



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3376

DATE FILMED 4/29/93 CAMERA NO. 2

CAMERAMAN S.E.C

92040900930

RECEIVED
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

91 AUG 16 AM 11:25

August 14, 1991

MUR 3376

91 AUG 16 PH 3:31

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Federal Election Commission
Att: Lois Lerner, Associate
General Council for Enforcement
999 E Street, NW
Washington, D.C. 20463

Dear Ms. Lerner:

It has come to my attention that an advertisement for Congressman Gerry Studds has appeared in the August 8-21, 1991 edition of "The Barnacle."

The advertisement does not contain the disclaimer required by 2 U.S.C. 441(d).

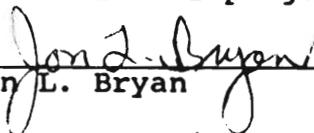
By knowledge and belief, it is my understanding that this advertisement was ordered and paid for by the Committee to Re-Elect Congressman Studds.

I have attached the advertisement (see exhibit 1), and request that the Federal Election Commission investigate this matter to determine whether the Committee to Re-Elect Congressman Studds has violated 2 U.S.C. 441(d), or any other FEC regulations by their actions in this matter.

Noting that Mr. Studds was fined by the Federal Election Commission for similar failures to attach requisite disclaimers during my 1988 challenge, the Studds organizations' apparent continued non-compliance may indicate a lack of concern for important federal regulations designed to protect the integrity of the election process. Studds spokesman's comments that the allegations are "...petty..." (see exhibit 2) appear to support this theory.

Thank you for your consideration of this matter.

I swear the foregoing is true to the best of my knowledge and belief under the pain and penalties of perjury.


Jon L. Bryan

Signed and sworn to before me this 14th day of August, 1991.



My commission expires 8-7-92.

92040900931

EX. 1

people who were getting tired. Coupled with the higher price for scallops, fishermen just didn't bother to donate the product anymore. Around the year of 1968 the last Scallop Festival was held.

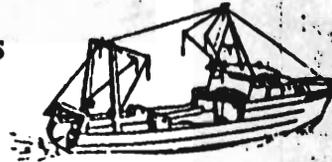
One of Nickerson's fondest memories of the event was the fact that people from all walks of life pitched in to support the fishing industry. "People that had nothing to do with the industry participated and never asked questions about the amount of time it took."

His biggest worry was attracting so many people and running out of food. Fortunately that never happened.



Smithwick & Clarke Insurance, Inc. MARINE INSURANCE

**Finest companies
Best Rates
Draggers**



**Excellent Service
Fast Claims Service
Scallopers**

Serving the New Bedford Fishing Fleet
Please visit or call Tony Martinho

113 MacArthur Drive,
New Bedford, MA 02740
(508) 999-4004

Portland Office: 400 Commercial Street, Portland, ME 04101
1-800-388-1636



YOUR ONE STOP GEAR SHOP!!

HOOK UP GEAR, DRAGGER GEAR

Swivels, Shackles, Towing Chains
Bunts, Bobbins, Blocks, Wire Rope

SCALLOP GEAR

Rings, Links, Scallop Bags
Wire Ties, Twine Tops, Wire Rope

LOBSTER GEAR

Bands, Bait Bag, Shock Cord, Radar Reflectors,
Poly Rope, High Flyers, Low Flyers, Poles

FILLET HOUSE EQUIPMENT

Totes, Saeplast Tube, Gloves, Knives,
Rainwear, Boots, Aprons, Broom & Brushes

GILLNETS

All Sizes and Meshes

LONGLINE AND TUNA GEAR

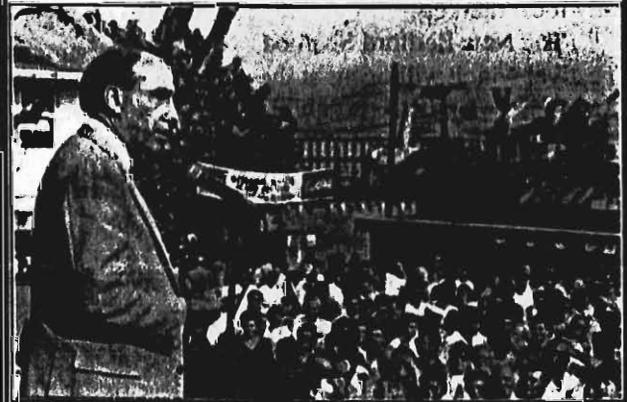
Hooks, Jigs, Snaps, Swivels, Mono Line

IMP Fishing Gear

44 South Street, New Bedford (508) 993-0010

*"Wishing All...Safe Voyages
During the 22nd Annual Blessing of the Fleet"*

Congressman GERRY STUDDS



**CARING • FIGHTING
WINNING**

9 2 0 4 0 9 0 0 9 3 2



Cape Cod Times

THE CAPE AND ISLANDS' DAILY NEWSPAPER

State GOP again charges Studds broke election laws

By JEFFREY BURT
OTTAWAY NEWS SERVICE

NEW BEDFORD — The Republican State Committee fired another shot yesterday at U.S. Rep. Gerry E. Studds, claiming the congressman violated federal election laws in an advertisement run in the local biweekly fishing magazine, The Barnacle.

The quarter-page advertisement, with the words "Caring, Fighting, Winning" printed below a photograph of Rep. Studds, did not carry a disclaimer stating the ad was paid for by the Cohasset Democrat's re-election committee.

A statement released by the Republican State Committee claimed that this was just one in a series of election rules violations perpetrated by Studds's campaign.

But Studds's aide Steven Schwadron denied the allegation.

The Studds re-election campaign placed the ad, Schwadron said, but the lack of a disclaimer "was a mistake. I don't know whose mistake, but as you can see,

there is white space at the bottom" of the advertisement for a disclaimer.

He said the allegation was another in a string of petty partisan attacks by the Republican Committee that "trivializes the (political) process."

"It's petty whining," Schwadron said. "There's no question in the world whose ad this is. . . . It really is like a little baby trying to get attention."

But Jon Bryan, who has lost twice in bids to take Studds' seat, said the issue is important.

"Either (Rep. Studds) feels he is above the law or his committee is disorganized," Bryan said. "Either way, it sends a bad message to the voters of this district."

Alan Safran, a spokesman for the Republican Committee, said the committee is considering bringing the incident to the attention of the Federal Election Commission.

9 2 0 4 0 9 0 0 9 3 3

Box 88
Osterville, MA 02655

9 2 0 4 0 9 0 0 9 3 4



FEDERAL ELECTRONIC COMMISSION
91 AUG 16 AM 11:25



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 22, 1991

The Honorable Gerry E. Studds
P.O. Box 513
Scituate, MA 02066

RE: MUR 3376

Dear Mr. Studds:

The Federal Election Commission received a complaint which alleges that you 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 3376. 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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If you have any questions, please contact Jeffrey Long, the staff member 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

92040900936



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 22, 1991

Edwin M. Martin, Jr., Treasurer
Committee to Re-elect Congressman Studds
P.O. Box 513
Scituate, MA 02066

RE: MUR 3376

Dear Mr. Martin:

The Federal Election Commission received a complaint which alleges that the Committee to Re-elect Congressman Studds ("Committee") 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 3376. 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 the committee and you, as treasurer 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.

92040900937

If you have any questions, please contact Jeffrey Long, the staff member 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

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FEDERAL ELECTION COMMISSION

WASHINGTON, DC 20463

August 22, 1991

Jon L. Bryan
215 Prince Avenue
Marston Mills, MA 02648

RE: MUR 3376

Dear Mr. Bryan:

This letter acknowledges receipt on August 16, 1991, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the Committee to Re-elect Congressman Studds and Edwin M. Martin, Jr., as treasurer, and Gerry E. Studds. 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 3376. 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

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

Enclosure
Procedures

92040900939

06C 2819

Studds for Congress

September 5, 1991

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

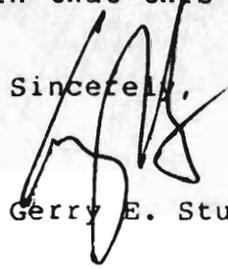
Dear Ms. Lerner:

I am writing in response to your letter of August 22 regarding MUR 3376.

