



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3138

DATE FILMED 11/2/91 CAMERA NO. 2

CAMERAMAN AS

91040874409

06C 8083

# OBER, KALER, GRIMES & SHRIVER

ATTORNEYS AT LAW

180 EAST BALTIMORE STREET

BALTIMORE, MARYLAND 21202-1643

(301) 685-1120

FACSIMILE (301) 847-0699

CABLE "RITNEY"

TELEX 8-7774

OFFICES IN

WASHINGTON, D. C.

NEW YORK

NEW JERSEY

WRITER'S DIRECT DIAL NUMBER

JAMES R. WORSLEY, JR.\*  
 PAUL DANIEL\*  
 THOMAS D. WASHBURN  
 LEWIS C. STRUDWICK  
 LAWRENCE D. HOLLMAN\*  
 JERVIS S. FINNEY  
 MANFRED W. LECKSZAS  
 THOMAS B. EASTMAN  
 FREDERICK S. HIRD, JR.\*  
 WILLIAM F. BLUE  
 GEORGE T. TYLER  
 WILLIAM L. BALFOUR  
 WILLIAM A. SNYDER, JR.  
 RICHARD R. JACKSON, JR.  
 GEORGE J. HOELZER\*  
 ROBERT COURTNEY MANGONE\*  
 DONALD C. GREENMAN  
 LOUIS H. ROUSHON, JR.\*  
 JERALD J. OPPEL  
 PAUL M. VINCENT  
 JOHN H. WEST, III  
 ROBERT V. BARTON, JR.  
 ALAN J. MOGOL  
 LEONARD C. HOMER  
 JOHN ANTHONY WOLF  
 JEFFREY J. RADOWICH  
 FRANK M. NICOLETTI\*  
 JOHN C. BALDWIN  
 DAVID D. QUEEN  
 WARREN B. DALY, JR.  
 GEOFFREY S. TOBIAS  
 ROBERT L. ASH  
 SANFORD V. TEPLITZKY  
 M. HAMILTON WHITMAN, JR.  
 PAMELA J. WHITE  
 CLARKSON S. FISHER, JR.\*  
 NEIL J. RUTHER  
 PATRICK K. CAMERON  
 STEVEN A. LOEWY  
 ROBERT E. MAZER  
 THOMAS S. SPRENCER

CAREL T. HEDLUND  
 ROBERT E. SCHER  
 HOWARD L. BOLLINS  
 GUY W. WARFIELD  
 THOMAS J. MALONEY\*  
 PAUL S. BUGAR  
 KEVIN A. DUNNE  
 PEGGY CHARLIN  
 LAURENCE S. RUSSELL  
 KAREN L. MYERS ZAUNER  
 STEPHEN A. SHERMAN\*  
 S. CRAIG HOLDEN  
 JAMES E. EDWARDS, JR.  
 PETER J. MCNAMARA  
 JOHN N. RODOCK\*  
 EDWARD K. GROSS  
 ROBERT L. ENRICH, JR.  
 JOHN F. MORKAN, III  
 ANGUS E. FINNEY  
 JAMES D. WALSH  
 DAVID S. HAMILTON  
 JOHN J. ELLER  
 CHARLES M. ENGLISH, JR.\*  
 JOAN T. BARGENT  
 DIANE FESTINO SCHMITT  
 ROBERT J. WELLS  
 MATTHEW W. HAYDEN  
 MATTHEW A. MACE  
 CHARLES T. SMITH, II\*  
 DAVID A. EMALA  
 KAREN S. QUARINO  
 KENT K. MATSUMOTO  
 DAVID R. JOHANSON\*  
 JOHN M. G. MURPHY  
 GEORGE F. JONES  
 ELISE D. GONSON\*  
 ROBERT W. COBB  
 THOMAS L. JOHNS\*  
 KEVIN G. KILGALLEN\*  
 MONIQUE D. ALMY

LESLIE DEMAREE GOLDSMITH  
 JOHN P. FLANAGAN\*  
 MARIA G. KRAPP  
 SARAH A. SNYDER  
 BENJAMIN N. GONSON\*  
 LAURA L. KATZ  
 GEORGE W. KELLY  
 ROBIN J. FISH  
 ROBERT S. HOPKINS  
 E. SCOTT JOHNSON  
 GREGORY W. SWANK  
 DEBORAH M. MULLIGAN\*  
 ANN E. BERRIMAN  
 MARY S. SAKER  
 ROBERTA M. SOYKIN  
 STEPHEN P. HEUSTON  
 MARK D. KOHLER  
 MARTHA DALE NATHANSON  
 SPECIAL TAX  
 COUNSEL  
 ROBERT S. BROHBERG\*  
 (CINCINNATI)  
 COUNSEL  
 W. WALLACE KIRKPATRICK\*  
 JAMES L. KALER  
 J. PAUL BRIGHT, JR.  
 RANDALL C. COLEMAN  
 CARLYLE C. KING, JR.\*  
 FRANK S. OBER  
 (1988-1991)  
 WILLIAM A. GRIMES  
 (1964-1977)  
 J. NICHOLAS SHRIVER, JR.  
 (1918-1977)  
 SHERWOOD S. SMITH, JR.  
 (1936-1989)  
 \* NOT ADMITTED IN MARYLAND

RECEIVED  
 FEDERAL ELECTION COMMISSION  
 OFFICE OF GENERAL COUNSEL  
 90 OCT -5 AM 11:24

September 25, 1990

John C. Surina, Esquire  
 Staff Director  
 Federal Election Commission  
 999 E Street, N.W.  
 Washington, D.C. 20463

Dear Mr. Surina:

I enclose page 21 from the current edition of the "New Yorker" magazine sent to me as a subscriber at my home address.

