FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3086

DATE FILMED 1/16/91 CAMERA NO. 2

CAMERAMAN AS

9 1 0 4 0 3 1 3 5 6 4

OGC 7009

Oregon
Republican
Party

Craig Berkman
Chairman
9900 S.W. Greenburg Road
Suite 150
Portland, Oregon 97223
(503) 620 4330
FAX (503) 620-5791

90 JUL 23 PM 12:42

July 20, 1990

90 JUL 23 PM 3:37

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

Dear Commissioners:

The Oregon Republican Party (O.G.O.P.), Suite 150, 9900 S.W. Greenburg Rd., Portland, Oregon 97223, files this complaint charging violations of the Federal Election Campaign Act of 1971, as amended, 11 CFR 110.11, et. seq., by the Willamette Citizen, 1425 N.W. Monroe Avenue, Suite I, Corvallis, Oregon 97330 (hereinafter "Respondent").

Respondent has violated the Federal Election Campaign Act by failing to use the necessary disclaimers in certain advertisements and fliers.

FACTS:

Respondent is operating an independent expenditure committee. Respondent's advertised purpose is to "run an independent campaign to elect Mike Kopetski to Congress" in Oregon's Fifth Congressional District. In support of this goal, Respondent has advertised in the Monday, May 7th, 1990 Daily Barometer, the Oregon State University newspaper, "CLASSIFIED" section (see Exhibit A). Respondent has sent out fliers to recruit individuals to campaign during the summer of 1990 (see Exhibit B) in furtherance of the election of Mike Kopetski. According to the Daily Barometer advertisement at Exhibit A, interviews were to be conducted to fill these summer campaign positions at the Career Center, Administration Building, Oregon State University. A copy of Respondent's Statements of Organization may be found at Exhibit C.

21040813565

LAW:

Communications by independent expenditure committees (such as those found in Exhibits A and B) that expressly advocate the election or defeat of a clearly identified candidate which (are) made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate must expressly state that the communication has been paid for by such person and is not authorized by any candidate or candidate's committee. The disclaimer must be presented in a clear and conspicuous manner (2 U.S.C. 441(d), 11 CFR Sec. 110.11).

Respondent has failed to use disclaimers detailed above, as evidenced by Exhibits A and B.

ANALYSIS:

Respondent has violated the law by refusing to use the necessary disclaimers. The O.G.O.P. therefore requests that the F.E.C. conduct an investigation to determine why Respondent has refused to comply with the law, thus committing the violations alleged herein.

Respectfully Submitted,

Richard B. Noonan

Richard B. Noonan
Executive Director
Oregon Republican Party

Subscribed and Sworn to Before me this 19th day of July, 1990

Notary Public

March 8, 1991
My Commission Expires

9104031356 6

Summer in Portland?

Campaign for the Environment

Earn $180-$235/wk

- Work to elect candidates who will fight toxic waste dumping, global warming, and other hazards
- Learn valuable skills

- Work to elect candidates who will fight toxic waste dumping, global warming, and other hazards
- Learn valuable skills

- Work with students

Interviews with Willamette Graphics, Non, [illegible] Wed, May [illegible] and at OSU Career Exploration Placement Center, basement of Administration. Interviews begin each day at 2:00 and [illegible] sharp!

CLASSIFIED

Classified Ad Rates
20¢ per word/per day
($3.00 per day minimum)
Hearts ♥ 30¢ ♥ 75¢/day
Greek Letters (2-3) $1.50/day
Large Type $2.50/day
Ad deadline is 2 p.m., one day before publication
MU East 117

Save 50% at leading hotels nationwide and qualify for FREE lodging. Also solid 6 figure income. 1-800-233-8509 x1001.

"MAKE EVERY DAY EARTH DAY"
Summer Campaigns
For the Environment
Earn $2500-$3500. Help pass the Clean Air Act, tighten pollution controls, & promote comprehensive recycling. Available in 18 states & D.C.
Call Kate at: 1-800-75-EARTH.

Landscape/Landscape Irrigation persons. Immediate openings. Permanent full-time and summer help. Leonard Bernhardt Landscaping, 7340 SW Miller Hill Rd.; Beaverton, Oregon 97007. 649-3535.

Students needed for "Hay Crew." Please call Wayne at the OSU Horse Center. 737-5175.

Attention: Earn money Reading Books! $32,000/year income potential. Details. (602-838-8885. Ext. Bk 12157.

Free Travel Benefits! Cruise ships and casinos now hiring! All positions. Call (1) 602-838-8885. Ext. Y-12157.

Free Travel Benefits! Airlines now hiring! positions $17,500-$58,240. Call (602-838-8885. Ext. X12157.

Canvass Director
Summer Position
The Citizens Utility Board is hiring for the position of Portland Canvass Director. CUB advocates for fair utility rates and environmentally sound energy policies. Prior canvassing required. Salary range: $1400-$1600/month. Send resume by May 18 to CUB, 921 SW Morrison, Suite 550, Portland, OR 97205. (227-1984).

BAROMETER DELIVERY PERSON NEEDED
Must be reliable, able to work from 5-7 am, have truck and able to work immediately. Apply by May 8th at 5:00 in Shell 118

ATTENTION-HIRING! Government jobs in your area. $17,840-$59,465. Call 1-602-838-8885. Ext. R12157.

ATTENTION: Postal Jobs! Start $11.41/hour! For application infor call 1-602-838-8885. Ext. M-12157, 6 a.m.-10 p.m., 7 days.

SUMMER JOBS/ELECT KOPETSKI
Earn $185/ 230/ week
Willamette Citizen, the environmental group, is running an independent campaign to elect Mike Kopetski to Congress. Office near OSU. Interviews Monday, Tuesday, Wednesday, May 7, 8, 9; 2:00 or 3:30 sharp. Careers Center, Administration Building.

WANTED Pre 70 British and Italian Sportscars, call Brian Bur. Call collect: Days, 503-771-6955; Eves, 503-654-6840.

Want 5967 I'll buy your graduation tickets! Call Jeanette, 753-6314.

I need one Graduation ticket. Will pay. Call Richard — 737-6315.

WANTED DEAD OR ALIVE
American and import cars and trucks. 775-5646.

South Salem Diet Center Franchise business for sale. Open for operation. Owner's retiring. (503)588-3810

Windsurfers: 1989 Alpha 189 P
10'10" transition board; 5.5 RAF Neil Pryde sail w/ harness, lines, lock system. $650. OBO—753-4421 rooms.

Must Sell! 1988 Toyota Tercel EZ. Excellent condition, 30-35 mpg. $4300. OBO. 967-4093, eves.

Attention: Educational Institution, Faculty, & Post-secondary students.
Huge discounts on Computer Equipment direct from the manufacturer.
Amiga, Commodore, & IBM-compatible systems (Macintosh Emulation Available as Well) Prices below Dealer Cost!
Contact Floyd M. Suter (Certified Education Specialist) (503)761-0333 10356 SE Harold Street; Portland, OR 97266

1978 CHEVY LUV, new engine, camper shell, radio & tape, excellent condition, original owner $1200. 757-0861

1978 Fiat X1-9 Good condition New paint AM/FM stereo Studded snow tires. $2500 firm Phone 752-2125. Ask for Kelly

United Airline ticket to Las Vegas. Leave Eugene 5/12 return 5/16. $150/offer 757-7231

Attention—Government seized vehicles from $100 Fords, Mercedes, Corvettes, Chevys Surplus Buyers Guide. 1-602-838-8885 Ext A12157

FOR SALE. HP-28S $125.00. Call 752-0946 Mornings

Storage Available. Call now 753-3621. Hrs. 11 a.m.-6 p.m.
May and June hrs. 8:30 a.m.-5:30 p.m.
Twin Oaks Mini Storage

The College Inn is now accepting applications for the school year beginning September 1990. Upper classmen only.
Quiet co-ed. A great place to live! Fine food, weekly housekeeping, each room with bath. Universal gym, recreation room, vending and laundry. Cable T.V. in lounges. Apply in person at 155 NW Kings Blvd. Corvallis 97330 or Call 752-7127 for more information or application.