With respect to the political advertisement in question, it is clear that the required disclaimer was erroneously omitted. It was most certainly our intention that the disclaimer appear conspicuously at the bottom of this advertisement, and on any other campaign materials underwritten by the Committee to Reelect Congressman Studds. As you can see, there is an excess of white space below the text of the print ad in question. It was in this white space that we had expected the disclaimer to be included.

I take very seriously the valid and important requirement for disclaimers on political advertisements. We will continue to do everything possible to make certain that this kind of inadvertent error does not recur.

Sincerely,



Gerry E. Studds

91 SEP 18 PM 3:15

RECEIVED
FEDERAL ELECTION COMMISSION

91 SEP 18 AM 10:37

RECEIVED
FEDERAL ELECTION COMMISSION

92040900940

92-3902

October 11, 1991

91 OCT 21 PM 12:40

Federal Election Commission
Att: Lois Lerner, Associate
General Council for Enforcement
999 E Street, NW
Washington, D.C. 20463

91 OCT 22 PM 3:08

RECEIVED
FEDERAL ELECTION COMMISSION

RE: MUR

3376

Dear Ms. Lerner:

It has come to our attention that a possible additional violation of the disclaimer requirement of 2 U.S.C. 441(d) had been committed by the Committee to Re-Elect Congressman Studts in "The Barnacle."

I have attached a copy of an article in the Boston Globe (see exhibit 1) which indicates that the advertisement noted in our original complaint had run prior to the 1990 election, again without a disclaimer.

Thank you for your consideration.

I swear that the foregoing is true to the best of my knowledge and belief under the pain and penalties of perjury.

Jon L. Bryan
Jon L. Bryan

Signed and sworn to before me this 11th day of October, 1991.

Robert J. Peck
My commission expires
13 March 1992

92040900941

Exhibit 1

Notes from the Hill and the Hall

8/15/91



Studds ad hooks GOP attention

WHEN THE GOP GOES ballistic on Rep. Gerry Studds (D-Mass.) it doesn't stop.

Now the party wants to know why a quarter-page advertisement in the current issue of *The Barnacle*, a New Bedford fishing industry magazine, did not include a disclaimer.

"In truth . . . the ad was paid for by the Studds reelection campaign committee and apparently violates the federal law which requires that political advertisements state clearly who paid for them," the Massachusetts Republican Party charges.

Gary Golas, publisher of *The Barnacle*, says he simply ran the ad copy given him by the Studds camp - a year-old Studds ad that also

lacked a disclaimer.

The ad praised Studds as "Car-ing . . . fighting . . . winning," along-side a picture of the congressman.

Steven Schwadron, a spokesman for Studds, said he couldn't explain the omission of the disclaimer, but that: "To the extent that t's weren't crossed and i's weren't dotted, they should have been."

Whatever the reason, there was a collective groan at Studds headquarters over the latest GOP complaints.

This month, for example, Massachusetts Republicans called for a Federal Election Commission investigation of whether Studds had used "shadow campaign committees" in last year's reelection bid.

Indeed, the GOP sees a connection. "Now, with this mystery ad in *The Barnacle*, it appears that the Studds campaign doesn't want to acknowledge having any committees," party chairman Leon Lombardi said in a written statement.

Schwadron's riposte: "If it's Monday, it must be Federal Election Commission day."

FREDERIC M. BIDDLE

92040900942



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

October 29, 1991

The Honorable Gerry E. Studds
P.O. Box 513
Scituate, MA 02066

RE: MUR 3376

Dear Mr. Studds:

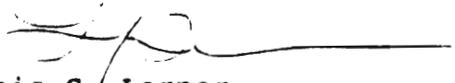
On August 22, 1991, you were notified that the Federal Election Commission received a complaint from Jon L. Bryan alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On October 22, 1990, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. As this new information is considered an amendment to the original complaint, you are hereby afforded an additional 15 days in which to respond to the allegations.

If you have any questions, please contact Tonda M. Mott, 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

92040900943



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 29, 1991

Edwin M. Martin, Jr., Treasurer
Committee to Re-elect Congressman Studts
P.O. Box 513
Scituate, MA 02066

RE: MUR 3376

Dear Mr. Martin:

On August 22, 1991, you were notified that the Federal Election Commission received a complaint from Jon L. Bryan alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On October 22, 1990, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information. As this new information is considered an amendment to the original complaint, you are hereby afforded an additional 15 days in which to respond to the allegations.

If you have any questions, please contact Tonda M. Mott, 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

92040900944



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 29, 1991

Jon L. Bryan
215 Prince Avenue
Marston Mills, MA 02648

RE: MUR 3376

Dear Mr. Bryan:

This letter acknowledges receipt on October 22, 1991, of the amendment to the complaint you filed on August 16, 1991, against the Committee to Re-elect Congressman Studds and Edwin M. Martin, Jr., as treasurer, and Gerry E. Studds. The respondents will be sent copies of the amendment. You will be notified as soon as the Federal Election Commission takes final action on your complaint.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in dark ink, appearing to read "Lois G. Lerner", written over a horizontal line.

BY: Lois G. Lerner
Associate General Counsel

92040900945

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3370, 3438, 3439, 3376

NAME OF COUNSEL: Holly Schadler

ADDRESS: Perkins Coie

607 14th Street, NW

Washington, D.C. 20005

202-434-1634

TELEPHONE:

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.

11/15/91
Date


Signature

RESPONDENT'S NAME: Hon. Gerry E. Studds; Committee to Re-Elect Congressman

ADDRESS: Studds; Studds for Congress Committee (Edwin M. Martin, Treasurer)

Box 513

Scituate, MA 02066

HOME PHONE: _____

BUSINESS PHONE: 617-545-6191

92040900946

OGC 3845

PERKINS COIE

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

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 DEC 18 PM 4:01

December 18, 1991

Lawrence M. Noble, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Attention: Tonda M. Mott

Re: MUR 3376 - Studds for Congress Committee and Edwin
M. Martin, Jr., as Treasurer

Dear Mr. Noble:

This letter constitutes the response through counsel of the Studds for Congress Committee (the "Committee") and Edwin M. Martin, Jr., as Treasurer (collectively "Respondents"), to the complaint filed by Jon L. Bryan, Congressman Studds' opponent in the 1990 election. The complaint requests the Federal Election Commission to investigate an advertisement that appeared with no disclaimer in a local newsletter.

The advertisement appeared in the August 8, 1991 edition of The Barnacle. See Exhibit 5. The Barnacle is a small biweekly newsletter with 125 paying subscribers. It started in New Bedford in mid-1990 principally for circulation by hand to fishermen and waterfront workers. In an effort to show community support, the Committee responded to a request from the editor to purchase an advertisement in the newsletter. The Committee intended to run an advertisement that acknowledged the celebration of the Blessing of the Fleet, an annual festival of the commercial fishing community. Instead, due to inadvertent error, a standard Committee advertisement was sent for publication.

The regulations require that any communication paid for and authorized by a candidate that "expressly advocates the election or defeat of a clearly identified candidate, or that solicits any contribution" through any form of public political advertising, must include a disclaimer. 11 C.F.R. § 110.11. This notice must clearly state that the costs of the communication have been paid for by the authorized political committee. Id.; See also Federal Election Commission Record, May, 1990 at 9. ("Disclaimer ads are

[17141-0001/DA913430.002]

92040900947

Lawrence M. Noble, Esq.
December 18, 1991
Page 2

required on campaign ads and solicitations distributed through public political advertising that: expressly advocate the election or defeat of a clearly identified candidate; or solicit contributions on behalf of a political committee or a candidate.") The regulations are not applicable, therefore, to an advertisement unless it is for the purpose of soliciting funds for or expressly advocating the election of a candidate.

