of Richard Gephardt for President made at the joint press conference. This Office notes that the fact that there may have been no specific or explicit discussion of the particular advertisements at issue is not controlling. The facts adequately show that the Jenkins Committee had knowledge of the Gephardt Committee's plans and schedule in Georgia and the campaign strategy of the Gephardt campaign in regard to Georgia.

Respondents' counsel cites 11 C.F.R. 109.1(a)(4)(i)(A) and asserts that a presumption of nonindependence arises only if, with a view toward having an expenditure made, the expenditure is based on information about the candidate's plans, projects, or needs and the candidate, his committee, or agent provides such information. However, this Office notes that according to 11 C.F.R. § 109.1(a)(4)(i), the term "made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee" means "any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication." Therefore, we note that arrangement, coordination, and direction by the candidate or his or her agent is not limited to those circumstances identified by counsel and listed in 11 C.F.R. § 109.1(a)(4)(i)(A) but can be accomplished by additional means.

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Therefore, as we noted earlier, the Act and regulations do not require that the parties specifically discuss the expenditures in question if they have discussed strategy in general or if the expenditures are made in concert with or cooperation with the other campaign. In this case, we do not believe that the advertisements can be separated from the joint press conference where Congressman Jenkins announced his support for Congressman Gephardt.

This situation can be compared with the situation before the Commission in Advisory Opinion 1983-12. In this Advisory Opinion, NCPAC proposed a "Constituent Congratulations Program" that would show film footage of incumbent U.S. Senators of NCPAC's choosing. The issue before the Commission was whether to the extent that coordination or consultation occurred with the subject Senators, the payments for the proposed messages were in-kind contributions to the featured candidate. The Commission decided that if information or film footage was provided by the candidate, the payments for the film footage were in-kind contributions. If, however, the information or materials were obtained from archives or television stations without cooperation or consultation with the candidate, the Commission decided that the payments for the film footage would not be in-kind contributions.

In the case of Congressman Jenkins and Gephardt, the contacts between the committees were greater in number and degree than the contacts between NCPAC and the candidates or their committees. The Jenkins and Gephardt Committees cooperated with and consulted each other regarding scheduling, key contact individuals and

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general national campaign strategy regarding Super Tuesday. Thus, the cooperation and coordination between the Jenkins and Gephardt Committees leads to a conclusion similar to that made in NCPAC that the payments for the newspaper advertisements were in-kind contributions.

Because the Gephardt Committee provided information regarding scheduling, key contacts, and national campaign strategy to the Jenkins Committee and because of the obvious linkage between the press conference and the advertisements, the expenditures for the newspapers advertisements by the Jenkins Committee were made in cooperation with or concert with the Gephardt for President Committee. Thus, the $12,312.52 in expenditures should be considered in-kind contributions.

Based on the foregoing, this Office views these expenditures as constituting in-kind contributions which exceed the Jenkins Committee's $1,000 limit in violation of 2 U.S.C. 441a(a)(1)(A) and as constituting support in excess of the $1,000 support limit in violation of 2 U.S.C. 432(e)(3). It therefore also follows that because the expenditures were coordinated with the Gephardt Committee, the disclaimer should have stated that the advertisement was authorized by the Gephardt for President Committee. Because the disclaimer stated "[t]his ad is paid for by the Jenkins for Congress Committee, and is not authorized by any candidate," it violates 2 U.S.C. § 441d(a).

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2. A Principal Campaign Committee's Inability to Make Independent Expenditures on Behalf of Other Federal Candidates

Based on the circumstances noted earlier, this Office concluded that the expenditures made by the Jenkins Committee for newspaper advertisements were not independent expenditures. However, this Office notes that even if the expenditures were independent, the Jenkins Committee, as the authorized committee of Federal candidate Edgar Jenkins, was not capable of making independent expenditures on behalf of Richard Gephardt, another Federal candidate.