---

2 houses house, $185 plus 1/3 utilities. Available June 8, 1990. Leave message at 754-6868—Gary.

FEMALE ROOMMATE NEEDED starting in June. Non-smoker, neat. Please call KARLA 754-7152.

Two female roommates needed for beautiful summer rental. Close to OSU. $225 mon. includes everything. Must be a non-smoker. Robyn 752-3331, leave message.

Taking Organics summer terms? I'm looking for roommates. Contact Jeff L. at Hackart Lodge. 737-7763

Special Notices

BMOC Winners:
1st place — ΛΧΑ Neal Erickson
2nd place — ΣΑΕ Tad Kipzmiller
3rd place — ΑΤΩ Jeff Schloss
Congratulations!
Thank you all participants and to all those who supported us in making this year's BMOC a great success!
ΑΔΠ

INTERNATIONALS— PRACTICE ENGLISH enjoy discussions, Bible Study. Sundays 10:00-11:00 a.m. Kings Circle Assembly. Call 752-6861 or 757-9080

Hey Sally!
Have you seen the new MUPC office located next to the bookstore in the MU? they're having an Open House on Wed., May 9th. Let's go check it out!

T-SHIRTS, SWEATSHIRTS, Sportswear, Signs, Glassware, etc. Custom designs. Screen Printed. Group discounts! Shirt Circus, 1411A NW 9th, 752-8380.

MORTAR BOARD SCHOLARSHIP RECEIPIENT
Suzan Warren
Congratulations and Good Luck!

Lost: Silver divers watch, May 2 on east side of Education Building on grass. Reward. 757-8659

Lost: May 2 near 5th/Jefferson. Coin/date brown and black wallet, important documents inside. Please return. Reward. 757-6869 eves.

Found in Kidder Classrooms and Milam Hall. 3 coats, 1 sweater, 2 pairs ladies gloves, sweats and a set of keys. Come to Kidder 109 to I.D. and claim.

CRISIS PREGNANCY? Free pregnancy test/confidential counsel. We Can Help. Corvallis Crisis Pregnancy Center 757-8645

Large tropical plants — palms, ficus, etc. and waterfall. Rental prices $5 per plant. Russell's Green Thumb 753-7852.

Birthright
Free Pregnancy Testing
A place to think things over. A friend to talk to. Confidential. We care.
Salem 585-2273. Toll Free 1-800-848-LOVE.
Eugene 687-8651.

ΛΧΑ
Only 3 weeks are left till finally we meet. Dinner and dancing, oh what a treat. The earth will be shaking but not from a quake. For KD's and Lambda Chi's it's got to be fate

ΒΘΠ "Smitty"
Sun River, hot tubs, and cajun mushrooms. "I wonder what the poor people are doing?" Just a Shasta warm up.
I can't wait, no way.
♥ ΑΧΩ Leah

ΧΦ Steve
Torture at the Commons
Who says we can't ski?
China Hat in the ditch, lake Billy Chinook.
Spring break at Disneyland...
Where will it end? My favorite Bozo, I love you lots! Here's to another year and a half.
Happy Anniversary!

ΑΤΔ VIII
About three good Delts we like to tell,
About Brown, Byers, and Spam in room No. 2
Adj taking turns Shasta to drink some brew,
Hey Mike to see, hope very soon they
Who cannot wait to see
Wednesday night, and
Tuesday night, Nate, Tim, and Tracy

The Men of Phi Gamma Delta wish to congratulate Nathan Krause on his pinning Alpha Phi Sarah Bayes. Good luck and congratulations to both.

CAL

MONDAY
Meetings
Alcoholics Anonymous, 11:30 a.m., men's Center/Benton Annex.
Amnesty International, 7:30 p.m., Beardroom.
Gay and Lesbian Assoc., 7 p.m., men's Center. Video: X-tianity homosexuality.
Gay Men's Support Group, 737-7838 & 757-1988.
Poultry Science Club, 6:30 p.m., Dry 223.
Miscellaneous
Academic Services Center, 8 a.m. F Term registration is May 15.
TUESDAY
Meetings
Alpha Kappa Psi, 7:30 p.m., MU Pledge meeting.
ASOSU Senate, 7 p.m., MU 105.

ORCHARD MOTEL
VERY REASONABLE RATES
752-5917
•SWIMMING POOL
•FREE CABLE COLOR TV
•AIR CONDITIONING
•KITCHENETTES
1562 SW 3RD 1 & 2 BEDROOM UNITS
•WEEKLY RATES

REGULAR MAIL

MAY 21 1990

STATEMENT OF ORGANIZATION

(See reverse side for instructions)

1. (a) Name of Committee (in full) ☐ (Check if name is changed)

Willamette Citizen

(b) Mailing Address ☐ (Check if address is changed)

1391 SW Maple Tree Ct

(c) City, State and ZIP Code

Corvallis, OR 97333

5. TYPE OF COMMITTEE (Check one)

☐ (a) This committee is a principal campaign committee. (Complete the candidate information below.)

☐ (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate	Candidate Party Affiliation	Office Sought	State/District

☒ (c) This committee supports/opposes only one candidate Mike Kopetski (name of candidate) and is NOT an authorized committee.

☐ (d) This committee is a _____ (National, State or subordinate) committee of the _____ (Democratic, Republican, etc.) Party.

☐ (e) This committee is a separate segregated fund [illegible]

☐ (f) This committee supports/opposes more than [illegible] candidate and [illegible] separate segregated fund or a party committee.

6. Name of Any Connected Organization or Affiliated Committee | Mailing Address and ZIP Code | Nature of Relationship

Type of Connected Organization

☐ Corporation ☐ Corporation w/o Capital Stock ☐ Labor Organization ☐ Membership Organization ☐ Trade Association ☐ Cooperative

7. Custodian of Records: Identify by name, address (phone number — optional) and position of the person in possession of committee books and records.

Full Name | Mailing Address | Title or Position

Abner Linwood Holton III | 1391 SW Maple Tree Ct Corvallis OR (503) 757-4659 | Treasurer

8. Treasurer: List the name and address (phone number — optional) of the treasurer of the committee, and the name and address of any designated agent (e.g., assistant treasurer).

Full Name | Mailing Address | Title or Position

Abner Linwood Holton III | 1391 SW Maple Tree Ct Corvallis, OR 97333 | Treasurer

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc. | Mailing Address and ZIP Code

Typed Name and Title of Person Signing

Type on Signature Line

Abner Linwood Holton III

DATE

May 20 1990

NOTE: Submission of false, [illegible] is a violation of 18 U.S.C. [illegible]

FEC FORM 1

9011139787

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 27, 1990

Richard B. Noonan
Executive Director
Oregon Republican Party
Suite 150
9900 S.W. Greenburg Road
Portland, Oregon 97223

RE: MUR 3086

Dear Mr. Noonan:

This letter acknowledges receipt on July 23, 1990, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Willamette Citizens and Abner Linwood Holton, III, as treasurer. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3086. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

2 1 0 4 0 3 1 3 5 7 0

3086

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 27, 1990

Abner Linwood Holton, III,
Treasurer
The Willamette Citizen
1425 N.W. Monroe Ave.
Suite I
Corvallis, Oregon 97330

Re: MUR 3086

Dear Mr. Holton,

The Federal Election Commission received a complaint which alleges that Willamette Citizen and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3086. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received with 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

21040313571

If you have any questions, please contact Xavier McDonnell, the attorney assigned to this matter at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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

21040313572

OGC 7485

PRESTON
THORGRIMSON
SHIDLER
GATES & ELLIS

ATTORNEYS AT LAW

3200 U.S. BANCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OR 97204-3635
TELEPHONE: (503) 228-3200
FACSIMILE: (503) 248-9085

DOUGLAS C. BLOMGREN

RECEIVED
FEDERAL ELECTION COMMISSION

90 AUG 17 AM 10: 19

HAND DELIVERED

August 16, 1990

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

90 AUG 17 PM 12: 56

VIA FEDERAL EXPRESS

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

Re: MUR3086

Dear Commissioners:

In response to the Complaint of the Oregon Republican Party dated July 20, 1990, Willamette Citizen submits, pursuant to 11 C.F.R. § 111.6, the accompanying memorandum setting forth reasons why the Commission should take no action.