Here, the advertisement that appeared neither solicited contributions on behalf of the Committee nor expressly advocated the election of Congressman Studds. The advertisement was never intended as an election-related communication. The message and the timing of the advertisement -- August of a nonelection year -- are indicative of the Committee's intent to support this community celebration.

Therefore, because this advertisement was neither for electioneering or solicitation purposes, no disclaimer was required under 11 C.F.R. § 110.11. Respondents request that the complaint be dismissed with no further action.

Very truly yours,



B. Holly Schadler
Counsel
Studds for Congress Committee

BHS:mah

92040900948



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 14, 1992

B. Holly Schadler
Perkins Coie
607 14th Street, N.W.
Washington, D.C. 20005

RE: MUR 3376

Dear Ms. Schadler:

Per our telephone conversation, enclosed please find a copy of the amendment to the original complaint. I have also enclosed, for your records, copies of the October 29, 1991 letters notifying your clients of this additional information.

Your clients were originally afforded an additional 15 days in which to respond to the amendment to the complaint. We now request that you respond as soon as possible, but no later than 15 days from receipt.

If you have any questions, please contact me at
(202) 219-3400.

Sincerely,


Tonda M. Mott
Attorney

Enclosures

92040900949

PERKINS COIE

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

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

92 JAN 29 PM 1:07

January 27, 1992

Tonda M. Mott, Esq.
Federal Election Commission
Office of the General Counsel
999 E Street, N.W.
Washington, D.C. 29463

92 JAN 29 PM 3:57

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL

Re: MUR 3376

Dear Ms. Mott:

This letter responds to your notification dated January 14, 1992, regarding additional information provided by Complainant in MUR 3376. In 1990, an advertisement appeared The Barnacle and, due to inadvertent clerical omission, did not include a disclaimer. To the extent that Complainant attempts to portray this isolated instance as a recurring event, his allegations are again entirely false.

The Studds for Congress Committee ("the Committee") has diligently complied with the disclaimer requirement in those instances where it is applicable. As our previous response stated, no disclaimer was required on the 1991 advertisement appearing in The Barnacle because it neither solicited contributions on behalf of the Committee nor expressly advocated the election of Congressman Studds.

If you have any additional questions, please contact me at 202-434-1634.

Very truly yours,


B. Holly Schadler

BHS:slh

[00000-0000/DA920220.084]

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RECEIVED
F.E.C.
SECRETARIAT

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

92 MAR -5 AM 10:50

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR # 3376
DATE COMPLAINT RECEIVED
BY OGC: August 16, 1991
DATE OF NOTIFICATION TO
RESPONDENTS: August 22, 1991
STAFF MEMBER: Tonda M. Mott

COMPLAINANT: Jon L. Bryan
RESPONDENTS: Congressman Gerry E. Studds; and
Studds for Congress Committee,¹ and
Edwin M. Martin, Jr., as treasurer
RELEVANT STATUTES: 2 U.S.C. § 441d
INTERNAL REPORTS CHECKED: None
FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by a complaint filed on August 16, 1991, by Jon L. Bryan ("the Complainant") against Congressman Gerry E. Studds and the Committee to Re-Elect Congressman Studds (a.k.a. Studds for Congress Committee, hereinafter "the Committee") and Edwin M. Martin, Jr., as treasurer (collectively, "the Respondents"). The Complainant was Congressman Studds' opponent in 1988 and 1990. According to the response, the Complainant "has also announced his intention to run in 1992." Attachment 5, p. 1.

1. On October 25, 1991, the "Committee to Re-Elect Congressman Studds" amended its Statement of Organization, formally changing the Committee's name to "Studds for Congress Committee." Attachment 1.

92040900951

II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended, ("the Act") requires an appropriate disclaimer for communications that expressly advocate the election or defeat of a clearly identified candidate or that solicit contributions through any broadcasting station, newspaper magazine, or any other type of general public political advertising. 2 U.S.C. § 441d. The disclaimer relevant to this matter is as follows:

if [the communication is] paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, the disclaimer shall clearly state that the communication has been paid for by such authorized political committee.

2 U.S.C. § 441d(a).

The Complainant alleges that the Respondents violated provisions of the Act by not including a disclaimer stating who paid for advertising which appeared in The Barnacle on August 8, 1991. Since the advertisement at issue did not solicit contributions, the only legal basis on which to find a violation of 2 U.S.C. § 441d is the presence of express advocacy.

The Barnacle is a "free biweekly newspaper"² which serves "the New Bedford (Massachusetts) Fishing & Maritime Interests." Attachment 4, p. 3. The advertisement pictures Congressman Studds before a large gathering of people. "Congressman Gerry Studds" is printed above the picture, and "Caring, Fighting, Winning" is printed below the picture. There is no other text

2. Although the copy of the front page provided by Counsel for Respondents states that the newspaper is free, Counsel stated in the response that "'The Barnacle' is a small biweekly newsletter with 125 paying subscribers." Attachment 4, p. 1.

92040900952

in the advertisement. There is what appears to be a blank space at the bottom of the advertisement.

On September 18, 1991, the Commission received a response signed by Congressman Studds. Attachment 3. The Congressman stated that "it is clear that the required disclaimer was erroneously omitted," and that "it was most certainly our intention that the disclaimer appear conspicuously at the bottom of this advertisement." Id. Congressman Studds asserted that the "white space" at the bottom of the advertisement was where the Respondents had "expected the disclaimer to appear."³ Id.

Subsequent to Congressman Studds' response, this Office contacted the Committee to ask whether the earlier response constituted a response from the Committee as well. At that time, we were informed that Counsel for Respondents would be filing a response. On November 19, 1991, Counsel requested an extension of time, which was granted. On December 18, 1991, this Office received the response by counsel

3. Although Respondents provided no evidence of error by the newspaper, the Commission has previously considered inadvertent omissions of printers and newspapers by finding no reason to believe or by finding reason to believe but taking no further action. See MURs 2634 and 2260, respectively.

4.

92040900953

In the landmark case Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court concluded that the only expenditures covered by the Act's reporting provisions are those that "expressly advocate the election or defeat of a clearly identified candidate."⁵ Id. at 80. The Court stated that the provision must be restricted "to communications containing express words of advocacy of election or defeat, such as 'vote for,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" Id. at 44, n.52.

The purpose of the standard set by the Court was to protect free speech by limiting the coverage of the disclaimer provision "precisely to that spending that is unambiguously related to the campaign of a particular candidate." Id. at 80. This standard was incorporated into 2 U.S.C. § 441d of the Act.

Subsequently, in finding express advocacy in FEC v. Massachusetts Citizens for Life, Inc. 479 U.S. 238 (1986), the Supreme Court declined to strictly adhere to only those words and phrases in Buckley which it had determined would constitute "express advocacy." The Court stated that "the fact that [the communication's] message is marginally less direct than 'Vote for Smith' does not change its essential nature." Id. at 249.

5. The Court's reasoning in Buckley related to the meaning of "for the purpose of...influencing" an election, language contained in the reporting requirements provision of the Act. From this language the Court devised the "expressly advocating" language and standard, which also appear in the disclaimer provision of the Act today. However, the requirement for a disclaimer on communications which solicit contributions stands separately from the requirement for a disclaimer on communications under the "express advocacy" test.

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The "express advocacy" standard was further clarified by the courts in FEC v. Furgatch, 807 F.2d 857 (9th Cir. 1987), cert. denied, 484 U.S. 850 (1987). To be "express advocacy" under the Act, speech must, "when read as a whole and with limited reference to external events, be susceptible of no other reasonable interpretation but an exhortation to vote for or against a specific candidate." Id. at 864. Speech cannot be express advocacy if "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." Id.