Counsel for respondents asserts that authorized committees of a Federal candidate are capable of making independent expenditures on behalf of another Federal candidate. In asserting that the expenditures were independent expenditures, argues that it is unconstitutional to conclude that authorized committees are limited in the amount of independent expenditures which they can make on behalf of other Federal candidates and that this Office is ignoring the constitutionality issue. Counsel asserts that there is constitutional precedent distinguishing between contributions and expenditures. Counsel cites Buckley v. Valeo, 424 U.S. 1 (1976), and states that restrictions on political spending may withstand constitutional scrutiny only if they serve a compelling state interest and are narrowly drawn to achieve the purpose. Id. at 25. Counsel argues that Congress would need a compelling interest to override the First Amendment right of any group or person, including authorized committees, to make independent expenditures.

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This Office recognizes that the Supreme Court has found limits on independent expenditures to be unconstitutional. See Buckley v. Valeo, 424 U.S. 1 (1976), and FEC v. NCPAC, 470 U.S. 480 (1985). Although the language in these opinions may seem broad enough to include independent expenditures by authorized committees, neither case involved factual circumstances where an authorized committee had claimed to have made independent expenditures. Thus, this Office does not find those decisions to be controlling in this matter.

As noted earlier, the circumstances in this matter are not simply whether a person or committee in general can make independent expenditures but whether an authorized committee can make independent expenditures or contributions in excess of $1,000 and still retain its status as an authorized committee. In our view, Congress has clearly precluded authorized committees from "supporting" other candidates in such a manner. Under the Act, authorized committees have the clearly defined role of furthering the election of a designated candidate and have been accorded special treatment under the Act for this purpose. This role serves two purposes: first, to ensure that the candidate's campaign activities are disclosed through one centralized committee; and second, to inform and assure contributors that their contributions will be used to further the election of the designated candidate.

The statute does recognize, through the exemption from the term "support," a limited range of permissible activities on behalf of other candidates. This limited range of activity for an

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authorized committee would be $1,000 in contributions to another Federal candidate. Counsel for the respondents asserts that the term "support" is limited to contributions not expenditures because the definition of the term "support" is no more than $1,000 in contributions. This Office notes that if the $1,000 exemption did not exist, an authorized committee could not make any contributions or expenditures on behalf of another candidate and still be an authorized committee. The exemption provided by the "support" provision opens a narrow window only for contributions up to $1,000.

Even if the Commission should conclude that the payments by the Jenkins Committee for the March 4, 1988 advertisements should be treated as independent expenditures, it should also conclude that the Jenkins Committee supported more than one candidate and as a result of this action, the Committee lost its status as an authorized committee.

3. Conclusion

Based on the information exchanged and communications between the Jenkins and Gephardt Committees regarding Richard Gephardt's activities in Georgia, the Jenkins Committee was knowledgeable about the Gephardt campaign in Georgia. In this particular situation, the Gephardt Committee provided information to the Jenkins Committee regarding the campaign schedule, campaign appearances, and national campaign strategy for Super Tuesday, information that was crucial to the timing of the newspaper advertisements. This Office also notes that the newspaper advertisements were placed in concert with Congressman Gephardt's

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appearances in Georgia and especially the press conference at which Congressman Gephardt and Jenkins appeared. Thus, we continue to believe the weight of the evidence points toward treating these payments as in-kind contributions.

III. **DISCUSSION OF CONCILIATION AND CIVIL PENALTY**

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IV. RECOMMENDATIONS

1. Find probable cause to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).

2. Find probable cause to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 432(e)(3).

3. Find probable cause to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 441d(a).

4. Approve the attached conciliation agreement and appropriate letters.

6/2/92
Date

Lawrence M. Noble
General Counsel

Attachment
1. Conciliation Agreement

Staff Assigned: Mary Taksar

9304093073 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /DONNA ROACH DR
COMMISSION SECRETARY

DATE: JUNE 8, 1992

SUBJECT: MUR 2841 - GENERAL COUNSEL'S REPORT DATED JUNE 2, 1992.

The above-captioned document was circulated to the Commission on WEDNESDAY, JUNE 3, 1992 at 11:00 A.M.

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

Commissioner Aikens	
Commissioner Elliott	XXX
Commissioner McDonald	XXX
Commissioner McGarry	
Commissioner Potter	
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda for TUESDAY, JUNE 9, 1992.