Also enclosed, please find, Willamette Citizen's Statement of Designation of Counsel.

Very truly yours,

Douglas C. Blomgren
Of Attorneys for
Willamette Citizen

DCB/dbm
Enclosures
WILLAMET\4ELCOMMI.OEJ

SEATTLE, WA (206) 623 7580 Columbia Ctr Fax (206) 623-7022 1st Interstate Fax (206) 622 5110
BELLEVUE, WA (206) 453 0300 Fax: (206) 646-3081
TACOMA, WA (206) 272 1500 Fax (206) 272 2913
ANCHORAGE, AK (907) 276 1969 Fax (907) 276-1365
PORTLAND, OR (503) 228 3200 Fax: (503) 248 9085
WASHINGTON, DC (202) 628 1700 Fax (202) 331 1024

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

2 1 0 4 0 3 1 3 5 7 3

BEFORE THE

FEDERAL ELECTIONS COMMISSION

MUR 3086	MEMORANDUM OF WILLAMETTE CITIZEN IN RESPONSE TO COMPLAINT

Respondent Willamette Citizen submits this response to the Complaint dated July 20, 1990, submitted by the Oregon Republican Party ("OGOP"). That Complaint falsely asserts that an advertisement and a "flier" prepared by Willamette Citizen violate the disclaimer requirement contained in 2 U.S.C. § 441d and 11 C.F.R. § 110.11 *et seq*. As this memorandum will demonstrate, no action should be taken on this Complaint because none of the material identified in the Complaint "expressly advocates" the election or defeat of a candidate. Moreover, the second publication referred to in the Complaint does not "clearly identify" any candidate or, for that matter, any election. Thus, neither 2 U.S.C. § 441d nor 11 C.F.R. § 110.11 are implicated by the material identified in the Complaint and the disclaimers contemplated under 11 C.F.R. § 110.11(a)(1) are not required.

I. FACTS

Willamette Citizen is an independent committee established and registered with the FEC in May, 1990. The committee supports the election to the United States House of Representatives of Mike Kopetski.

Willamette Citizen operates from offices in Corvallis, Oregon, which is also the location of Oregon State University

PRESTON THORGRIMSON SHIDLER GATES & ELLIS
3200 U.S. BANCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3635
TELEPHONE (503) 228-3200

2104031357 4

("OSU"). Desiring to hire college students sympathetic with its views and supportive of its goals, Willamette Citizen advertised the availability of summer jobs.

Willamette Citizen first printed a flier which was posted on and near the OSU campus. This flier read as follows:

> Summer in Corvallis?
> CAMPAIGN FOR THE ENVIRONMENT
> Earn $180-$235/wk
> +Work to elect candidates who will fight toxic waste dumping, global warming, and other hazards.
>
> +Learn valuable skills
>
> +Work with students
>
> Interview with WILLAMETTE CITIZEN Mon Tue and Wed, May 7, 8, and 9. OSU Career Planning and Placement Center, basement of Administration. Interviews begin each day at 2:00 and 3:00 sharp.

Exhibit 1, attached.

Shortly after the flier was distributed, Willamette Citizen decided to place a "help wanted" ad that clearly informed potential applicants of the type of job being offered. The following advertisement was placed in the "help wanted" portion of the Classified Advertisements in the OSU Daily Barometer:

> Summer Jobs/Elect Kopetski
> Earn $185/230/week
> Willamette Citizen, the environmental group, is running an independent campaign to elect Mike Kopetski to Congress. Office near OSU. Interviews Monday, Tuesday, Wednesday, May 7, 8, 9; 2:00 or 3:30 sharp. Careers Center, Administration Building

Exhibit 2, attached.

PRESTON THORGRIMSON SHIDLER GATES & ELLIS
3200 U.S. BANCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3635
TELEPHONE: (503) 228-3200

9104081 3575

II. APPLICABLE LAW

The disclaimer requirements applicable to independent committees under the Federal Election Campaign Act ("FECA") appear at 2 U.S.C. § 441d and 11 C.F.R. § 110.11. The statutory provision is as follows:

> (a) Whenever any person makes an <u>expenditure</u> for the purpose of financing communications <u>expressly advocating</u> the election or defeat of a <u>clearly identified candidate</u> . . . through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication --
>
> (3) If not authorized by a candidate, an authorized political committee of a candidate or its agent, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

2 U.S.C. § 441d(a) (emphasis added).

The disclaimer requirements under this section are triggered only where there has been (1) an expenditure which (2) "expressly advocates" the election or defeat of a candidate and (3) that candidate is "clearly identified."

The same requirements are echoed in regulations adopted by the Federal Election Commission. Under 11 C.F.R. § 110.11(a)(1), when an independent committee makes "expenditures" for the purpose of financing a communication that "expressly advocates the election or defeat of a clearly identified candidate," a disclaimer is to be provided which "shall clearly state that the communication has been paid for by such person and is not

PRESTON THORGRIMSON SHIDLER GATES & ELLIS
3200 U.S. BANCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3635
TELEPHONE: (503) 228-3200

2 1 0 4 0 3 1 3 5 7 6

authorized by any candidate or candidate's committee." 11 C.F.R. § 110.11(a)(1)(III). Under the regulation, the disclaimer is intended to "give the reader . . . notice of the identity of persons who paid for and, where required, who authorized the communication." *Id.*

As the following analysis will demonstrate, neither Exhibit 1 nor Exhibit 2 constitutes the type of "express advocacy" contemplated by the FECA since it was amended in 1976. In addition, with regard to Exhibit 1, a disclaimer is not required because the publication makes no reference whatsoever to any "clearly identified candidate."

III. ANALYSIS

A. The flier contains no express advocacy of a clearly identified candidate.

Prior to the Supreme Court decision in *Buckley v. Valeo*, 424 U.S. 1 (1976), provisions of FECA pertaining to independent expenditures applied to expenditures made "for the purpose of . . . influencing the election of candidates to federal office." (Emphasis added). Following that decision, the FECA was amended, Pub. L. 94-283, Title I, 90 Stat. 481, such that regulation of independent expenditures reached only those communications which "expressly advocate the election or defeat of a clearly identified candidate." *Id.* It was the purpose of these amendments to conform the FECA to the judicial requirement that, for independent expenditures, only truly candidate-oriented speech be within the reach of the FECA.

PRESTON THORGRIMSON SHIDLER GATES & ELLIS
3200 U.S. BANCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3635
TELEPHONE (503) 228-3200

2140013577

It was clearly not the intention of the Court in *Buckley*, nor the Congress in amending the FECA, that "want ads" offering summer jobs fall within the scope of speech which may be regulated under the FECA.