The court stated that speech is "express advocacy" if three criteria are met. First, a political communication's message is "express" if it is unmistakable and unambiguous, suggestive of only one plausible meaning. Second, its message is "advocacy" if it presents a clear plea for action, and thus is not purely informative. Third, the message is "express advocacy" if it is clear what action is advocated. Id.

Counsel for the Respondents argues that the advertisement does not expressly advocate the election of Congressman Studds, and thus a 2 U.S.C. § 441d disclaimer is not required. Attachment 4, p. 2. Counsel further argues that "the advertisement was never intended as an election-related communication." Id. Counsel states that "the Committee intended to run an advertisement that acknowledged the celebration of the Blessing of the Fleet, an annual festival." Id. at 1. Counsel maintains that the Committee intended to run

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an entirely different advertisement.⁶ Id.

Regardless of what advertisement the Respondents intended to run and whether they intended it to be election-related, the advertisement which did run, and is thus the subject of this complaint, does not appear to expressly advocate the election or defeat of any candidate, on its face. The advertisement clearly identifies Congressman Studds, with his name displayed above his picture. The advertisement states character traits of the Congressman, "caring, fighting, winning." However, the 1991 advertisement, having been published in a non-election year, has no direct or indirect connection to any election. Neither does the advertisement invoke the reader to take any action. Therefore, the advertisement is not express advocacy.

The 1991 publication of the advertisement was paid for by the Respondents; however, the Act does not require all advertisements paid by the candidate or committee to include the disclaimer. The Act requires only those communications which expressly advocate the election or defeat of a candidate or solicit contributions to include a disclaimer.⁷

6. Conversely, the letter sent by Congressman Studds claimed that the lack of a disclaimer was an oversight, and that it should have appeared, and that the Committee had intended for it to appear. Further, in the response from Congressman Studds, there was no mention of the Committee's intention to run a different advertisement.

7. Arguably, candidate generated advertisements, such as those at issue in this matter, constitute the type of activity which the Act was intended to cover. See, Buckley, 424 U.S. at 80; Furgatch, 807 F.2d at 865. However, legislative or regulatory reforms would be necessary in order to apply the Act's disclaimer requirements to this type of advertising.

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On October 22, 1991, the Complainant filed an amendment to the original complaint alleging that the same advertisement, which was the subject of the original complaint, had also been used by the Committee previous to the 1990 election, also without any disclaimer. Attachment 2. The allegations in the Complainant's amendment derive from an article in the Boston Globe, dated August 15, 1991, detailing the filing of and allegations in the original complaint. The advertisement allegedly previously used without a disclaimer was supposedly identical to the 1991 advertisement. However, neither the amendment to the complaint nor the Boston Globe article included copies of the earlier publication of the advertisement.

On January 14, 1992, this Office contacted counsel to inform her that the Committee had not responded to the allegation in the amendment to the complaint. Counsel stated that she was not aware of an amendment. This Office then forwarded to her a copy of the amendment and copies of the letters which had been sent to Respondents, prior to their designation of counsel, notifying them of the amendment.

On January 29, 1992, this Office received the response to the amendment to the complaint. Counsel states that the 1990 advertisement "due to inadvertent clerical omission, did not include a disclaimer."⁸ Attachment 6. Counsel further

8. Counsel asserts that these omissions are isolated incidents. Attachment 6. However, it should be noted that Respondents have claimed "inadvertent omission" on this issue in two occasions previous to the incidents which precipitated this matter. See MURs 2759, 1744.

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maintains that the advertisement does not require a disclaimer because it neither solicited contributions nor expressly advocated the election of the candidate. Id.

The 1990 publication of the advertisement obviously occurred during an election year, but no information is available as to the exact date of the publication. Because of the potential timing of the 1990 advertisement, the nature of the advertisement might be called into question. Nevertheless, timing alone is not sufficient to make a communication express advocacy. The advertisement does not, on its face, expressly advocate the election or defeat of any candidate. Reasonable minds could differ as to whether the advertisement when read as a whole, with limited reference to external events, encourages a vote for or against Congressman Studds. Thus, it appears that the 1990 advertisement, as presented in this complaint, is not subject to the disclaimer requirements of 2 U.S.C. § 441d.

Therefore, this Office recommends that the Commission find no reason to believe that Representative Gerry E. Studds and the Studds for Congress Committee and Edwin M. Martin, Jr., as treasurer, violated 2 U.S.C. § 441d, based on the complaint in MUR 3376.

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III. RECOMMENDATIONS

1. Find no reason to believe that Congressman Gerry E. Studds and the Studds for Congress Committee and Edwin M. Martin, Jr., as treasurer, violated 2 U.S.C. § 441d, on the basis of the complaint in MUR 3376.
2. Approve the appropriate letters.
3. Close the file.

Lawrence M. Noble
General Counsel

Date

3-4-92

BY:


Lois G. Lerner
Associate General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3376
Congressman Gerry E. Studds;)
Studds for Congress Committee, and)
Edwin M. Martin, Jr., as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 25, 1992, do hereby certify that the Commission took the following actions in MUR 3376:

1. Failed in a vote of 3-2 to pass a motion to
- a) Reject recommendation 1 in the General Counsel's report dated March 4, 1992, and instead find reason to believe that Studds for Congress Committee and Edwin M. Martin, Jr., as treasurer, violated 2 U.S.C. § 441d on the basis of the complaint in MUR 3376.
 - b) Direct the Office of General Counsel to send appropriate letters and Factual and Legal Analysis pursuant to the above action.

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

(continued)

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2. Failed in a vote of 2-3 to pass a motion to

- a) Find no reason to believe that Congressman Gerry E. Studds and the Studds for Congress Committee and Edwin M. Martin, Jr., as treasurer, violated 2 U.S.C. § 441d on the basis of the complaint in MUR 3376.
- b) Approve the appropriate letters as recommended in the General Counsel's report dated March 4, 1992.
- c) Close the file.

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

3. Decided by a vote of 5-0 to close the file in MUR 3376 and direct the Office of General Counsel to send appropriate letters.

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

Attest:

3/30/92
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 6, 1992

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Jon L. Bryan
215 Prince Avenue
Marston Mills, MA 02648

RE: MUR 3376

Dear Mr. Bryan:

The Federal Election Commission has reviewed the allegations contained in your complaint dated August 14, 1991. On March 25, 1992, the Commission considered your complaint, but there was an insufficient number of votes to find reason to believe Studds for Congress Committee and Edwin M. Martin, Jr., as treasurer, and Gerry E. Studds violated the Federal Election Campaign Act of 1971, as amended.

Accordingly, on March 25, 1992, the Commission closed the file in this matter. The Federal Election Campaign Act 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 Tonda M. Mott, the attorney 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
and Certification

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 6, 1992

CLOSED

Judith L. Corley, Esq.
Perkins Coie
1607 14th Street, N.W., Suite 800
Washington, D.C. 20005

RE: MUR 3376
Congressman Gerry E.
Studds, and Studds for
Congress Committee and
Edwin M. Martin, Jr., as
treasurer

Dear Ms. Corley:

On October 29, 1991, the Federal Election Commission notified you of a complaint alleging that Congressman Gerry E. Studds, and Studds for Congress Committee and Edwin M. Martin, Jr., as treasurer had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

On March 25, 1992, the Commission considered the complaint but there was an insufficient number of votes to find reason to believe your clients violated the Act. Accordingly, the Commission closed its file in this matter. This matter will become 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 direct them to Tonda M. Mott, the attorney 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
and Certification

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3376

DATE FILMED 4/29/92 CAMERA NO. 2

CAMERAMAN S.E.G

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3376.