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

93040930736

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2841
Ed Jenkins For Congress Committee	)	
and Hollis Lathem, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 9, 1992, do hereby certify that the Commission took the following actions in MUR 2841:

1. Decided by a vote of 5-0 to find probable cause to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).

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

2. Decided by a vote of 5-0 to reconsider the vote just taken in MUR 2841.

   Commissioners Aikens, Elliott, McDonald, Potter, and Thomas voted affirmatively for reconsideration; Commissioner McGarry was not present.

(continued)

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3. Decided by a vote of 4-1 to find probable cause to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).

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

4. Decided by a vote of 5-0 to find probable cause to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 432(e)(3).

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

5. Decided by a vote of 5-0 to find probable cause to believe that the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. § 441d(a).

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

(continued)

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6. Decided by a vote of 5-0 to approve the conciliation agreement and appropriate letters as recommended in the General Counsel's report dated June 2, 1992,

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

Attest:

6-10-92
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 10, 1992

Robert F. Bauer. Esq.
B. Holly Schadler, Esq.
Perkins Coie
607 Fourteeenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 2841
Ed Jenkins for Congress Committee
and Hollis Lathem, as treasurer

Dear Mr. Bauer and Ms. Schadler:

On June 9, 1992, the Federal Election Commission found that there is probable cause to believe that your clients, the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A), 432(e)(3), and 441d(a), provisions of the Federal Election Campaign Act of 1971, as amended, in connection with expenditures made for newspaper advertisements.

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. I will then recommend that the Commission accept the agreement. Please make your check for the civil penalty payable to the Federal Election Commission.

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If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Mary Taksar, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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OGC 7828

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 DEC -8 PM 4:36

December 8, 1992

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

Re: 2841 - Ed Jenkins for Congress Committee and Hollis Lathem, as Treasurer

RECEIVED
FEDERAL ELECTION COMMISSION
92 DEC 11 PM 1:11

Dear Ms. Taksar:

Enclosed you will find the conciliation agreement, signed on behalf of the Ed Jenkins for Congress Committee and Hollis Lathem, as Treasurer, and a check in the amount of $5,500 in full payment of the civil penalty in this matter.

As I told you, we intend to send a letter for inclusion in the file stating our objection to the Commission's conclusion in this matter. In an effort to conclude this matter as quickly as possible however, I have sent the signed conciliation agreement under separate cover.

92 DEC -9 PM 5:00

Very truly yours,

B. Holly Schadler
Counsel to Respondents

Enclosure

BHS:mah

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[15662-0001/DA923290.015]

TELEX: 44-0277 PCSO UI • FACSIMILE: (202) 434-1690
ANCHORAGE • BELLEVUE • LOS ANGELES • PORTLAND • SEATTLE • SPOKANE

FEDERAL ELECTION COMMISSION
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92 DEC 11 PM 1:16

ED JENKINS FOR CONGRESS COMMITTEE
P O BOX 70
JASPER, GA 30143

5750

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611

December 4 19 92

PAY TO THE ORDER OF Federal Election Commission $ 5,500.00

Five thousand five hundred and no/100---------- DOLLARS

Jasper Banking Company JASPER GEORGIA 30143

FOR

Hollis O. Latham

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 628-6600

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December 15, 1992

92 DEC 15 PM 3:34
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

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

Re: 2841 - Ed Jenkins for Congress Committee and Hollis Lathem, as Treasurer

Dear Ms. Taksar:

Under separate cover, the Ed Jenkins for Congress Committee (the "Committee") and Hollis Lathem, as Treasurer ("Respondents") sent the signed conciliation agreement and payment in this matter for the purpose of concluding the matter as expeditiously as possible. Representative Jenkins is leaving Congress at the end of this year and wanted all outstanding issues related to the Committee resolved prior to his departure. Moreover, the Committee has neither the resources nor the inclination to initiate a court challenge over the Commission's position. This resolution does not, however, indicate the Committee's agreement with the legal position the Commission took in this matter.

On behalf of the Committee, we object to the Commission's legal reasoning and conclusions in this matter. There is no precedent for the Commission's position that authorized campaign committees are precluded from making independent expenditures as a matter of law. Neither the statute, nor Congress' intent suggests such a restriction on authorized committee expenditures. And, as the Committee has stated in earlier responses, there is little ground, if any, to assume such a position would be sustained upon a court's review.