Under the applicable law, the "help wanted" flier (Exhibit 1) quite obviously contains nothing which remotely identifies any candidate in any race at any level. Under 2 U.S.C. § 431(18) and 11 C.F.R. § 100.17 a candidate is "clearly identified" in material only when "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." The flier at issue mentions no individual. In fact, the flier seeks employees who will work to "elect candidates who will fight toxic waste dumping, global warming and other hazards." Exhibit 1. No picture of any candidate appears on the flier. Nor is there any means by which a reader could discern whether the term "candidates" pertains to those involved in a federal race. *Compare FEC v. Mass. Citizens for Life*, 479 U.S. 238 (1986). One simply cannot read Exhibit 1 and conclude that it is "susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate." *Federal Election Commission v. Furgatch*, 807 F.2d 857, 863 (9th Cir.) *cert. den.*, 108 S.Ct. 151 (1987). For this reason, no disclaimer was required on Exhibit 1.

/ / /

/ / /

PRESTON THORGRIMSON SHIDLER GATES & ELLIS
3200 U.S. BANCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3635
TELEPHONE (503) 228-3200

2140313578

B. The "want ad" does not constitute express advocacy of a candidate merely because the words "Elect Kopetski" appear in the ad; the information appearing in the ad fulfills the purpose of the disclaimer.

The want ad appearing in Exhibit 2 was prepared by Willamette Citizen to attract summer workers who were sympathetic with the committee's goals. The treasurer of the committee believed that applicants should know more directly what the aims of the committee were. For this reason, he felt the applicants should be told that a goal of the committee was to "elect Kopetski." The OGOP claims that the use of these words without a disclaimer violate the FECA. They are wrong.

Congress and the FEC have adopted language closely tracking the language of *Buckley v. Valeo* in which the Court identified terms or "magic words" generally thought to constitute express advocacy. *Compare* 2 U.S.C. §§ 431(17), 441d and 11 C.F.R. § 109.1(2) with *Buckley v. Valeo*, 424 U.S. at 80, n.108. The word "elect" is one of those magic words. But whether the words "elect" or "vote for" or any other "magic words" appear in printed matter does not alone determine whether the material constitutes express advocacy.

Recently, the Ninth Circuit has adopted a standard for analyzing whether language constitutes "express advocacy" which rejects a simple reliance on these "magic words." *Federal Election Commission v. Furgatch*, 807 F.2d 857 (9th Cir.) *cert. denied* 108 S.Ct. 151 (1987).

As employed by the Ninth Circuit, the standard has three

PRESTON THORGRIMSON SHIDLER GATES & ELLIS
3200 US BANCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3635
TELEPHONE (503) 228-3200

2104081 3579

parts:

> First, even if it is not presented in the clearest, most explicit language, speech is "express" for present purposes if its message is unmistakable and unambiguous, suggestive of only one plausible meaning. Second, speech may only be termed "advocacy" if it presents a clear plea for action, and thus speech that is merely informative is not covered by the Act. Finally, it must be clear what action is advocated. Speech cannot be "express advocacy of the election or defeat of a clearly identified candidate" when reasonable minds could differ as to whether it encourages a vote for or against the candidate or encourages the reader to take some other kind of action. We emphasize that if any reasonable alternative reading of speech can be suggested, it cannot be express advocacy subject to the Act's disclosure requirements.

807 F.2d at 863 (emphasis added).

Employing the *Furgatch* analysis, the "help wanted" ad appearing in the OSU student newspaper falls far short of express advocacy. In that ad, Willamette Citizen sought summer help. It obviously hoped for workers sympathetic with its efforts to "elect Kopetski." However, a single use of the term "elect" to describe the purpose of the committee, in this context, constitutes nothing more than "a stray comment [which] viewed in isolation may suggest an idea that is only peripheral to the primary purpose of speech as a whole." *Id.*

The context within which the advertisement appeared also supports the conclusion that it does not constitute "express advocacy." The advertisement appeared in the "help wanted" section. It identified the dates on which interviews would be

PRESTON THORGRIMSON SHIDLER GATES & ELLIS
3200 U.S. BANCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3635
TELEPHONE: (503) 228-3200

2 1 3 4 0 3 1 3 5 3 0

held. It identified the range of weekly pay available for those who were hired. Exhibit 2.

What emerges from the language and context of the advertisement is an invitation, not advocacy. The ad does not encourage "a vote for or against a candidate;" it "encourages the reader to take some other kind of action." *Furgatch*, 807 F.2d at 864. It encourages the reader to apply for a job. Under the *Furgatch* test, therefore, the advertisement does not constitute "express advocacy" requiring the inclusion of the disclaimer.

Even if it could be concluded that a disclaimer were required under 2 U.S.C. § 441d, the language of the advertisement itself supplies virtually all of the information otherwise provided in a disclaimer. The advertisement specifically identifies that the potential employer is "Willamette Citizen." It further states that the organization is running an "independent campaign" intent on electing Mike Kopetski to Congress. Anyone reading the advertisement would logically conclude that the ad had been placed by a group, independent of Mike Kopetski, bearing the name Willamette Citizen. And the reader would have been correct. The language of the advertisement itself serves any purpose the disclaimer is intended to satisfy.

An additional point is relevant to the Commission's decision at this stage. In this case, the person responsible for placing the advertisement not only believed that the advertisement did not constitute "express advocacy," he also firmly believed that,

PRESTON THORGRIMSON SHIDLER GATES & ELLIS
3200 U S BANCORP TOWER
111 S W FIFTH AVENUE
PORTLAND, OREGON 97204-3635
TELEPHONE (503) 228-3200

9104081353 1

like bumper stickers, pins, buttons, and similar small items, an 8-line classified ad was exempt from the disclaimer requirements under 11 C.F.R. § 110.12. *See* attached letter dated August 15, 1990 (Exhibit 3). He relied upon the FEC Campaign Guide for Nonconnected Committees prepared in 1985 (at p. 9, ¶ 3). He was unaware of any Advisory Opinion suggesting that newspaper advertising is not eligible for the "impracticability exemption" provided in the regulation. Respondent respectfully suggests that, if the language contained in the "help wanted" advertisement is found to constitute "express advocacy," the most appropriate action for the Commission to take would be to revise the Guide prepared years ago so that those wishing to avoid any impropriety might have clear direction as to how this might be accomplished.

IV. CONCLUSION

Not all advertising by independent committees advocates the election of a particular candidate. The "help wanted' flier, like the similar classified ad, was an effort to locate suitable employees for the Willamette Citizen campaign. If a committee seeks suitable employees and attempts to identify its purposes so that potential employees can make their own decisions about the job, committees must be free to make reference to their purpose without the advertisement being considered an independent expenditure on behalf of a particular candidate. Particularly in the employment area it is appropriate for a committee to identify its political affiliation, alignment, or sympathies. While it

PRESTON THORGRIMSON SHIDLER GATES & ELLIS
3200 U.S. BANCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3635
TELEPHONE (503) 228-3200

2 1 0 4 0 5 1 3 5 3 2

may be possible for a political committee to advertise in the newspaper for a used mimeograph machine, an old refrigerator, or other appliances which may be of use to a committee, it cannot seek employees without additional disclosure of its political bent. It can do this in a number of ways. Perhaps the most expedient is to identify in the help wanted ads the candidate the committee supports. Another way is to identify issues about which a group is concerned. Whichever way the disclosure is performed, it should not then be subject to complaints such as those made by the OGOP simply because the employer is engaged in a political campaign.

Respondents respectfully request that the Commission take no action on the Complaint filed by the OGOP and that that Complaint be dismissed as provided by Commission rules.

DATED this 15th day of August, 1990.

Respectfully submitted,

PRESTON THORGRIMSON SHIDLER
GATES & ELLIS

By: _____
Douglas C. Blomgren
Of Attorneys for
Willamette Citizen

PRESTON THORGRIMSON SHIDLER GATES & ELLIS
3200 U S BANCORP TOWER
111 S W FIFTH AVENUE
PORTLAND, OREGON 97204-3635
TELEPHONE (503) 228-3200

9104031583

Summer in Corvallis?