5/5/92

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 4, 1992

CLOSED

Jon L. Bryan
215 Prince Avenue
Marston Mills, MA 02648

RE: MUR 3376

Dear Mr. Bryan:

By letter dated April 6, 1992, the Office of the General Counsel informed you of determinations made with respect to the complaint filed by you against Congressman Gerry E. Studds; Studds for Congress Committee and Edwin M. Martin, Jr., as treasurer ("the Committee"). Enclosed with that letter was the First General Counsel's Report.

Enclosed please find a Statement of Reasons adopted by three Commissioners explaining their position regarding the failed vote of 3-2 to find reason to believe that the Committee violated 2 U.S.C. § 441d(a) of the Federal Election Campaign Act. This document will be placed on the public record as part of the file of MUR 3376.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Tonda M. Mott
Attorney

Enclosure
Statement of Reasons

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 4, 1992

Judith Corley, Esq.
Perkins Coie
607 14th Street, NW
Washington, DC 20005

RE: MUR 3376

Dear Ms. Corley:

By letter dated April 6, 1992, the Office of the General Counsel informed you of determinations made with respect to the complaint filed against your client, Congressman Gerry E. Studds; Studds for Congress Committee and Edwin M. Martin, Jr., as treasurer. Enclosed with that letter was the First General Counsel's Report.

Enclosed please find a Statement of Reasons adopted by three Commissioners explaining their position regarding the failed vote of 3-2 to find reason to believe that your client violated 2 U.S.C. § 441d(a) of the Federal Election Campaign Act. This document will be placed on the public record as part of the file of MUR 3376.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Tonda M. Mott
Attorney

Enclosure
Statement of Reasons

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3376.

4/28/92

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MEMORANDUM

TO: COMMISSIONERS
GENERAL COUNSEL NOBLE
STAFF DIRECTOR SURINA
PRESS OFFICER EILAND

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

DATE: APRIL 27, 1992

SUBJECT: STATEMENT OF REASONS FOR MUR 3376

Attached is a copy of the Statement of Reasons in MUR 3376 signed by Commissioners McDonald, McGarry and Thomas. This was received in the Commission Secretary's Office on Monday, April 27, 1992 at 12:12 p.m.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

In the Matter of)
Congressman Gerry E. Studds;)
Studds for Congress Committee and) MUR 3376
Edwin H. Martin, Jr., as)
treasurer)

STATEMENT OF REASONS

VICE CHAIRMAN SCOTT E. THOMAS
COMMISSIONER DANNY LEE MCDONALD
COMMISSIONER JOHN WARREN MCGARRY

In Matter Under Review ("MUR") 3376, the Commission split 3-2 on whether a candidate's campaign committee, running newspaper advertisements featuring the candidate, should be required to disclose who paid for the advertisement. In our opinion, the public has a right to know this information under the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, we voted to find reason to believe that the Committee in this matter failed to include the required disclaimer on its ads in violation of the Act.

I.

The Act provides that whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through any type of general public advertising, such communication must contain a disclaimer

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explaining who was responsible for it. 2 U.S.C. §441d(a);¹
11 C.F.R. §110.11(a)(1).

On August 16, 1991, Jon L. Bryan ("the complainant") filed a complaint with the Federal Election Commission against Congressman Gerry E. Studds and the Committee to Re-Elect Congressman Studds ("the Committee"), and Edwin M. Martin, Jr., as treasurer. The complaint stated that an advertisement for Congressman Studds appeared in the August 8-21, 1991, edition of "The Barnacle," a "local biweekly fishing magazine." See Complaint at Exhibit 2 (Cape Cod Times). The complaint alleged that the "advertisement does not contain the disclaimer required by 2 U.S.C. §441(d) [sic]." Complaint at 1. The complainant further stated, "by knowledge and belief, it is my understanding that this advertisement was ordered and paid for by the Committee to Re-Elect Congressman Studds." Id.

On October 22, 1991, the complainant filed an amendment to his complaint. The complainant enclosed a copy of a newspaper article "which indicates that the advertisement noted in our original complaint had run prior to the 1990 election, again without a disclaimer." Amended complaint at 1. The amended complaint did not include a copy of the 1990 advertisement and gave no date of publication of the advertisement.

On March 25, 1992, the Commission considered the General Counsel's Report which recommended that the Commission find no reason to believe that the respondents had violated 2 U.S.C. §441d. The General Counsel's Report concluded that neither the 1990 advertisement nor the 1991 advertisement constituted express advocacy. A motion to approve the General Counsel's

1. 2 U.S.C. §441d(a) provides, in pertinent part:

Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication --

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee.

2. On October 25, 1991, the Committee to Re-Elect Congressman Studds filed an amendment to its Statement of Organization changing the Committee's name to Studds for Congress Committee.

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recommendation failed. Two Commissioners supported the General Counsel's recommendation, and three Commissioners (the undersigned) opposed. A motion to find reason to believe that the Studds for Congress Committee and its treasurer violated §441d also failed with three Commissioners supporting the motion and two Commissioners opposing it. Finally, a motion to close the file and send the appropriate letters passed with five Commissioners supporting the motion.

II.

The central issue in this matter is whether the 1990 and 1991 advertisements distributed by the Studds for Congress Committee expressly advocated the election of a federal candidate. If the advertisements contained express advocacy, the Act required the Committee to include a statement on the ads indicating whether the candidate's committee paid for them. After reviewing the applicable case law, the text of the advertisements, and the circumstances surrounding their publication, we believe that the advertisements ask the general public to vote for a specific federal candidate. Accordingly, we voted to find reason to believe that the Committee violated 2 U.S.C. §441d for failing to include the appropriate public disclaimer in the advertisements.

A.

Congress included the "express advocacy" provision as part of §441d in response to the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976). See H.R. Rep. No. 917, 94th Cong., 2d Sess. 5 (1976). In Buckley, the Court upheld as constitutional certain reporting requirements on expenditures made by individuals and groups that were "not candidates or political committees." 424 U.S. at 80. The Court expressed its concern, however, that these reporting provisions might be broadly applied to communications which discussed public issues which also happened to be campaign issues. In order to ensure that expenditures made for pure issue discussion would not be reportable under FECA, the Court construed these reporting requirements "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." Id. (emphasis added).

In creating the express advocacy standard, the Buckley Court sought to draw a distinction between issue advocacy and partisan advocacy focused on a clearly-identified candidate. Thus, the Court explained that the purpose of the express advocacy standard was to limit the application of the pertinent reporting provision to "spending that is unambiguously related to the campaign of a particular federal candidate." 424 U.S. at 80 (emphasis added). See also 424 U.S. at 81. (Under an express advocacy standard, the reporting requirements would

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"shed the light of publicity on spending that is unambiguously campaign related") (emphasis added). The Court, however, provided no definition of what constituted "spending that is unambiguously related to the campaign of a particular federal candidate" or "unambiguously campaign related." The Court only indicated that express advocacy would include communications containing such obvious campaign related words or phrases as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject." 424 U.S. at 80 n.108 citing 424 U.S. at 44 n.52.

In FEC v. Massachusetts Citizens For Life ("FEC v. MCFL"), 479 U.S. 238 (1986), the Supreme Court clarified the scope of the express advocacy standard. The Court indicated that a communication could be considered express advocacy even though it lacked the specific buzzwords or catch phrases listed as examples in Buckley. The Court explained that express advocacy could be "less direct" than the examples listed in Buckley so long as the "essential nature" of the communication "goes beyond issue discussion to express electoral advocacy." 479 U.S. at 249.

Similarly, in FEC v. Furgatch, 807 F.2d 857, 864 (9th Cir.), cert. denied, 484 U.S. 850 (1987), the Ninth Circuit concluded that "speech need not include any of the words listed in Buckley to be express advocacy under the Act." The court found that "'express advocacy' is not strictly limited to communications using certain key phrases." 807 F.2d at 862. Such a wooden and mechanical construction, the court recognized, would invite and allow for the easy circumvention of the Act:

A test requiring the magic words "elect," "support," etc., or their nearly perfect synonyms for a finding of express advocacy would preserve the First Amendment right of unfettered expression only at the expense of eviscerating the [Act]. "Independent" campaign spenders working on behalf of candidates could remain just beyond the reach of the Act by avoiding certain key words while conveying a message that is unmistakably directed to the election or defeat of a named candidate.