In setting forth its position, the General Counsel draws distinctions between authorized and unauthorized committees that are wholly irrelevant to the issue presented here. It then proceeds to draw conclusions from these distinctions with no apparent support and without any thoroughgoing review of the constitutional issues raised by these conclusions.

Moreover, the facts in this case do not demonstrate coordination which would have defeated the Committee's independence in making the expenditures in this matter.

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Concurrent service on the Ways and Means Committee and joint appearances by Congressmen Gephardt and Jenkins do not constitute relationships that defeat independence. Nevertheless, the Commission finds, despite sworn testimony to the contrary, that these facts indicate cooperation and coordination. Again, we disagree.

Very truly yours,

B. Holly Schadler
Counsel to Respondents

BHS:mah

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SECRETARIAT

92 DEC 21 PM 3:56

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	MUR 2841
Ed Jenkins for Congress Committee	)	
and Hollis Lathem, as treasurer	)	

GENERAL COUNSEL'S REPORT

Attached is a conciliation agreement which has been signed by B. Holly Schadler, counsel for the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer. Respondents submitted a check for five thousand and five hundred dollars ($5,500) along with the signed conciliation agreement. The attached conciliation agreement contains no changes from the agreement approved by the Commission on November 12, 1992.

RECOMMENDATIONS

1. Accept the attached conciliation agreement with the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer.

2. Close the file.

3. Approve the appropriate letter.

12/21/92
Date

Lawrence M. Noble
General Counsel

Attachments:
1. Signed conciliation agreement
2. Copy of civil penalty check

Staff Assigned: Mary L. Taksar

93040930746

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Ed Jenkins for Congress Committee	)	MUR 2841
and Hollis Lathem, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 6, 1993, the Commission decided by a vote of 6-0 to take the following actions in MUR 2841:

1. Accept the conciliation agreement with the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer, as recommended in the General Counsel's Report dated December 21, 1992.

2. Close the file.

3. Approve the appropriate letter, as recommended in the General Counsel's Report dated December 21, 1992.

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

Attest:

1-6-93
Date

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

Received in the Secretariat: Mon., Dec. 21, 1992 3:56 p.m.
Circulated to the Commission: Tues., Dec. 22, 1992 11:00 a.m.
Deadline for vote: Wed., Jan. 06, 1993 4:00 p.m.

bjr

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2841
Ed Jenkins for Congress Committee	)	
and Hollis Lathem, as treasurer	)	

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92 DEC 11 PM 1:16

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 the Ed Jenkins for Congress Committee and Hollis Lathem, as treasurer ("Respondents") violated 2 U.S.C. §§ 441a(a)(1)(A), 432(e)(3) and 441d(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 this matter.

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

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

1. The Ed Jenkins for Congress Committee ("Jenkins Committee") is the principal campaign committee of Congressman Edgar Jenkins and a political committee within the meaning of 2 U.S.C. § 431(4). The Gephardt for President Committee was the principal campaign committee of

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Congressman Richard Gephardt in the 1988 Presidential election and a political committee within the meaning of 2 U.S.C. § 431(4).

2. Hollis Lathem is the treasurer of the Ed Jenkins for Congress Committee.

3. Pursuant to 2 U.S.C. § 441a(a)(1)(A), a person may contribute up to $1,000 to any candidate for Federal office or to his or her authorized committee. Under the Act, the term "person" includes the principal campaign committee of a Federal candidate. 2 U.S.C. § 431(11).

4. Contribution is defined as any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a Federal election. 2 U.S.C. § 431(8)(A)(i). Commission regulations explain that "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A).

5. Expenditures made by any person in cooperation, consultation, or concert with, or at the request or suggestion of a candidate or his or her authorized political committee or their agent is considered a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B). Thus, the Act distinguishes between payments that are made "totally independently of the candidate and his campaign" and those that are "prearranged or coordinated." Buckley v. Valeo, 424 U.S. 1, 47 (1976).