Campaign for the Environment

Earn $180-$235/wk

+Work to elect candidates who will fight toxic waste dumping, global warming, and other hazards

+Learn valuable skills

+Work with students

Interview with WILLAMETTE CITIZEN Mon, Tue, and Wed, May 7, 8, and 9. OSU Career Planning and Placement Center, basement of Administration. Interviews begin each day at 2:00 and 3:30 sharp.

RESPONDENT'S EXHIBIT 1

9 1 0 4 0 8 1 3 5 8 4

CLASSIFIED

Classified Ad Rates

Classified Ad Rates
20¢ per word/per day
($3.00 per day minimum)
Hearts ♥ 30¢, ♥ 75¢/day
Greek Letters (2-3) $1.50/day
Large Type $2.50/day
(Up to 15 characters)
Ad deadline is 2 p.m., one day before publication
MU East 117

Help Wanted

Save 50% at leading hotels nationwide and locally for FREE lodging. Also solid 6 figure income. 1-800-233-8509 x1001.

"MAKE EVERY DAY EARTH DAY"
Summer Campaigns
For the Environment
Earn $2500-$3500. Help pass the Clean Air Act, tighten pollution controls, & promote comprehensive recycling. Available in 18 states & D.C.
Call Kate at: 1-800-75-EARTH

Landscape/Landscape Irrigation persons immediate openings. Permanent full-time and summer help. Leonard Bernhardt Landscaping, 9340 SW Miller Hill Rd., Beaverton, Oregon 97007. 649-3535.

Students needed for "Hay Crew." Please apply at the OSU Horse Center 737-2...

Attention: Earn money Reading Books! $32,000/year income potential. Details (602-838-8885 Ext Bk 12157

Free Travel Benefits! Cruise ships and airlines now hiring! All positions. Call (1) 602-838-8885 Ext Y-12157

Free Travel Benefits! Airlines now hiring! All positions $17,500-$58,240. Call (602-838-8885 Ext X12157

Canvass Director
Summer Position
The Citizens Utility Board is hiring for the position of Portland Canvass Director. CUB advocates for fair utility rates and environmentally sound energy policies. Prior canvassing required. Salary range $1400-$1600/month. Send resume by May 16 to: 921 SW Morrison, Suite 550, Portland, OR 97205 (227-1984)

BAROMETER DELIVERY PERSON NEEDED
Must be reliable, able to work from 5-7 am, have car/truck and able to work immediately. Apply by May 6th at 5:00 in Shed 118

Help Wanted

ATTENTION-HIRING! Government jobs in your area. $17,840-69,485. Call 1-602-838-8885 Ext. R12157

ATTENTION Postal Jobs! Start $11.41/hour! For application info call 1-602-838-8885 Ext. M-12157, 6 a.m.-10 p.m., 7 days

SUMMER JOBS/ELECT KOPETSKI
Earn $185/ 230/ week
Willamette Citizen, the environmental group, is running an independent campaign to elect Mike Kopetski to Congress. Office near OSU. Interviews Monday, Tuesday, Wednesday, May 7, 8, 9; 2:00 or 3:30 sharp. Careers Center, Administration Building.

Wanted

WANTED Pre 70 British and Italian Sportcars, call Brian Bur. Call collect: Days, 503-771-9955; Eves, 503-654-6640.

Want $$$? I'll buy your graduation tickets! Call Jeanette, 753-5314.

I need one Graduation ticket. Will pay. Call Richard — 737-9315.

WANTED DEAD OR ALIVE
American and import cars and trucks. 775-5545.

For Sale

South Salem Diet Center Franchise business for sale. Open key operation. Owner's retiring. (503)588-3810

Windsurfers: 1989 Alpha 160 F
10'10" transition board; 5.5 RAF Neil Pryde sail w/ harness lines, locs system. $650. OBO—753-4421 morns.

Must Sell! 1988 Toyota Tercel EZ. Excellent condition, 30-35 mpg, $4300. OBO 967-4093, eves.

Attention: Educational Institution, Faculty, & Post-secondary students
Huge discounts on Computer Equipment direct from the manufacturer
Amiga, Commodore, & IBM-compatible systems. (Macintosh Emulation. Available as Well Prices below Dealer Cost!
Contact Floyd M. Sutter (Certified Education Specialist) (503) 761-0333, 10356 SE Market Street, Portland, OR 97266

1978 CHEVY LUV, new engine, camper shell, radio & tape, excellent condition, original owner $1200. 757-0861

1978 Fiat X1/9. Good condition. New paint. AM/FM stereo. Studded snow tires. $2500 firm. Phone 752-2125. Ask for Kelly.

United Airline ticket to Las Vegas. Leave Eugene 5/12, return 5/18. $150/offer. 757-7291

Attention—Government seized vehicles from $100. Ferrari, Mercedes, Corvettes. Chevys. Surplus Buyers Guide (602) 838-8885 Ext. A12157

For Sale

FOR SALE, HP-28S $125.00. Call 752-0946 Mornings

For Rent

Storage Available. Call now 753-3621. Hrs. 11 a.m.-5 p.m.
May and June hrs. 8:30 a.m.-5:30 p.m.
Twin Oaks Mini Storage

Housing

The College Inn is now accepting applications for the school year beginning September 1990. Upper classmen only.
Quiet co-ed. A great place to live! Fine food, weekly housekeeping, each room with bath. Universal gym, recreation room, vending and laundry. Cable T.V. in lounges. Apply in person at 155 NW Kings Blvd, Corvallis 97330 or Call 752-7127 for more information or application.

Roommates

2 bdroom house, $185 plus 1/2 utilities. Available June 6, 1990. Leave mess at ... 754-6866—Gary.

FEMALE ROOMMATE NEEDED starting in June. Non-smoker, neat. Please call KARLA 754-7152

Two female roommates needed for beautiful summer rental. Close to OSU. $225 mon. includes everything. Must be a non-smoker. Robyn 752-3331, leave message.

Taiwing Organics summer term? I'm looking for roommates. Contact Jeff L. at Heckart Lodge 737-7763

Special Notices

BMOC Winners:

1st place — ΛΧΛ Neal Erickson

2nd place — ΣΑΕ Tad Kipzmuller

3rd place — ΑΤΩ Jeff Schmors

Congratulations.
Thank you all participants and to all those who supported us in making this year's BMOC a great success!

ΑΔΠ

INTERNATIONALS– PRACTICE ENGLISH enjoy discussions. Bible Study. Sundays 10:00-11:00 a.m. Kings Circle Assembly. Call 752-8861 or 757-9086

Hey Sally!
Have you seen the new MUPC office located next to the bookstore in the MU? They're having an Open House on Wed. May 9th. Let's go check it out!

Special Notices

T-SHIRTS, SWEATSHIRTS, Sportswear, Signs, Glassware, etc. Custom designs Screen Printed. Group discounts! Shirt Circus, 1411A NW 9th, 752-8380.

MORTAR BOARD SCHOLARSHIP RECIPIENT
Suzan Warren
Congratulations and Good Job!

Lost & Found

Lost: Silver divers watch, May 2 on east side of Education Building on grass. Reward. 757-8659

Lost: May 2 near 5th/Jefferson. Cowhide brown and black wallet. Important documents inside. Please return. Reward. 757-9958 eves.

Found in Kidder Classrooms and Milam Hall. 3 coats, 1 sweater, 2 pairs ladies gloves, sweats and a set of keys. Come to Kidder 109 to I.D. and claim.

Services

CRISIS PREGNANCY? Free pregnancy test/confidential counsel. We can help. Corvallis Crisis Pregnancy Center 757-9645

Large tropical plants — palms, ficus, etc. and waterfall. Rental prices $5 per day. Russell's Green Thumb 753-7852

Birthright
Free Pregnancy Testing
A place to think things over. A friend to talk to. Confidential. We care.
Salem 585-2273. Toll Free 1-800-848-LOVE
Eugene 687-8651.