Id. (emphasis added).

Rather than rely on the inclusion or exclusion of certain "magic words" for determining whether a particular communication contained express advocacy, the court concluded that for a communication "to be express advocacy under the Act...it must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate."

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807 F.2d at 864. (emphasis added). In defining "express advocacy" under this standard, the court considered the following factors:

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..." 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.

B.

The advertisements arranged and paid for by the Studds for Congress Committee feature a picture of the candidate speaking before a large crowd of people. Appearing above the pictures, in large, prominent letters, are the words "Congressman GERRY STUDDS." Below the picture are the words "CARING - FIGHTING - WINNING."

We have no doubt that these advertisements, paid for by the Studds for Congress Committee, are "unambiguously related to the campaign of a particular federal candidate." Buckley, 424 U.S. at 80. We can see no other purpose for the Studds campaign to pay for these advertisements than to encourage people to vote for Congressman Studds in the next election. There is none of the issue discussion present in these advertisements which so concerned the Court in Buckley and led to the development of an express advocacy standard. These advertisements are not tied, for example, to any legislative effort or lobbying effort or constituent communication regarding congressional activity. Rather, the purpose of the advertisements was simply to urge people to elect Congressman Studds because he is "caring, fighting, and winning." In view of these considerations, we believe that "when read as a whole...[the advertisements are] susceptible of no other reasonable interpretation but as an exhortation to vote for...a specific candidate." Furgatch, supra, 807 F.2d at 864.

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The General Counsel's Report concluded that express advocacy is not present in the 1991 advertisement because "the 1991 advertisement, having been published in a non-election year, has no direct or indirect connection to any election. Neither does the advertisement invoke the reader to take any action." General Counsel's Report at 6. We disagree with both of the arguments raised in the Report's analysis.

First, the Commission has never adopted an election year/non-election year rule suggesting that a campaign does not begin until an election year. To the contrary, both the Act and the Commission's regulations recognize that activity occurring in a non-election year will have an effect on the election year. For example, the limitations on contributions to candidates apply on a 'per election' basis rather than an 'election year' basis. 2 U.S.C. §441a(a)(1)(A), (2)(A); 11 C.F.R. §110.1(b). See also, Advisory Opinion 1985-14, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶5819 (Ads run by party committee in 1985 would count towards coordinated expenditure limit of 2 U.S.C. §441a(d) for 1986 general election.). With respect to non-election year activity, the law reflects the reality we all know, namely that it is common for a House Member's two-year term of office to correspond precisely to the campaign for that office. For instance, in the non-election year of 1991, 635 candidates for the House of Representatives reported receipts of over \$82 million and disbursements of over \$53 million. Federal Election Commission Press Release of March 6, 1992. The committees reporting these figures exist for the purpose of electing and reelecting candidates for the 1992 elections. In 1991, the Studds for Congress Committee itself reported receipts of \$270,000 and disbursements of \$190,000. Thus, we disagree strongly with the Report's argument that non-election year activity--especially that of a candidate's own campaign committee--"has no direct or indirect connection to any election."

We also disagree with the General Counsel's argument that the advertisements do not "invoke the reader to take any action." In Buckley, the Supreme Court listed the phrase "Smith for Congress" as an example of express advocacy. 424 U.S. at 44 n.52. By including this phrase, the Supreme Court recognized that there can be express advocacy even without words of exhortation such as "vote for" or "support" or "cast your ballot for." In our opinion, the phrase "Congressman Studds--Caring, Fighting, Winning" invites voter support of Congressman Studds just as much as the simple phrase "Studds for Congress."³

3. It is interesting to note that even the candidate acknowledges that express advocacy was present and that a disclaimer was required:

With respect to the political advertisement in question, it is clear that the required disclaimer was

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For similar reasons, we cannot accept the General Counsel's conclusion that the 1990 advertisement did not constitute express advocacy. The General Counsel's Report finds that "[b]ecause of the potential timing of 1990 advertisement, the nature of the advertisement might be called into question." General Counsel's Report at 8. The General Counsel's Report concluded, however, that there is no express advocacy and explains that "[r]easonable minds could differ as to whether the advertisement when read as a whole with limited reference to external events, encourages a vote for or against Congressman Studds." Id.

We think that the General Counsel's explanation misreads the test set forth in Furgatch, supra. The court in Furgatch 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." 807 F.2d at 864 (emphasis added). In other words, in order to reach a "no express advocacy" determination, some other plausible explanation for the communication must be given. In the matter at hand, we can see no plausible explanation for this election year advertisement, paid for by the Studds for Congress Committee, other than that it was a communication urging voter support for Congressman Studds.

We believe that the Barnacle advertisements, paid for and placed by the Studds for Congress Committee, should have included an appropriate public disclaimer. Accordingly, we voted to find reason to believe that the Studds for Congress Committee violated 2 U.S.C. §441d.

III.

The cornerstone of the Federal Election Campaign Act is its disclosure provisions. Congress sought to facilitate the complete disclosure of campaign finance information when it enacted §441d only months after Buckley was decided. As the

(Footnote 3 continued from previous page)

erroneously omitted. It was most certainly our intention that the disclaimer appear conspicuously at the bottom of the advertisement, and on any other campaign materials underwritten by the Committee to Reelect Congressman Studds. As you can see, there is an excess of white space below the text of the print ad in question. It was in this white space that we had expected the disclaimer to be included.

Response of Congressman Studds (September 5, 1991) (emphasis added).

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legislative history demonstrates, Congress recognized the importance of placing a §441d public disclaimer on communications supporting federal candidates. In its report to accompany H.R. 12406, the Committee on House Administration explained that §441d was "designed to provide additional information to the voting public." H.R. Rep. No. 917, 94th Cong., 2d Sess. 5 (1976) (emphasis added).

Congress may not have chosen the best possible language when crafting the disclaimer provision at issue. There can be little doubt that the purpose of the law was to let the public know who was behind campaign advertising. The Federal Election Commission is charged with interpreting the law and enforcing it. If the Commission's rulings undermine the clear purpose of the law, at some point the Commission and the law will be subject to ridicule. The system created by Congress to prevent campaign finance abuses and erosion in public confidence in elected government will be endangered. In our view, matters like this one are where the Commission must hold the line.

92040903074

24 April 1992

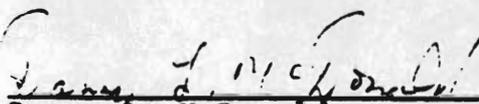
Date



Scott E. Thomas
Vice Chairman

4/24/92

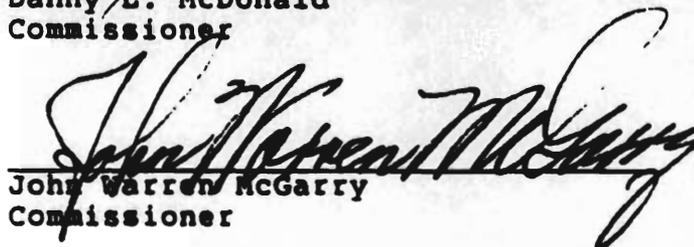
Date



Danny L. McDonald
Commissioner

24 April 1992

Date



John Warren McGarry
Commissioner

4. Our concerns with the General Counsel's analysis lie not only with this matter but with the application of this analysis to future cases. Under the General Counsel's analysis, could a corporation under 2 U.S.C. §441b run television and radio advertisements the day before an election saying "Congressman Studds--Caring, Fighting, Winning"? Or, on the other hand, could an unauthorized committee run ads before an election saying "Congressman Studds -- Neglecting, Quitting, Failing" without being required to provide a public disclaimer? We believe that the answer to both these questions is no, but we fear that the General Counsel's analysis, supported by some of our colleagues, may lead to a contrary conclusion.