6. Any expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate must state whether or not the communication was paid for by the candidate, an authorized political committee of the candidate, or

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agents of the candidate. 2 U.S.C. § 441d(a)(1) and (2). The term "clearly identified" means that the name of the candidate involved appears, a photograph or drawing of the candidate appears, or the identity of the candidate is apparent by unambiguous reference. 2 U.S.C. § 431(18). Moreover, if the communication is not authorized by a candidate, an authorized political committee, or agents of the candidate, it must clearly state the name of the person who paid for the communication and indicate that it was not authorized by the candidate or the candidate's committee. 2 U.S.C. § 441d(a)(3). If a communication is paid for by other persons but authorized by a candidate, an authorized political committee of a candidate or its agents, the communication must clearly state that it was paid for by such other persons and authorized by such authorized political committee. 2 U.S.C. § 441d(a)(2).

7. No political committee which supports or has supported more than one candidate may be designated as an authorized committee. 2 U.S.C. § 432(e)(3)(A). A candidate may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee. As used in Section 432(e)(3), the term "support" does not include a contribution by an authorized committee in amounts of $1,000 or less to an authorized committee of any other candidate. 2 U.S.C. § 432(e)(3)(B).

8. During the 1987-1988 election cycle, the Jenkins Committee spent $370,981 in operating expenditures in support of Edgar Jenkins re-election to Congress while during the 1989-1990

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election cycle, the Jenkins Committee spent $298,751 in operating expenditures for such purposes. On June 3, 1987, the Jenkins Committee made a $1,000 contribution to the Gephardt for President Committee for the primary election. On February 26, 1988, the Jenkins Committee disbursed $12,312.52 for newspaper advertisements supporting the candidacy of Richard Gephardt for the Democratic nomination for President. Thus, in the 1987-1988 election cycle, the Jenkins Committee supported more than one candidate for Federal office.

9. Furthermore, prior to Congressman Jenkins and Gephardt attending the Jefferson-Jackson Day Dinner in Georgia on February 26, 1988, "Congressman Jenkins' staff spoke with the Gephardt Committee's scheduling staff in Washington, D.C. to organize the details of Congressman Gephardt's appearance." These conversations focused on "scheduling arrangements including: details of Congressman Gephardt's arrival and departure, and a discussion of key democratic and local leaders whom Mr. Gephardt should meet." The discussion also touched on "in the course of casual conversation, what subsequent campaign appearances Mr. Gephardt might have tentatively scheduled in the state and general national campaign strategy."

In his affidavit, dated January 8, 1991, Samuel Smith, administrative assistant to Congressman Jenkins during 1987 and 1988 and campaign director for certain periods in 1987 and 1988, stated that he "talked to the staff of the Gephardt for President Committee ("Gephardt Committee") for the purpose of arranging the details of Congressman Gephardt's trip to Georgia on February 26,

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1988." Mr. Smith also stated that "[t]hese conversations dealt specifically with Mr. Gephardt's schedule and other details related to his attendance at the Jefferson-Jackson Day Dinner." Mr. Smith stated that he "did not consult with the Gephardt Committee staff, or any agent of the Gephardt Committee, about the newspaper advertisements or any proposal to make expenditures to advocate the nomination of Mr. Gephardt" and "did not communicate directly or indirectly with the Gephardt Committee about its activities, strategies or needs as they related to the newspaper advertisements."

In his affidavit, dated January 8, 1991, Congressman Jenkins stated that "at no time during these joint appearances, or at any time, did I discuss with Mr. Gephardt my Committee making independent expenditures related to the Georgia primary or Congressman Gephardt's presidential campaign or specifically the proposal to place advertisements in Georgia newspapers."

10. On February 26, 1988, Congressman Jenkins announced his support of Congressman Gephardt's presidential candidacy, Congressman Jenkins and Gephardt appeared together at the annual Jefferson-Jackson Day Dinner in Georgia. On this same day, February 26, 1988, the Jenkins Committee issued a press release entitled "JENKINS ENDORSES GEPHARDT." The press release stated that "Georgia's Ninth District Congressman Ed Jenkins announced today that he is endorsing Missouri Democrat Richard (Dick) Gephardt for President." Mr. Jenkins is then quoted as stating that "[a]s a grassroots worker and moderate Democrat, Dick and I

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share many common values and goals. . .[a]s a candidate for President of the United States, he is the best." The press release closes with Mr. Jenkins' statement that:

> [t]he Gephardt Presidency will invest our resources in the greatest hope we have. . . our people. . . those who are beginning their careers, those who are established in the workplace and those who have retired. Dick Gephardt is a realist. He is a motivator and a leader. I have always found him to be very attentive to me as a Georgian and the needs of our state. I trust him and wholeheartedly endorse him for President of the United States.