I ask that this advertisement be reviewed by the Commission to determine whether or not any violation of federal election law is presented.

The advertisement is, in its own terms, misleading. A particular single interest "grass roots" cause (free speech) in a request for a petition to members of the Congress turns out, upon closer reading, to be a solicitation for funds to unseat Senator Helms of North Carolina who is, I assume, running for reelection this November.

The only attribution for this fundraising advertisement is a reference to the "First Amendment Crisis Team" with no identifying name or address or indication of membership.

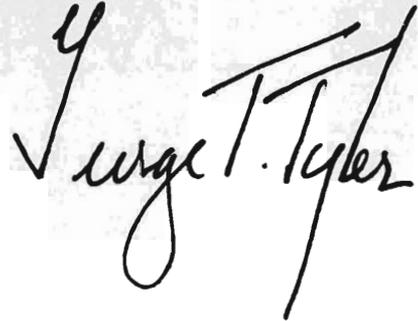
91040374410

John C. Surina, Esquire  
September 25, 1990  
Page 2

Can this sort of fundraising effort related to raising money to oppose the reelection campaign of a U.S. Senator be legal?

I will be most grateful for an answer to this inquiry.

Sincerely,



Enclosure

GTT/ek

P.S. - Aside from the fraudulent presentation of the main point by the persons who placed this advertisement, the invitation is to spend \$9.99 to have a telex sent to your Congressman and if that is the cost, how can there be "profits from this effort", which will be used, according to the persons who paid for this advertisement, which will be directed to the campaign to unseat Jesse Helms. Is it legal to raise money to be against a candidate without indication of whether the money will be sent to his opponent in the election, or how it will be spent? Is First Amendment Crisis Team a political action committee legally identified as such? All of this is very puzzling.



G.T. Tyler

91040874411

**"If art is to nourish the roots of our culture,**

# **society must set the artist free**

**to follow his vision  
wherever it takes him."**

**-President John F. Kennedy  
Amherst College, October 1963**

Led by Senator Jesse Helms, the U.S. Congress has applied censorship constraints on grants made by the National Endowment for the Arts, and has threatened to end all funding for this essential agency. Please, dial 1-900-230-HELP to send a telex to your congressman in support of the N.E.A.



Not only will you be helping to preserve the arts, you will also be helping in the effort to unseat Jesse Helms. The cost is \$9.99 per telex, charged to your regular telephone bill.

Calls must be made between September 20th and October 5th, 1990...

## **Save the dream.**

**1-900-230-HELP  
Unseat Jesse Helms  
\$9.99 per call**

Paid for by First Amendment Crisis Team.  
Not in coordination with any other campaign.

All profits from this effort will be  
directed to the campaign to unseat Jesse Helms.

9 1 0 4 0 8 7 4 4 1 2



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 5, 1990

George T. Tyler, Esquire  
Ober, Kaler, Grimes and Shriver  
120 East Baltimore Street  
Baltimore, Maryland 21202-1643

Dear Mr. Tyler:

This is to acknowledge receipt of your letter dated September 15, 1990. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter did not contain a notarization on your signature and was not properly sworn to.

You must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. A statement by the notary that the complaint was sworn to and subscribed before him/her will be sufficient. We are sorry for the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

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

Sincerely,

Lawrence M. Noble  
General Counsel

*Lois G. Lerner*  
BY: Lois G. Lerner  
Associate General Counsel

91040874413



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 5, 1990

Dial - IT 900 Service  
P.O. Box 1143  
Bedminster, NJ 07921

Dear Sir or Madam:

The Federal Election Commission is an agency of the United States Government and we request your cooperation in providing us with certain information related to the telephone number, 1-900-230-HELP. Please provide us with the name of the organization using such telephone number between September 20, 1990, and October 5, 1990, as well as all known addresses of such organization. The name and address, if known, of all officials connected with the organization is also requested.

If you have any questions, please contact Maura White Callaway, Special Assistant to the Associate General Counsel, at (202)376-5690.