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO.

THE PUBLIC RECORD IN CLOSED MUR 3376.

7/30/92

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*Noble
Conroy*



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

MEMORANDUM

TO: COMMISSIONERS
GENERAL COUNSEL NOBLE
STAFF DIRECTOR SURINA
PRESS OFFICER EILAND

FROM: *Marjorie W. Emons* MARJORIE W. EMMONS/BONNIE J. ROSS *[Signature]*
SECRETARY OF THE COMMISSION

DATE: JULY 2, 1992

SUBJECT: STATEMENT OF REASONS FOR MUR 3376

Attached is a copy of the Statement of Reasons in MUR 3376 signed by Chairman Aikens and Commissioner Elliott. This was received in the Commission Secretary's Office on Thursday, July 2, 1992 at 11:22 a.m.

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FEDERAL ELECTION COMMISSION

WASHINGTON, DC 20463

In the Matter of)
)
 Studds for Congress Committee)
 and Edwin M. Martin, Jr.) NUR 3376
 as treasurer,)
)
 Congressman Gerry E. Studds)

STATEMENT OF REASONS

Commissioner Joan D. Aikens
Commissioner Lee Ann Elliott

On March 25, 1992, we approved the recommendations of the Office of General Counsel to find no reason to believe Congressman Gerry Studds and his campaign committee violated 2 U.S.C. §441d(a) by failing to include a disclaimer on certain newspaper advertisements paid by the Studds campaign.

As a policy matter, we agree with our colleagues that disclaimers should be included on all communications paid by a candidate's campaign committee. In fact, we recommend Congress amend the FECA to so require.¹ But in an enforcement matter under the FECA as currently written, Studds' advertisements do not need a disclaimer because they do not contain the "express advocacy" necessary to trigger application of Section 441d.

Congressman Studds' campaign committee paid for an advertisement in two Massachusetts newspapers. Each advertisement contained a picture of the Congressman and read:

Congressman Gerry Studds

Caring Fighting
Winning

1. See, e.g., Federal Election Commission 1990 Annual Report, Legislative Recommendations, p. 46 ("Congress should revise the statute to require registered political committees to display the appropriate disclaimer notice [when practicable] in any communication issued to the general public") (emphasis added).

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We do not dispute these advertisements were produced by the Studds campaign to generally benefit the candidate and influence his re-election. ² We acknowledge a political "purpose" behind these advertisements and certainly agree the money used to pay for them is a reportable "expenditure" under the Act.

This case, however, poses the harder question of whether the advertisements "expressly advocate" Congressman Studds' re-election. Applying the "express advocacy" standard to a communication involves a stricter focus than merely thinking a particular communication was "made for the purpose of influencing a federal election." Compare 2 U.S.C. § 441d with the FECA's broader definition of "expenditure" at 2 U.S.C. § 431(9)(A)(i). ³

The General Counsel's Report in this matter reviewed the judicial interpretations of "express advocacy" and correctly recommended no violations be found. We agree that words "marginally less direct" than the Buckley "buzz-words" at 424 U.S. 44, n.52 can be express advocacy. FEC v. Massachusetts Citizens for Life, Inc. ("MCFL"), 479 U.S. at 249. MUR 3376 GC Report at 4. We also acknowledge the three-part test for "express advocacy" set forth in Furgatch:

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.

2. The Respondent said it intended to place a different advertisement in one newspaper which only would have acknowledged the Blessing of the Fleet, an annual festival in Cape Cod. Due to an administrative error, a standard committee advertisement was sent. MUR 3376 Response Letter, (Dec. 18, 1991) at p. 1. Regardless of what advertisement the Respondents intended to run, we view this error as irrelevant and judge this advertisement exactly as it appeared.

3. Section 441d(a)(1) requires advertisements "expressly advocating the election or defeat of a clearly identified candidate" which are financed by a candidate's authorized political committee "clearly state that it has been paid for by such authorized political committee." A disclaimer is not required for advertisements without express advocacy.

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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 whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action. (emphasis added)

FEC v. Furgatch, 807 F.2d 857, 864 (9th Cir. 1987).

In applying Furgatch, we believe the Commission cannot decide the final element of the Furgatch test (is the action being advocated electoral?) without going through the opinion's first two steps of finding "express" language and a "clear plea for action." We believe the Commission cannot properly determine what a reasonable reader is being encouraged to do unless he is being asked to do something! Some "plea for action" must be present before we can determine if electoral or issue action is being urged. Otherwise, the speech is "merely informative" and not covered by the Act. Furgatch at 864.

The advertisements in this case do not contain any call for action. The reader is not asked to do anything in response to the ad, other than possibly form an opinion about the officeholder. We believe electoral advocacy cannot be a matter of implication. It must clearly be present for the communication to be "express advocacy." FEC v. Central Long Island Tax Reform Immediately Committee, ("CLITRIM") 616 F.2d 45 (2d Cir. 1980) ("the words "express advocacy" mean exactly what they say ... [not] for the purpose, express or implied, of encouraging election or defeat.")(emphasis in original). Since there is no advocacy in the Studds message (let alone some advocacy subject to interpretation) we found no violation of the Act.

We read our colleagues' Statement of Reasons as not requiring any "advocacy" or a "clear call to action" before finding "express advocacy." In fact, their statement only employs the the third prong of the Furgatch test. Statement at 7. Not only does their analysis omit

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critical elements of the Furgatch test, it construes the court's opinion to allow candidate-related advocacy to be found by implication, and ignores the court's emphasis on the words "don't let him do it." As the court stated:

'Don't let him' is a command. The words 'expressly advocate' action of some kind [this] advertisement urged readers to vote against Jimmy Carter. This was the only action open to those who would not 'let him do it.'

Furgatch at 865.

Those in favor of inferring exhortations to act apparently would have found "express advocacy" in the Furgatch case even without the words the court relied on, since criticism of President Carter within the context of a presidential election would imply to the reader that he or she should vote against Carter. We disagree. There must be some advocacy in the message before the entire message can be considered electoral advocacy.

We also disagree with our colleagues' statement:

In other words, in order to reach a "no express advocacy" determination, some other plausible explanation for the communication must be given.

Statement at 7 (emphasis in original).

In our opinion, Furgatch does not empower the Commission to infer "express advocacy" at the outset of interpreting a communication. Nor does the absence of any issue discussion in a communication mean that, by default, the message is "express advocacy." We believe candidate-related advocacy is not implicit whenever a communication praises or criticizes an officeholder, or that a speaker must come up with some non-electoral excuse

4. We recognize a reasonable limit to this position. It is possible that critical references to candidate immediately before an election could be construed as express advocacy if there is some reference to the election or a vague call to action. Furgatch at 865. (bold, yet unspecified, calls for action are "express advocacy" if made within 7 days of an election).

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for his message to avoid our jurisdiction. We choose to define our jurisdiction as reaching only "express calls for candidate-related action" rather than reaching all messages "except those expressly calling for issue action." See FEC v. National Organization for Women, 713 F. Supp 428 (D.D.C. 1989) (letter containing issue discussion and the phrase "Jesse Helms [and] Strom Thurmond ... must be made to understand that failure to pass the ERA will result in powerful campaigns to defeat them" is protected issue advocacy, not express advocacy).