Personals

ΛΧΛ
Only 3 weeks are left till finally we meet. Dinner and dancing, oh what a treat. The earth will be shaking but not from a quake. For KC's and Lamboa Chis it's got to be fate

ΒΘΠ "Smitty"
Sun River, hot tubs, and cajun mushrooms. "I wonder what the poor people are doing." Just a Shasta warm up. I can't wait, no way.

♥ ΑΧΩ Lean

ΧΦ Steve
Tomorrow at the Commons
Who says we can't ski?
China rug in the ditch, lake Billy Chinook
Spring break at Disneyland
Where are I and I? My favorite Bozo. I love you long. Here's to another year and a half. Happy Anniversary!

Personals

ΔΤΔ
Here's a little story we'd like to tell.
About three cool Delts we like so well,
Shawn, Bryan, and Scott in room No. 2,
Are taking us to Shasta to drink some brew,
We'd like to say, in our very own way,
We cannot wait til this Wednesday.
Z agd
Nedi, Kim, and Tracy

The Men of Phi Gamma Delta wish graduate Nathan Varusso on his pin. Alpha Phi Sarah Boyce. Good luck and wishes to you both.

CA

MONDAY

Meetings

Alcoholics Anonymous, 11:30 a.m. men's Center/Benton Annex.

Amnesty International, 7:30 p.m., Boardroom.

Gay and Lesbian Assoc., 7 p.m., men's Center. Video: X-tianity homosexuality.

Gay Men's Support Group, 737-78... 757-1980.

Poultry Science Club, 4:30 p.m., Dr... 213.

Miscellaneous

Academic Services Center, 8 a.m. Term registration is May 15

TUESDAY

Meetings

Alpha Kappa Psi, 7:30 p.m., MU Pledge meeting.

ASOSU Senate, 7 p.m., MU 105

ORCHARD MOTEL
VERY REASONABLE RATES
752-5917
•SWIMMING POOL
•FREE CABLE COLOR TV
•AIR CONDITIONING
•KITCHENETTES
1562 SW 3RD
•1 & 2 BEDROOM UNITS
•WEEKLY RATES

RESPONDENT'S EXHIBIT 2

Willamette Citizen
1425 NW Monroe Ave.
Corvallis, OR 97330
August 15, 1990

Federal Election Commission
Washington, D.C. 20463

Dear Commissioners,

I am writing in response to the complaint filed against Willamette Citizen by the Oregon Republican Party (MUR 3086). I do not believe that disclaimers were required on our Help Wanted advertisements and flyers.

The flyer did not need a disclaimer because it did not mention the name of either candidate.

The Help Wanted advertisement mentioned Kopetski's name, but its clear purpose was to recruit staff, not get people to vote for Kopetski. Also, I felt the Help Wanted advertisement did not need a disclaimer because including one would have been impracticable. I noted in the FEC guide for non-connected committees that bumper stickers are exempt from the disclaimer requirement. So I figured that Help Wanted ads, which are much smaller than bumper stickers, were also exempt.

Sincerely,

Abner Linwood Holton III

Abner Linwood Holton III
Campaign manager

9104031335 6

RESPONDENT'S EXHIBIT 3

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3086

NAME OF COUNSEL: Douglas C. Blomgren

ADDRESS: PRESTON THORGRIMSON SHIDLER GATES & ELLIS
111 SW Fifth Avenue, Suite 3200
Portland, OR 97204

TELEPHONE: (503) 228-3200

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

August 10, 1990
Date

Alonzo Linwood Holton III
Signature
A.L. Holton, III
Treasurer

RESPONDENT'S NAME: Willamette Citizen

ADDRESS: 1425 NW Monroe Avenue
Suite 1
Corvallis, OR 97330

HOME PHONE:

BUSINESS PHONE:

9104081358 7

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

90 DEC -3 PM 4:50

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR 3086
DATE COMPLAINT RECEIVED
BY OGC: July 23, 1990
DATE OF NOTIFICATION TO
RESPONDENTS: July 27, 1990
STAFF MEMBER: Xavier McDonnell

COMPLAINANT: Oregon Republican Party and Richard B. Noonan, as Executive Director

RESPONDENTS: Willamette Citizen, and Abner Linwood Holton, III, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441d(a)
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The Oregon Republican Party and Richard B. Noonan, as Executive Director ("Complainants") have filed a complaint against the Willamette Citizen, (the "Committee") and Abner Linwood Holton, III, as treasurer (collectively "Respondents").

II. FACTUAL AND LEGAL ANALYSIS

A. BACKGROUND

The Willamette Citizen is an independent expenditure committee with the stated purpose of electing Mike Kopetski to Congress in Oregon's Fifth District. Attachment 1 at pages 1 and 5; Attachment 2 at page 2. Complainant alleges that the Respondents violated the Federal election Campaign Act of 1971, as amended, (the "Act") by failing to place disclaimers on a flier and a newspaper advertisement.

9104081358

B. **APPLICABLE LAW**

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 newspaper or any other type of general public advertising, such communication, if not authorized by a candidate, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized. 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(a)(1).

An expenditure includes any payment made "for the purpose of influencing" a federal election. 2 U.S.C. § 431(9)(A)(i). "Expressly advocating" is defined as including expressions such as "elect," "vote against" and "defeat." Buckley v. Valeo, 424 U.S. 1, 44, n. 52, see also 11 C.F.R. § 109.1(b)(2). In FEC v. Massachusetts Citizens For Life, 479 U.S. 230, 249 (1986), the Supreme Court noted that express advocacy can be "less direct" than the examples listed in Buckley, so long as the "essential nature" of the message goes "beyond issue discussion to express electoral activity." See also FEC v. Furgatch, 807 F.2d 857 (9th cir.) cert. denied, 108 S.Ct. 151 (1987).

In Furgatch, the Ninth Circuit proposed a three part standard for determining whether speech, when taken as a whole, constitutes express electoral activity. First, the language must be "express" so that "its message is unmistakable and unambiguous, suggestive of only one plausible meaning." Furgatch, 807 F.2d at 864. Second, the communication must be more than informative and must advocate "a clear plea for action." Id. Third, "it must be clear what action is advocated." Id. The court stated that

2104031353 9

speech cannot be express advocacy "when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action." Furgatch, 807 F.2d at 864.

C. **ANALYSIS**

1. **Newspaper Advertisement**

The advertisement, which was published in the classified section of the Daily Barometer, the Oregon State University ("OSU") newspaper on May 7, 1990, stated:

> Summer Jobs/Elect Kopetski
> Earn $185/230/week
> Willamette Citizen, the environmental group, is running an independent campaign to elect Mike Kopetski to Congress.

Attachment 1 at page 4.[1]

The Committee does not deny that the candidate is clearly identified or that the communication is a clear plea for action. Rather, the Committee relies on the third component of the standard proposed in Furgatch, and asserts that the use of the word "elect" was "a stray comment," that the word was used to describe the Committee, and that, through the advertisement the Committee simply "sought summer help." Attachment 2 at page 8. The Respondents also argue that, given the context in which the advertisement appeared, in the help wanted section, its purpose was not to encourage "a vote for or against a candidate" but to encourage "some other kind of action," namely, to apply for a job. Id. at page 9. Furgatch, 807 F.2d at 864.

Respondents' arguments are unavailing. To begin with, the

---

1. The remainder of the eight line advertisement disclosed the location and time for interviews.

9104031359 0

words within the advertisement expressly advocate that the reader join the Committee in its efforts to "Elect Kopetski." The expression used in this advertisement, therefore, contains the very words identified by the Supreme Court and by the Commission as examples of express advocacy. Buckley v. Valeo, 424 U.S. 1, at page 44, n. 52; 11 C.F.R. § 109.1(b)(2). In contrast, the advertisement in Furgatch did not contain any of the examples of express advocacy included in Buckley.[2] Moreover, in Furgatch, the court noted that by adopting the three part standard it was "not forced" to "ignore the plain meeting of campaign-related speech." Furgatch, 807 F.2d at 864. The court also stated that the "intent behind political speech is less important than its effect," as a "speaker may expressly advocate regardless of his intention," and that the context in which speech appears is "peripheral to the words themselves." Id. at 863.