Sincerely,

Lawrence M. Noble  
General Counsel

*Lois G. Lerner*  
BY: Lois G. Lerner  
Associate General Counsel

91040374414

OBER, KALER, GRIMES & SHRIVER  
ATTORNEYS AT LAW

OGC 8104  
MUR 3138

120 EAST BALTIMORE STREET  
BALTIMORE, MARYLAND 21202-1643  
(301) 685-1120

FACSIMILE (301) 547-0699  
CABLE "RITNEY"  
TELEX 8-7774

OFFICES IN  
WASHINGTON, D. C.  
NEW YORK  
NEW JERSEY

WRITER'S DIRECT DIAL NUMBER

JAMES R. WORRLEY JR.\*  
PAUL DANIEL\*  
THOMAS D. WASHBURN\*  
LEWIS C. STRUDWICK  
LAWRENCE D. MOILMAN\*  
JERVIS S. FINNEY  
MANFRED W. LECKBZAS  
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KEVIN G. KILGALLEN\*  
MONIQUE D. ALMY

LESLIE DEMAREE GOLDSMITH  
JOHN P. FLANAGAN\*  
MARIA G. KRAPP  
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DEBORAH M. MULLIGAN\*  
ANN E. BERRMAN  
MARY S. BAKER  
ROBERTA M. BOYRIN  
STEPHEN P. HEUSTON  
MARK D. KOHLER  
MARTHA DALE NATHANSON  
SPECIAL TAX  
COUNSEL  
ROBERT S. BROMBERG\*  
(CINCINNATI)  
COUNSEL  
W. WALLACE KIRKPATRICK\*  
JAMES L. KALER  
J. PAUL BRIGHT, JR.  
RANDALL C. COLEMAN  
CARLYLE C. RING, JR.\*  
FRANK S. OBER  
(1988-1989)  
WILLIAM A. GRIMES  
(1904-1977)  
J. NICHOLAS SHRIVER, JR.  
(1912-1977)  
SHERWOOD B. SMITH, JR.  
(1938-1989)  
\* NOT ADMITTED IN MARYLAND

October 8, 1990

Lois G. Lerner, Esquire  
Associate General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Miss Lerner:

Thank you for your letter of October 5. As you did not return my letter and its exhibit of September 25, a xerox copy of the file carbon together with a xerox copy of the exhibit transmitted by means of my letter are attached hereto as Exhibit A, consisting of three pages; also attached hereto as Exhibit B is your letter to me of October 5, 1990.

The jurat of a notary public is affixed below.

Sincerely,

*George T. Tyler*

STATE OF MARYLAND  
CITY OF BALTIMORE

Before me, the undersigned, a Notary Public for the State and City aforesaid, appeared GEORGE T. TYLER,

21040374415

90 OCT -9 PM 12: 24

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL  
90 OCT -9 PM 4: 02

RECEIVED  
FEDERAL ELECTION COMMISSION

Lois G. Lerner, Esquire  
October 8, 1990  
Page 2

and made oath in due form of law, that the above letter to which is attached Exhibit A, consisting of three pages and Exhibit B, consisting of one page, is true to the best of his knowledge, information and belief.

As witness my hand and seal this 8th day of  
October, 1990

Susan A. McDonald  
Notary Public

My Commission Expires:

December 1, 1993

GTT/ek

91040374416

Exhibit A

September 25, 1990

John C. Surina, Esquire  
Staff Director  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Mr. Surina:

I enclose page 21 from the current edition of the "New Yorker" magazine sent to me as a subscriber at my home address.

I ask that this advertisement be reviewed by the Commission to determine whether or not any violation of federal election law is presented.

The advertisement is, in its own terms, misleading. A particular single interest "grass roots" cause (free speech) in a request for a petition to members of the Congress turns out, upon closer reading, to be a solicitation for funds to unseat Senator Helms of North Carolina who is, I assume, running for reelection this November.

The only attribution for this fundraising advertisement is a reference to the "First Amendment Crisis Team" with no identifying name or address or indication of membership.

91040874417

John C. Surina, Esquire  
September 25, 1990  
Page 2

Can this sort of fundraising effort related to raising money to oppose the reelection campaign of a U.S. Senator be legal?

I will be most grateful for an answer to this inquiry.

Sincerely,



Enclosure

GTT/ek

P.S. - Aside from the fraudulent presentation of the main point by the persons who placed this advertisement, the invitation is to spend \$9.99 to have a telex sent to your Congressman and if that is the cost, how can there be "profits from this effort", which will be used, according to the persons who paid for this advertisement, which will be directed to the campaign to unseat Jesse Helms. Is it legal to raise money to be against a candidate without indication of whether the money will be sent to his opponent in the election, or how it will be spent? Is First Amendment Crisis Team a political action committee legally identified as such? All of this is very puzzling.



91040374418

**"If art is to nourish the roots of our culture,**

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**to follow his vision  
wherever it takes him."**

**-President John F. Kennedy  
Amherst College, October 1963**

Led by Senator Jesse Helms, the U.S. Congress has applied censorship constraints on grants made by the National Endowment for the Arts, and has threatened to end all funding for this essential agency. Please, dial 1-900-230-HELP to send a telex to your congressman in support of the N.E.A.



Not only will you be helping to preserve the arts, you will also be helping in the effort to unseat Jesse Helms. The cost is \$9.99 per telex, charged to your regular telephone bill.

Calls must be made between September 20th and October 5th, 1990...