We do not place any emphasis on what we perceive the speaker's purpose was in speaking. As stated, a general "political purpose" only gets us as far as saying the communication is an "expenditure" under the Act. This means Congressman Studds has to use his political committee's funds (not his own pocket) to pay for these ads and that their cost is reportable to the FEC. It does not answer the harder question of whether the communication is "express advocacy." Also, relying heavily on a speaker's purpose cannot alone be determinative as "attempts to fathom [a speaker's] mental state would distract us unnecessarily from the speech itself ... [and] the intent behind political speech is less important than its effect. Furgatch. 863

We also do not think the advertisements, "when read as a whole" urge people to elect Congressman Studds because he is "caring, fighting and winning." Statement at 5. A careful reading of the Furgatch opinion's "as a whole" analysis instructs the Commission to not promote external factors (like who the speaker is, or his perceived purpose) above his words, themselves. When the Furgatch court referred to reading speech "as a whole," it meant you should not read each word of a speech in isolation, but that all the words must be read together to get a proper understanding of the speakers message. Furgatch at 863. "As a whole" does not mean we get to throw in circumstantial evidence at the outset of evaluating a communication. While we can look into context and timing, these considerations are ancillary ones, peripheral to the words themselves, and can only reinforce an electoral interpretation of an otherwise vague call to action. 863, 865. Those factors are not allowed to create a call to action where none exists.

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Our colleagues advance a new interpretation of Buckley v. Valeo. They state:

In Buckley, the Supreme Court listed the phrase "Smith for Congress" as an example of express advocacy. 424 U.S. at 44 n.52. By including this phrase, the Supreme Court recognized that there can be express advocacy even without words of exhortation such as "vote for" or "support" or "cast your ballot for."

Statement at 6.

We obviously consider the message "Smith for Congress" to be express advocacy. The exhortation is not missing, it is in the words "for Congress." That is a command. To follow the command, the reader must vote for Smith. Although this command is not as vague or evasive as the command in Furgatch, it is equally unambiguous. Furgatch at 865. Also, applying the Furgatch test to the phrase "Smith for Congress" you see an "unmistakable and unambiguous" statement that is "suggestive of only one plausible meaning." It is a "clear plea for action" and we believe reasonable minds could not differ what readers are being urged to do. "Studds for Congress" advocates electoral advocacy, "Congressman Studds - caring, fighting, winning" does not. See also MUR 2737 (Bonior for Congress).

5. A instance when we would not consider "Smith for Congress" to be express advocacy is if it wasn't the message of the speaker, but was the name of the speaker, itself. Many candidates use the phrase "for Congress" in the name of the principal campaign committee they register with the Commission. 2 U.S.C. §432(e)(1), (4). If every use of the phrase "for Congress" was express advocacy, than every time a committee stated its name it would also have to disclaim it. The Commission acknowledged this would lead to absurd results in Advisory Opinion 1978-38 (Unruh for Congress) when it said "[i]nformation required for the committee's mailing address would under no circumstances be considered a communication that needed to include [a disclaimer]..." See also MUR 2737 (Bonior for Congress) Statement of Reasons of Commissioners Josefiak, Elliott & Aikens at n.2 and accompanying text.

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We are confident our position upholds the clear purpose of the law. We may not disagree with our colleague's policy-based motivations, but we recognize them for what they are: a statement of what they think the law should be and not what it currently is.

Joan D. Aikens
Joan D. Aikens
Commissioner

Lee Ann Elliott
Lee Ann Elliott
Commissioner

July 2, 1992

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

Microfilm
 Public Records
 Press

THE FOLLOWING DOCUMENTATION IS ADDED TO
THE PUBLIC RECORD IN CLOSED MUR. 3376

9/10/92

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 3, 1992

CLOSED

B. Holly Schadler
Perkins Coie
607 14th Street, N.W.
Washington, D.C. 20005

RE: MUR 3376

Dear Ms. Schadler:

By letter dated April 6, 1992, the Office of the General Counsel informed you of determinations made with respect to the complaint filed against your clients, Congressman Gerry E. Studds, and the Studds for Congress Committee and Edwin M. Martin, Jr., as treasurer. Enclosed with that letter was the First General Counsel's Report. Subsequently, this Office also sent to you a copy of the Statement of Reasons adopted by three Commissioners, explaining their position in the failed vote of 3-2 to find reason to believe that your clients violated 2 U.S.C. § 441d(a) of the Federal Election Campaign Act of 1971, as amended.

Enclosed please find a Statement of Reasons adopted by the remaining two Commissioners explaining their vote in this matter. This document will be placed on the public record as part of the file of MUR 3376.

If you have any questions, please contact me at
(202) 219-3400.

Sincerely,

Tonda M. Mott
Attorney

Enclosure
Statement of Reasons

*to n/31/92
Mon 7/31*

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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607 14th Street, N.W.
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Sincerely,

Tonda M. Mott
Attorney

Enclosure
Statement of Reasons

92040923853



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 3, 1992

Jon L. Bryan
215 Prince Avenue
Marston Mills, MA 02648

RE: MUR 3376

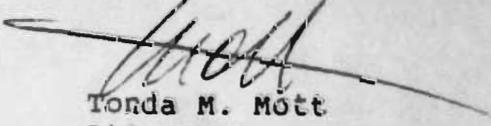
Dear Mr. Bryan:

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Sincerely,


Tonda M. Mott
Attorney

Enclosure
Statement of Reasons

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

In the Matter of)
)
Studds for Congress Committee)
and Edwin M. Martin, Jr.) MUR 3376
as treasurer,)
)
Congressman Gerry E. Studds)

STATEMENT OF REASONS

Commissioner Joan D. Aikens
Commissioner Lee Ann Elliott

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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 whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action. (emphasis added)

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We are confident our position upholds the clear purpose of the law. We may not disagree with our colleague's policy-based motivations, but we recognize them for what they are: a statement of what they think the law should be and not what it currently is.

Joan D. Aikens
Joan D. Aikens
Commissioner

Lee Ann Elliott
Lee Ann Elliott
Commissioner

July 2, 1992

92040923858



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

Microfilm
 Public Records
 Press

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3376.

4/21/94

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PERKINS COIE

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A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
1007 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011 • (202) 328-0600

December 18, 1991

91 DEC 18 PM 4:00

Lawrence M. Noble, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Attention: Tonda M. Mott

Re: MURs 3365, 3370, 3376, 3438, 3439 - Studds for
Congress Committee and Edwin M. Martin, Jr., as
Treasurer

Dear Mr. Noble:

Enclosed you will find the responses of the Studds for Congress Committee (the "Committee") and Edwin M. Martin, Jr., as Treasurer, to the four complaints most recently filed by Mr. Jon L. Bryan and the Massachusetts Republican Party.¹ Bryan was Congressman Studds' Republican opponent in 1988 and 1990. He has also announced his intention to run in 1992. These complaints represent only the most recent attempts by Bryan to harass the Studds Committee and further his own political ambitions, by appealing to the Commission and other federal agencies to investigate spurious allegations.

As a cornerstone of his campaigns, Bryan has repeatedly and redundantly raised issues in complaints filed with the Commission, only some of which relate to federal election laws. His allegations are based on wild speculation with no legal or factual support. In each instance, Bryan or the Republican Party have used the opportunity to hold a press conference -- in some cases scheduling multiple media appearances -- to announce the filing of another complaint.

¹ On July 26, 1991, Bryan filed a complaint alleging that the Committee placed two advertisements in the Cape Cod Times for which it never paid; he incorrectly concluded that the cost of the ads constituted an illegal in-kind corporate contribution. The Committee, in a letter dated August 12, 1991 and signed by Congressman Studds, responded to these allegations in MUR 3365.

(17141-0001/DA913460.032)

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Lawrence M. Noble, Esq.
December 18, 1991
Page 2

See Exhibit 1. These groundless attacks constitute an abuse of the Commission's enforcement process, solely for purposes of his own political gain, and should not be condoned.

We request that the five MURs be consolidated for Commission consideration so that the pattern of harassment of these specious allegations is evident. Further, we request that the Commission dismiss these complaints with no further action.

Sincerely,



B. Holly Schadler
Counsel
Studds for Congress Committee

cc: Jeffrey Long

Enclosure

BHS:lja

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