11. Also, on February 26, 1988, Hollis Lathem, treasurer of the Jenkins Committee, sent a memorandum to selected daily newspapers in Georgia requesting that an advertisement supporting Richard Gephardt for President be placed in the March 4, 1988 issue of the 31 Georgia newspapers.

The advertisements consisted of a letter on a facsimile of "Jenkins for Congress" stationery from Congressman Jenkins to his constituents which explained that he was supporting Richard Gephardt for President because he had served with Mr. Gephardt for eleven years on the House Ways and Means Committee and had witnessed the "depth of his commitment to America." In this letter, Congressman Jenkins further stated that he "wholeheartedly endorse[d] him [Richard Gephardt] for President of the United States." The advertisements included photographs of Congressmen Jenkins and Gephardt. The disclaimer appearing in the advertisements stated "[t]his ad is paid for by the Jenkins for Congress Committee, and is not authorized by any candidate."

12. The circumstances noted in the above paragraphs indicate that the Jenkins and Gephardt staffs discussed

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Congressman Gephardt's appearance in Georgia and Congressman Jenkins endorsement of Richard Gephardt in Georgia while Congressman Gephardt was present in the state. The newspaper advertisements purchased by the Jenkins Committee were a republication of Congressman Jenkins' endorsement of Richard Gephardt for President. These advertisements placed by the Jenkins Committee were made after discussions with the Gephardt Committee about a joint appearance in Georgia. Therefore, in the Commission's view, the payments for the advertisements were not "totally independent" of the Gephardt Committee but were in-kind contributions to the Gephardt for President Committee. Therefore, the disclaimer should have stated "[t]his ad is paid for by the Jenkins for Congress Committee and authorized by the Gephardt for President Committee."

13. The Jenkins Committee has contended that the advertisements were independent expenditures and that because the expenditures were independent, "there was no limit on the amount the Committee was permitted to expend for the purpose of purchasing these advertisements." In its 1988 April Quarterly Report, the Committee reported the $12,312.52 spent for the newspaper advertisements as independent expenditures. Even so, in the Commission's view, the Act precludes a principal campaign committee from making expenditures on behalf of another candidate, thus supporting more than one Federal candidate, and still remaining a principal campaign committee.

14. As noted earlier, prior to purchasing these newspaper advertisements, the Jenkins Committee made a $1,000 contribution

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to the Gephardt Committee for the primary election. Therefore, the $12,312.52 spent for the advertisements constituted support for the Gephardt for President Committee by an authorized committee in excess of $1,000.

V. Respondents supported a candidate other than Ed Jenkins in violation of 2 U.S.C. § 441a(a)(1)(A) and 2 U.S.C. § 432(e)(3), and failed to provide adequate disclaimers in the thirty-one (31) newspaper advertisements that it purchased in violation of 2 U.S.C. § 441d(a).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of five thousand and five hundred dollars ($5,500), 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. 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

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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:

LM Noble (JH) 1/8/93

Lawrence M. Noble
General Counsel

Date

FOR THE RESPONDENTS:

B. Holly Schadler 12/8/92

(Name) B. Holly Schadler
(Position) Counsel

Date

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CLOSED

January 11, 1993

B. Holly Schadler, Esq.
Robert F. Bauer, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 2841
Ed Jenkins for Congress
Committee and Hollis Lathem,
as treasurer

Dear Ms. Schadler and Mr. Bauer:

On January 6, 1993, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of violations of 2 U.S.C. §§ 441a(a)(1)(A), 432(e)(3), and 441d(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record in addition to the the statement which you submitted on December 15, 1992, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

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.

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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 me at (202) 219-3400.

Sincerely,

Mary L. Taksar

Mary L. Taksar
Attorney

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2841

DATE FILMED _____ CAMERA NO. ___

CAMERAMAN _____

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