## **Save the dream.**

**1-900-230-HELP  
Unseat Jesse Helms  
\$9.99 per call**

Paid for by First Amendment Crisis Team.  
Not in coordination with any other campaign.

All profits from this effort will be  
directed to the campaign to unseat Jesse Helms.

91040874419



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

*Exhibit B*

October 5, 1990

George T. Tyler, Esquire  
Ober, Kaler, Grimes and Shriver  
120 East Baltimore Street  
Baltimore, Maryland 21202-1643

Dear Mr. Tyler:

This is to acknowledge receipt of your letter dated September 15, 1990. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter did not contain a notarization on your signature and was not properly sworn to.

You must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. A statement by the notary that the complaint was sworn to and subscribed before him/her will be sufficient. We are sorry for the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

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

Sincerely,

Lawrence M. Noble  
General Counsel

*Lois G. Lerner*

BY: Lois G. Lerner  
Associate General Counsel

[SIC]

250

910403744



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 1, 1990

George T. Tyler, Esquire  
Ober, Kaler, Grimes and Shriver  
120 East Baltimore Street  
Baltimore, Maryland 21202-1643

RE: MUR 3138

Dear Mr. Tyler:

This letter acknowledges receipt on October 9, 1990, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the First Amendment Crisis Team.

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, including the identity of the respondent, 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 3138. 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

91040374421

91 JAN 24 AM 10:49

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

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

MUR #3138  
DATE COMPLAINT RECEIVED  
BY OGC: 10/9/90  
DATE OF NOTIFICATION TO  
RESPONDENT: see below  
STAFF MEMBER: Frances B. Hagan

COMPLAINANT: George T. Tyler  
RESPONDENT: First Amendment Crisis Team  
RELEVANT STATUTES: 2 U.S.C. §§ 433, 434, 441d(a)  
INTERNAL REPORTS CHECKED: FEC indexes  
FEDERAL AGENCIES CHECKED: none

**I. GENERATION OF MATTER**

A complaint filed on October 9, 1990, by individual complainant George T. Tyler, asked that the Commission review an advertisement appearing in the New Yorker magazine during the week of September 24, 1990. Complainant alleged that the ad was misleading in that it purported to support a cause (apparently funding for the arts through the National Endowment for the Arts ("N.E.A.")), while "upon closer reading," proved to be "a solicitation for funds to unseat Senator Helms of North Carolina who is...running for reelection...."

**II. ANALYSIS**

The text of the ad urged readers to dial a 900 number "to send a telex to your congressman in support of the N.E.A. Not only will you be helping to preserve the arts, you will also be helping in the effort to unseat Jesse Helms." The telex charge

91040374422

was \$9.99. Large print exhorted readers to "Unseat Jesse Helms." Tiny lettering at the bottom stated: "All profits from this effort will be directed to the campaign to unseat Jesse Helms."

The ad indicates that it was "Paid for by First Amendment Crisis Team. Not in coordination with any other campaign." The First Amendment Crisis Team ("F.A.C.T.") is not registered as a political committee; nor does it appear on FEC indexes among independent expenditures against Senator Helms.<sup>1</sup> There is no clue in the ad to the persons or organization behind F.A.C.T.

To locate F.A.C.T., this Office sent a letter to the "Dial-IT 900 Service" requesting information regarding the user of the telephone number; but our inquiry elicited no response.

Thereafter, we called the New Yorker's advertising division and learned that the ad was placed by an advertising agency.

In order to discover the identity and address of the entity placing the advertisement, and to notify the respondent of the complaint, it is necessary to obtain information from the advertising agency through which the ad was placed. Therefore, the Office of the General Counsel is recommending that the Commission approve an order for written answers concerning the respondent "F.A.C.T." to Kirk Fredrick Graphics of San Francisco, California.

---

1. It is not clear what F.A.C.T. is; nor is it known how much money was raised and spent, or what "campaign" received funds from the ad. Consequently, the ad raises several questions that warrant investigation such as: registration by a political committee required by 2 U.S.C. § 433; reporting of independent expenditures made to influence an election pursuant to 2 U.S.C. § 434; and the issue of whether an appropriate disclaimer appears as required by 2 U.S.C. § 441d(a).

9 1 0 4 0 3 7 4 4 2 3

**II. RECOMMENDATIONS**

1. Authorize the attached order to Kirk Fredrick Graphics.
2. Approve the appropriate letter.

Lawrence M. Noble  
General Counsel

Date 1/23/91

BY:   
Lois G. Lerner  
Associate General Counsel

Attachment  
Order

91040874424



FEDERAL ELECTION COMMISSION  
WASHINGTON DC 20541

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS *DEH*  
COMMISSION SECRETARY

DATE: JANUARY 29, 1991

SUBJECT: MUR 3138 - FIRST GENERAL COUNSEL'S REPORT  
DATED JANUARY 23, 1991

The above-captioned document was circulated to the Commission on THURSDAY, JANUARY 24, 1991 at 4:00 p.m.