The Respondents offer no support for the proposition that encouraging the reader to work to elect a specific candidate is somehow distinguishable from simply asking for a vote because in either case the message has the effect of encouraging the reader to vote for a clearly identified candidate. Moreover, contrary to the Respondents' contentions, the advertisement at issue here not

---

2. In Furgatch, the court determined that disclaimers were required on an advertisement which stated: "DON'T LET HIM DO IT." Furgatch, 807 F.2d at page 858. In that case, the court stated that it was called upon to interpret and refine the definition of "express advocacy" as the message in Furgatch's advertisement was admittedly vague and did not contain the "magic words" previously identified by the Supreme Court. Id. at pages 861, 863 and 865. Given the fact that the advertisement at issue expressly requests that the reader "Elect Kopetski," and therefore contains the "magic words," it is indeed questionable whether the standard developed in Furgatch is pertinent here.

9104031359 1

only asks the reader for a vote: it asks the reader to assist the Committee in its efforts to win votes from others.

The Respondents additionally present two alternative arguments, neither of which is persuasive. First, the Respondents assert that even if the Commission finds a disclaimer was required, the advertisement contained "virtually all of the information otherwise provided in a disclaimer" because it identified the Committee by name and indicated that the Respondents were running an "independent campaign." Attachment 2 at page 9.

The Respondents are apparently asserting that the language of this advertisement implied that the Committee paid for it and that it was not authorized, and therefore it was in compliance with Section 441d. However, it is settled that the Act and the Commission's regulations "do not provide for disclaimers by inference." FEC v. National Conservative Political Action Committee, NO. 85-2898, memorandum opinion filed April 29, 1987 (D.D.C.). Rather, disclaimers must "clearly state" who paid for the communication and whether it was authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a).

The Committee also argues that the treasurer firmly believed that the 8 line advertisement came within the disclaimer exemption for small items provided in 11 C.F.R. 110.11(a)(iv)(B), as that provision was presented in an FEC campaign guide. Attachment 2 at pages 9-10. However, as the Respondents have acknowledged, in A.O. 1978-33 the Commission rejected the application of the small items exemption to newspaper advertisements.

9104031359 2

Accordingly, the Office of General Counsel recommends that the Commission find reason to believe the Willamette Citizen, and Abner Linwood Holton, III, as treasurer, violated 2 U.S.C. § 441d(a) by failing to place a disclaimer on this advertisement.

2. Flier

The flier advertises a position working "to elect candidates who will fight toxic waste, dumping, global warming and other hazards." See Attachment 1 at page 3. The flier reads:

> Summer in Corvallis?
> Campaign for the Environment
> Earn $180-235/wk
> Work to elect candidates who will
> fight toxic waste, dumping, global
> warming and other hazards.

The Respondents argue that the flier does not expressly advocate the election or defeat of a clearly identified candidate, therefore no disclaimer was required. 2 U.S.C. § 441d(a); Buckley v. Valeo, 424 U.S. 1 (1976). Under the Act and Commission regulations, "clearly identified" means: A) the name of the candidate involved appears; B) a photograph or drawing of the candidate appears; or C) the identity of the candidate is apparent by unambiguous reference. 2 U.S.C. § 431(18); 11 C.F.R. § 100.17.

This flier does not expressly advocate the election or defeat of a clearly identified candidate. As Respondents assert in their response, the flier does not contain the name or the photograph of any specific candidate. Nor does the advertisement contain an unambiguous reference to a specific candidate. Rather, it seeks individuals who will work to elect candidates who take a certain position with respect to environmental issues. In addition, the flier does not indicate whether the candidates are

2 1 0 4 0 3 1 3 5 9 3

involved in state or federal elections. Accordingly, the Office of General Counsel recommends that the Commission find no reason to believe that the Willamette Citizen and Abner Linwood Holton, III, as treasurer, violated 2 U.S.C. § 441d(a) by failing to place a disclaimer on the flier.

II. RECOMMENDATIONS

1. Find reason to believe the Willamette Citizen and Abner Linwood Holton, III, as treasurer, violated 2 U.S.C. § 441d(a) with respect to the newspaper advertisement.

2. Find no reason to believe the Willamette Citizen and Abner Linwood Holton, III, as treasurer, violated 2 U.S.C. § 441d(a) with respect to the flier.

2. Approve the attached Factual and Legal Analysis and the appropriate letter.

Lawrence M. Noble
General Counsel

11/30/90
Date

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

Attachments
1. Complaint
2. Response
3. Factual and Legal Analysis

2104031359 4

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /DELORES HARRIS
COMMISSION SECRETARY

DATE: DECEMBER 5, 1990

SUBJECT: MUR 3086 - FIRST GENERAL COUNSEL'S REPORT DATED NOVEMBER 30, 1990

The above-captioned document was circulated to the Commission on Tuesday, December 4, 1990 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	
Commissioner Josefiak	XXX
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	

This matter will be placed on the meeting agenda for TUESDAY, DECEMBER 11, 1990.

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

21034081395

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3086
Willamette Citizen, and Abner Linwood Holton, III, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 11, 1990, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3086:

1. Find reason to believe the Willamette Citizen and Abner Linwood Holton, III, as treasurer, violated 2 U.S.C. § 441d(a) with respect to the newspaper advertisement, but take no further action.

2. Find no reason to believe the Willamette Citizen and Abner Linwood Holton, III, as treasurer, violated 2 U.S.C. § 441d(a) with respect to the flier

3. Approve the Factual and Legal Analysis attached to the General Counsel's report dated November 30, 1990.

4. Close the file.

(continued)

90 1 4 0 3 1 3 5 9 6

5. Send appropriate letters pursuant to the actions noted above.

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

Attest:

12-13-90
Date

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

2104031359 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 20, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard B. Noonan
Executive Director
Oregon Republican Party
9900 S.W. Greenburg Road, Suite 150
Portland, OR 97223

Re: MUR 3086
Willamette Citizen and
Abner Linwood Holton, III,
as treasurer

Dear Mr. Noonan:

This is in reference to the complaint you filed with the Federal Election Commission on July 23, 1990, concerning certain newspaper advertisements and fliers distributed by the Willamette Citizen and Abner Linwood Holton, III, as treasurer (the "Respondents").

Based on that complaint, on December 11, 1990, the Commission found that there was reason to believe the Respondents violated 2 U.S.C. § 441d(a), a provision of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission determined to take no further action against the Respondents, and closed the file in this matter on December 11, 1990. A statement of reasons for the Commission's decision will follow. This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

9104031353 8

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

91040313599

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CLOSED

December 20, 1990

Douglas C. Blomgren, Esquire
Preston, Thorgrimson, Shidler,
Gates & Ellis
3200 U.S. Bancorp. Tower
111 S.W. Fifth Avenue
Portland, OR 97204-3635

RE: MUR 3086
Willamette Citizen and
Abner Linwood Holton, III, as treasurer

Dear Mr. Blomgren:

On December 11, 1990, the Federal Election Commission found reason to believe that the Willamette Citizen (the "Committee") and Abner Linwood Holton, III, as treasurer, ("your clients"), violated 2 U.S.C. § 441d(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. The Commission reminds your clients that failing to place a disclaimer on communications which expressly advocate the election of a federal candidate through general public advertising is a violation of Section 441d(a). Your clients 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. Should you wish to submit any materials to appear on the public record, please do so within ten days of your receipt of this letter. Please send such materials to the General Counsel's Office.