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

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u>          </u>
Commissioner Josefiak	<u>XXX</u>
Commissioner McDonald	<u>          </u>
Commissioner McGarry	<u>XXX</u>
Commissioner Thomas	<u>XXX</u>

This matter will be placed on the meeting agenda for TUESDAY, FEBRUARY 5, 1991.

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

21040374425

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
First Amendment Crisis Team ) MUR 3138

CERTIFICATION

I, Hilda Arnold, recording secretary for the Federal Election Commission executive session on February 5, 1991, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions with respect to MUR 3138:

1. Reject the recommendations of the Office of the General Counsel in the January 23, 1991 report, and
2. Refer this matter back to that office to obtain further information.

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

Attest:

FEB 7, 1991  
Date

Hilda Arnold  
Hilda Arnold  
Administrative Assistant

91040374426



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 14, 1991

POSTMASTER  
Noe Valley Branch Post Office  
San Francisco, CA 94114

RE: MUR 3138

Dear Sir or Madam:

Pursuant to 39 C.F.R. § 265(d)(1), we request that you provide us with the present address of Rob Staley, First Amendment Crisis Team. According to our records, the address of First Amendment Crisis Team was 2261 Market Street, Suite 455, San Francisco, California 94114, as of October 1990.

Under 39 C.F.R. § 265.8e(8)(iii), we request a waiver of fees. In this connection I hereby certify that the Federal Election Commission, an agency of the U.S. Government, requires the information requested above in the performance of its official duties, and that all other known sources for obtaining it have been exhausted.

A return envelope is enclosed. Should you have any questions or require any further information, please call me at (202) 376-8200.

Thank you for your assistance.

Sincerely,

*Frances B. Hagan*

Frances B. Hagan  
Paralegal Specialist

Enclosure  
Envelope

91040874427

91 FEB 19 PM 4:23

**BEFORE THE FEDERAL ELECTION COMMISSION**

**SENSITIVE**

In the Matter of  
First Amendment Crisis Team

)  
) MUR 3138  
)  
)

**COMPREHENSIVE INVESTIGATIVE REPORT #1**

On February 5, 1991, the Commission referred this matter back to the Office of the General Counsel, directing us to attempt through informal methods to identify and locate the respondent rather than by subpoena.

A telephone call to Kirk Fredrick Graphics ("KFG") in San Francisco, California, indicated that Rob Staley had apparently formed the entity known as First Amendment Crisis Team ("F.A.C.T."); that KFG had created the advertisement, but that Mr. Staley had placed the ad with the New Yorker magazine. KFG apparently has been seeking payment from Mr. Staley, but does not have a current address for F.A.C.T. Therefore, this Office is contacting the Postmaster in the San Francisco area to obtain a forwarding address. We will report to the Commission when additional information is available.

Lawrence M. Noble  
General Counsel

2/15/91  
Date

BY:   
Lois G. Lerner  
Associate General Counsel

Staff assigned: Frances B. Hagan

910874428



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**MEMORANDUM**

**TO:** LAWRENCE NOBLE  
GENERAL COUNSEL

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

**DATE:** FEBRUARY 21, 1991

**SUBJECT:** MUR 3138 - COMPREHENSIVE INVESTIGATIVE REPORT #1  
DATED FEBRUARY 15, 1991.

The above-captioned matter was received in the Commission Secretariat at 4:23 p.m. on February 19, 1991 and circulated on a 24-hour no-objection basis at 11:00 a.m. on Wednesday, February 20, 1991.

There were no objections to the above-captioned matter.

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RECEIVED  
FEDERAL ELECTION COMMISSION  
MAIL ROOM

91 MAR 21 PM 1:11



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 14, 1991

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF FEDERAL COUNSEL  
91 MAR 21 PM 3:25

POSTMASTER  
Noe Valley Branch Post Office  
San Francisco, CA 94114

RE: MUR 3138

Dear Sir or Madam:

Pursuant to 39 C.F.R. § 265(d)(1), we request that you provide us with the present address of Rob Staley, First Amendment Crisis Team. According to our records, the address of First Amendment Crisis Team was 2261 Market Street, Suite 455, San Francisco, California 94114, as of October 1990.

Under 39 C.F.R. § 265.8e(8)(iii), we request a waiver of fees. In this connection I hereby certify that the Federal Election Commission, an agency of the U.S. Government, requires the information requested above in the performance of its official duties, and that all other known sources for obtaining it have been exhausted.

A return envelope is enclosed. Should you have any questions or require any further information, please call me at (202) 376-8200.

Thank you for your assistance.

Sincerely,

*Frances B. Hagan*  
Frances B. Hagan  
Paralegal Specialist

MAR 1991  
MISSION ANNEX  
SAN FRANCISCO, CA  
94141-2000

Enclosure  
Envelope

91040874430

3/9/91 NEW <sup>Final</sup> ADDRESS  
↓

749 SOUTH LEMAY SUITE A3-136  
FT. COLLINS, CO. 80524



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 26, 1991

Mr. Rob Staley  
First Amendment Crisis Team  
749 South Lemay  
Suite A3-136  
Fort Collins, CO 80524

RE: MUR 3138

Dear Mr. Staley:

The Federal Election Commission received a complaint which alleges that you and your organization 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 3138. 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's 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 within 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.

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Mr. Rob Staley  
Page 2

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

91040374432

91 JUN 20 AM 11:36

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3138  
First Amendment Crisis Team )

**SENSITIVE**

GENERAL COUNSEL'S REPORT

I. BACKGROUND

A complaint filed on October 9, 1990, by individual complainant George T. Tyler, asked that the Commission review an advertisement appearing in the New Yorker magazine during the week of September 24, 1990.

The ad indicates that it was "Paid for by First Amendment Crisis Team. Not in coordination with any other campaign." The First Amendment Crisis Team ("F.A.C.T.") is not registered as a political committee; nor does it appear on FEC indexes among independent expenditures against Senator Helms. There is no clue in the ad as to the persons or organization behind F.A.C.T.

To locate F.A.C.T., this Office sent a letter to the "Dial-IT 900 Service" requesting information regarding the user of the telephone number; but our inquiry elicited no response. Thereafter, we called the New Yorker's advertising division and learned that the ad was placed by an advertising agency.

In order to discover the identity and address of the entity placing the advertisement, and to notify the respondent of the complaint, it was necessary to obtain information from the advertising agency through which the ad was placed.

On February 5, 1991, the Commission directed the Office of the General Counsel to attempt through informal methods to

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identify and locate the respondent. A telephone call to Kirk Fredrick Graphics ("KFG") in San Francisco, California, indicated that Rob Staley had apparently formed F.A.C.T.; that KFG had created the advertisement, but that Mr. Staley himself had placed the ad with the New Yorker magazine. KFG apparently has been seeking payment from Mr. Staley, but does not have a current address for F.A.C.T. This Office contacted the Postmaster in the San Francisco area to obtain a forwarding address.

On March 26, 1991, this Office sent the complaint notification to Mr. Staley at his address in Fort Collins, Colorado. The letter was not returned; and we have not received a response to the complaint.

II. ANALYSIS

2 U.S.C. § 433 requires registration by a political committee. 2 U.S.C. § 431(4)(A) defines the term "political committee" as any committee, club, association, or other group of persons that receives contributions or makes expenditures in excess of \$1,000 during a calendar year.

2 U.S.C. § 434(b)(6)(B)(iii) requires disclosure of persons receiving disbursements in connection with independent expenditures made by political committees, along with the amount received, and a statement concerning the candidate supported or opposed by the expenditures.

Pursuant to 2 U.S.C. § 441d, all expenditures for communications which expressly advocate the election or defeat of a clearly identified candidate must contain a disclaimer. Pursuant to 11 C.F.R. § 110.11(a)(1), the disclaimer must clearly

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state the identity of the person or committee who paid for the communication and whether the communication was authorized by the candidate or the candidate's committee.

Complainant alleged that the New Yorker ad was misleading in that it purported to support a cause (apparently funding for the arts through the National Endowment for the Arts ("N.E.A.")), while "upon closer reading," proved to be "a solicitation for funds to unseat Senator Helms of North Carolina who is...running for re-election...."

The text of the ad urged readers to dial a 900 number "to send a telex to your congressman in support of the N.E.A. Not only will you be helping to preserve the arts, you will also be helping in the effort to unseat Jesse Helms." The telex charge was \$9.99. Large print exhorted readers to "Unseat Jesse Helms." Tiny lettering at the bottom stated: "All profits from this effort will be directed to the campaign to unseat Jesse Helms."

During our attempts to locate the respondent through the New Yorker's advertising division, it was learned that this ad ran twice, in the September 24 and October 1, 1990, magazines. Apparently, a one-page, black and white ad in the magazine at that time could cost between \$8,600 and \$10,100 each time it ran.

Based on this information, it appears that F.A.C.T. is actually a political committee that raised funds to make independent expenditures in opposition to a federal candidate.<sup>1</sup>

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1. Given the use of the term "Team" in the name of the organization, we assume F.A.C.T. is the work of a group rather than an individual.

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As such, it must register with the Commission and disclose its receipts and disbursements. In addition, because the advertisement expressly advocates the defeat of a candidate, it should have had a disclaimer as required under the Act. Therefore, it appears that F.A.C.T. has violated 2 U.S.C. §§ 433, 434, and 441d(a).

III. RECOMMENDATIONS

1. Find reason to believe that the First Amendment Crisis Team violated the following:
  - a) 2 U.S.C. § 433 and 434;
  - b) 2 U.S.C. § 441d(a).
2. Approve the appropriate letter and the attached Factual and Legal Analysis.

Lawrence M. Noble  
General Counsel

6-19-91  
Date

BY:   
Lois G. Lerner  
Associate General Counsel

Attachment  
Factual and Legal Analysis

91040874436



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 24, 1991

SUBJECT: MUR 3138 - GENERAL COUNSEL'S REPORT  
DATED JUNE 19, 1991.