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

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosure
Factual and Legal Analysis

9104031360 0

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 3086

RESPONDENTS: Willamette Citizen, and
Abner Linwood Holton, III, as treasurer

I. GENERATION OF MATTER

The Oregon Republican Party and Richard B. Noonan, as Executive Director ("Complainants") filed a complaint against the Willamette Citizen, (the "Committee") and Abner Linwood Holton, III, as treasurer (collectively "Respondents").

II. FACTUAL AND LEGAL ANALYSIS

A. BACKGROUND

The Willamette Citizen is an independent expenditure committee with the stated purpose of electing Mike Kopetski to Congress in Oregon's Fifth District. Complainant alleges that the Respondents violated the Federal election Campaign Act of 1971, as amended, (the "Act") by failing to place disclaimers on a flier and a newspaper advertisement.

B. APPLICABLE LAW

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 newspaper or any other type of general public advertising, such communication, if not authorized by a candidate, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized. 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(a)(1).

2 1 5 4 0 3 1 3 5 0 1

An expenditure includes any payment made "for the purpose of influencing" a federal election. 2 U.S.C. § 431(9)(A)(i). "Expressly advocating" is defined as including expressions such as "elect," "vote against" and "defeat." Buckley v. Valeo, 424 U.S. 1, 44, n. 52, see also 11 C.F.R. § 109.1(b)(2). In FEC v. Massachusetts Citizens For Life, 479 U.S. 230, 249 (1986), the Supreme Court noted that express advocacy can be "less direct" than the examples listed in Buckley, so long as the "essential nature" of the message goes "beyond issue discussion to express electoral activity." See also FEC v. Furgatch, 807 F.2d 857 (9th cir.) cert. denied, 108 S.Ct. 151 (1987).

In Furgatch, the Ninth Circuit proposed a three part standard for determining whether speech, when taken as a whole, constitutes express electoral activity. First, the language must be "express" so that "its message is unmistakable and unambiguous, suggestive of only one plausible meaning." Furgatch, 807 F. 2d at page 864. Second, the communication must be more than informative and must advocate "a clear plea for action." Id. Third, "it must be clear what action is advocated." Id. The court stated that speech cannot be express advocacy "when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action." Furgatch, 807 F.2d at 864.

C. ANALYSIS

1. Newspaper Advertisement

The advertisement, which was published in the classified section of the Daily Barometer, the Oregon State University

2 1 3 4 0 3 1 3 5 0 2

("OSU") newspaper on May 7, 1990, stated:

> Summer Jobs/Elect Kopetski
> Earn $185/230/week
> Willamette Citizen, the environmental group
> is running an independent campaign to elect
> Mike Kopetski to Congress.

The Committee does not deny that the candidate is clearly identified or that the communication is a clear plea for action. Rather, the Committee relies on the third component of the standard proposed in Furgatch, and asserts that the use of the word "elect" was "a stray comment," that the word was used to describe the Committee, and that, through the advertisement the Committee simply "sought summer help." The Respondents also argue that, given the context in which the advertisement appeared, in the help wanted section, its purpose was not to encourage "a vote for or against a candidate" but to encourage "some other kind of action," namely, to apply for a job. Furgatch, 807 F.2d at 864.

Respondents' arguments are unavailing. To begin with, the words within the advertisement expressly advocate that the reader join the Committee in its efforts to "Elect Kopetski." The expression used in this advertisement, therefore, contains the very words identified by the Supreme Court and by the Commission as examples of express advocacy. Buckley v. Valeo, 424 U.S. 1, 44, n. 52; 11 C.F.R. § 109.1(b)(2); In contrast, the advertisement in Furgatch did not contain any of the examples of

9104031363 03

express advocacy included in Buckley.[1] Moreover, in Furgatch, the court noted that by adopting the three part standard it was "not forced" to "ignore the plain meaning of campaign-related speech." Furgatch, 807 F.2d at 864. The court also stated that the "intent behind political speech is less important than its effect," as a "speaker may expressly advocate regardless of his intention," and that the context in which speech appears is "peripheral to the words themselves." Id. at 863.

The Respondents offer no support for the proposition that encouraging the reader to work to elect a specific candidate is somehow distinguishable from simply asking for a vote because in either case the message has the effect of encouraging the reader to vote for a clearly identified candidate. Moreover, contrary to the Respondents' contentions, the advertisement at issue here not only asks the reader for a vote: it asks the reader to assist the Committee in its efforts to win votes from others.

The Respondents additionally present two alternative arguments, neither of which is persuasive. First, the Respondents assert that even if the Commission finds a disclaimer was required, the advertisement contained "virtually all of the

---

1. In Furgatch, the court determined that disclaimers were required on an advertisement which stated: "DON'T LET HIM DO IT." Furgatch, 807 F.2d at page 858. In that case, the court stated that it was called upon to interpret and refine the definition of "express advocacy" as the message in Furgatch's advertisement was admittedly vague and did not contain the "magic words" previously identified by the Supreme Court. Id. at pages 861, 863 and 865. Given the fact that the advertisement at issue expressly requests that the reader "Elect Kopetski," and therefore contains the "magic words," it is indeed questionable whether the standard developed in Furgatch is pertinent here.

9 1 0 4 0 3 1 3 5 0 4

information otherwise provided in a disclaimer" because it identified the Committee by name and indicated that the Respondents were running an "independent campaign." The Respondents are apparently asserting that the language of this advertisement implied that the Committee paid for it and that it was not authorized, and therefore it was in compliance with Section 441d. However, it is settled that the Act and the Commission's regulations "do not provide for disclaimers by inference." FEC v. National Conservative Political Action Committee, NO. 85-2898, memorandum opinion filed April 29, 1987 (D.D.C.). Rather, disclaimers must "clearly state" who paid for the communication and whether it was authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a).

The Committee also argues that the treasurer firmly believed that the 8 line advertisement came within the disclaimer exemption for small items provided in 11 C.F.R. 110.11(a)(iv)(B), as that provision was presented in an FEC campaign guide. However, as the Respondents have acknowledged, in A.O. 1978-33 the Commission rejected the application of the small items exemption to newspaper advertisements.

Accordingly, there is reason to believe the Willamette Citizen, and Abner Linwood Holton, III, as treasurer, violated 2 U.S.C. § 441d(a) by failing to place a disclaimer on this advertisement.

2. Flier

The flier advertises a position working "to elect candidates who will fight toxic waste, dumping, global warming and other

9104031360 5

hazards." The flier reads:

> Summer in Corvallis?
> Campaign for the Environment
> Earn $180-235/wk
> Work to elect candidates who will
> fight toxic waste, dumping, global
> warming and other hazards.

The Respondents argue that the flier does not expressly advocate the election or defeat of a clearly identified candidate, therefore no disclaimer was required. 2 U.S.C. § 441d(a); Buckley v. Valeo, 424 U.S. 1 (1976). Under the Act and Commission regulations, "clearly identified" means: A) the name of the candidate involved appears; B) a photograph or drawing of the candidate appears; or C) the identity of the candidate is apparent by unambiguous reference. 2 U.S.C. § 431(18); 11 C.F.R. § 100.17.

This flier does not expressly advocate the election or defeat of a clearly identified candidate. As Respondents assert in their response, the flier does not contain the name or the photograph of any specific candidate. Nor does the advertisement contain an unambiguous reference to a specific candidate. Rather, it seeks individuals who will work to elect candidates who take a certain position with respect to environmental issues. In addition, the flier does not indicate whether the candidates are involved in state or federal elections. Accordingly, there is no reason to believe that the Willamette Citizen and Abner Linwood Holton, III, as treasurer, violated 2 U.S.C. § 441d(a) by failing to place a disclaimer on the flier.

2 1 0 4 0 3 1 3 6 0 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3086

DATE FILMED 1/16/91 CAMERA NO. 2

CAMERAMAN AS

9104031363 7