The above-captioned document was circulated to the Commission on THURSDAY, JUNE 20, 1991 at 4:00 P.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, JULY 9, 1991.

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

91040374437

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 3138  
First Amendment Crisis Team )

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on July 9, 1991, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3138:

1. Find reason to believe that the First Amendment Crisis Team violated 2 U.S.C. §§ 433, 434, and 441d(a).
2. Approve the appropriate letter and the Factual and Legal Analysis as recommended in the General Counsel's report dated June 19, 1991, subject to amendment as agreed during the meeting discussion.

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

Attest:

7-10-91  
Date

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

91040374438



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

July 15, 1991

Mr. Rob Staley  
First Amendment Crisis Team  
749 South Lemay  
Suite A3-136  
Fort Collins, CO 80524

RE: MUR 3138

Dear Mr. Staley:

On March 26, 1991, the Federal Election Commission notified you and the First Amendment Crisis Team ("Committee") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on July 9, 1991, found that there is reason to believe the Committee violated 2 U.S.C. §§ 433, 434, and 441d(a), provisions of 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. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of 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, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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

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Mr. Rob Staley  
Page 2

pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

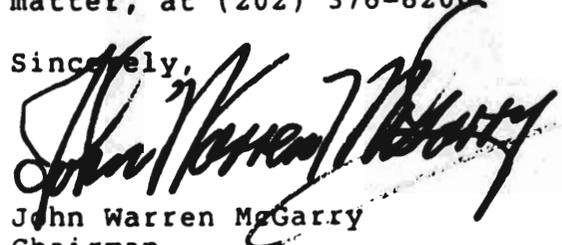
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

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

Sincerely,



John Warren McGarry  
Chairman

Enclosures  
Designation of Counsel Form  
Factual & Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS:           First Amendment Crisis Team           MUR: 3138

2 U.S.C. § 433 requires registration by a political committee. 2 U.S.C. § 431(4)(A) defines the term "political committee" as any committee, club, association, or other group of persons that receives contributions or makes expenditures in excess of \$1,000 during a calendar year.

2 U.S.C. § 434(b)(6)(B)(iii) requires disclosure of persons receiving disbursements in connection with independent expenditures made by political committees, along with the amount received, and a statement concerning the candidate supported or opposed by the expenditures.

Pursuant to 2 U.S.C. § 441d, all expenditures for communications which expressly advocate the election or defeat of a clearly identified candidate, or expenditures to solicit any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, must contain a disclaimer. Pursuant to 11 C.F.R. § 110.11(a)(1), the disclaimer must clearly state the identity of the person or committee who paid for the communication and whether the communication was authorized by the candidate or the candidate's committee.

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A complaint filed on October 9, 1990, by individual complainant George T. Tyler, asked that the Commission review an advertisement appearing in the New Yorker magazine during the week of September 24, 1990.

The ad indicates that it was "Paid for by First Amendment Crisis Team. Not in coordination with any other campaign." The First Amendment Crisis Team ("F.A.C.T.") is not registered as a political committee; nor does it appear on FEC indexes among independent expenditures against Senator Helms. There is no clue in the ad as to the persons or organization behind F.A.C.T.

Complainant alleged that the New Yorker ad was misleading in that it purported to support a cause (apparently funding for the arts through the National Endowment for the Arts ("N.E.A.")), while "upon closer reading," proved to be "a solicitation for funds to unseat Senator Helms of North Carolina who is...running for re-election...."

The text of the ad urged readers to dial a 900 number "to send a telex to your congressman in support of the N.E.A. Not only will you be helping to preserve the arts, you will also be helping in the effort to unseat Jesse Helms." The telex charge was \$9.99. Large print exhorted readers to "Unseat Jesse Helms." Tiny lettering at the bottom stated: "All profits from this effort will be directed to the campaign to unseat Jesse Helms."

During our attempts to locate the respondent through the New Yorker's advertising division, it was learned that this ad ran twice, in the September 24 and October 1, 1990, magazines. Apparently, a one-page, black and white ad in the magazine at

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that time could cost between \$8,600 and \$10,100 each time it ran.

Based on this information, it appears that F.A.C.T. is actually a political committee that raised funds to make independent expenditures in opposition to a federal candidate. As such, it must register with the Commission and disclose its receipts and disbursements. In addition, because the advertisement expressly advocates the defeat of a candidate, and because it solicits funds for that purpose, it should have had a disclaimer as required under the Act. Therefore, there is reason to believe that the First Amendment Crisis Team has violated 2 U.S.C. §§ 433, 434, and 441d(a).

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RECEIVED  
F.E.C.  
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION ~~10 OCT 1990~~ PM 5:05

In the Matter of )  
First Amendment Crisis Team ) MUR 3138

**SENSITIVE**

**GENERAL COUNSEL'S REPORT**

**I. BACKGROUND**

A complaint filed on October 9, 1990, by individual complainant George T. Tyler, asked that the Commission review an advertisement appearing in the New Yorker magazine during the week of September 24, 1990. Complainant alleged that the New Yorker ad was misleading in that it purported to support a cause (apparently funding for the arts through the National Endowment for the Arts ("N.E.A.")), while "upon closer reading," proved to be "a solicitation for funds to unseat Senator Helms of North Carolina who is...running for re-election...."

The text of the ad urged readers to dial a 900 number "to send a telex to your congressman in support of the N.E.A. Not only will you be helping to preserve the arts, you will also be helping in the effort to unseat Jesse Helms." Large print exhorted readers to "Unseat Jesse Helms."

The ad indicates that it was "Paid for by First Amendment Crisis Team. Not in coordination with any other campaign." The First Amendment Crisis Team ("F.A.C.T.") is not registered as a political committee; nor does it appear on FEC indexes among independent expenditures against Senator Helms. There is no clue in the ad as to the persons or organization behind F.A.C.T.

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**Efforts to Locate Respondent**

To locate F.A.C.T., the Office of the General Counsel sent a letter to the "Dial-IT 900 Service" requesting information regarding the user of the telephone number; but our inquiry elicited no response. Thereafter, we called the New Yorker's advertising division and learned that the ad was placed by an advertising agency.

In order to discover the identity and address of the entity placing the advertisement, and to notify the respondent of the complaint, it was necessary to obtain information from the advertising agency through which the ad was placed.

On February 5, 1991, the Commission directed the Office of the General Counsel to attempt through informal methods to identify and locate the respondent. A telephone call to Kirk Fredrick Graphics ("KFG") in San Francisco, California, indicated that Rob Staley had apparently formed F.A.C.T.; that KFG had created the advertisement, but that Mr. Staley himself had placed the ad with the New Yorker magazine. KFG apparently has been seeking payment from Mr. Staley, but does not have a current address for F.A.C.T. This Office contacted the Postmaster in the San Francisco area to obtain a forwarding address.

On March 26, 1991, this Office sent the complaint notification to Mr. Staley at his address in Fort Collins, Colorado. The letter was not returned; and we have not received a response to the complaint.

On July 9, 1991, the Commission found reason to believe that F.A.C.T. violated 2 U.S.C. §§ 433, 434, and 441d(a) in this

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matter. On July 15, 1991, the reason to believe notification was mailed to the address in Fort Collins, Colorado. On September 18, 1991, the notification was returned by the postal service with the notation "MLNA," apparently "moved, left no address." For verification, this Office sent a request to the Postmaster officially requesting a forwarding address, if available. We have not received a reply.

**Conclusion**

Although further investigation of F.A.C.T.'s activities appears to be warranted based on the available facts in the case, the inability to locate the respondent and a paucity of verifiable evidence makes further pursuit of this matter problematic, particularly in view of the staff resources necessary to continue the search. See Heckler v. Chaney, 470 U.S. 821 (1985). Therefore, this Office recommends that the Commission take no further action in this matter and close the case.

**II. RECOMMENDATIONS**

1. Take no further action concerning the First Amendment Crisis Team regarding violations of the following:
  - a) 2 U.S.C. §§ 433 and 434;
  - b) 2 U.S.C. § 441d(a).
2. Close the file.
3. Approve the appropriate letter.

Lawrence M. Noble  
General Counsel

Date 10/9/91

BY:   
Lois G. Lerner  
Associate General Counsel

91040874446

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
First Amendment Crisis Team. ) MUR 3138

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 15, 1991, the Commission decided by a vote of 5-0 to take the following actions in MUR 3138:

1. Take no further action concerning the First Amendment Crisis Team regarding violations of the following:
  - a. 2 U.S.C. §§ 433 and 434;
  - b. 2 U.S.C. § 441d(a).
2. Close the file.
3. Approve the appropriate letter, as recommended in the General Counsel's Report dated October 9, 1991.

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

Attest:

10-15-91  
Date

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

Received in the Secretariat: Wed., Oct. 09, 1991 5:05 p.m.  
Circulated to the Commission: Thurs., Oct. 10, 1991 11:00 a.m.  
Deadline for vote: Tues., Oct. 15, 1991 11:00 a.m.

bjf

91040374447



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

CLOSED

October 22, 1991

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

George T. Tyler, Esquire  
Ober, Kaler, Grimes and Shriver  
120 East Baltimore Street  
Baltimore, Maryland 21202-1643

RE: MUR 3138

Dear Mr. Tyler:

This is in reference to the complaint you filed with the Federal Election Commission on October 9, 1990, concerning the First Amendment Crisis Team.

Based on that complaint, on July 9, 1991, the Commission found that there was reason to believe the First Amendment Crisis Team violated 2 U.S.C. §§ 433, 434, and 441d(a), provisions of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter. However, after considering the circumstances of this matter, the Commission determined to take no further action against the First Amendment Crisis Team, and closed the file in this matter on October 15, 1991. 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).

If you have any questions, please contact Frances B. Hagan, the staff member assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble  
General Counsel

BY:   
Lois G. Lerner  
Associate General Counsel

Enclosure  
General Counsel's Report

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3138

DATE FILMED 11/2/91 CAMERA NO. 2

CAMERAMAN AS

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