



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3550

DATE FILMED 1/8/95 CAMERA NO. 4

CAMERAMAN A.L.H.

93040925075

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

92 JUN 22 PM 3:10

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIN COPY ROOM

JUN 19 11 54 AM '92

June 15, 1992

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

MUR 3550

Dear Commissioner,

I am a voter in Virginia's new 11th Congressional district, and I am writing to point out what seems to be a violation of the FEC rules.

Enclosed you will find two letters written by two different people, which were mailed to members of their respective churches. As you will note, there is no line on the enclosed letters stating who paid for or authorized them.

Please note that the content of the letter is the same, and as such, I believe clearly represents the intent or desire to mislead.

I believe all politicians must follow the same rules as outlined by the Federal Election Commission, and I would appreciate your looking into the matter.

Sincerely,

Michael J. Herrick
Michael Herrick

13436 Nascoby Lane
Dale City, Virginia 22193

Enclosure: (2) letters

State of Virginia, County of Prince William
Sworn to and subscribed before me this 15th
day of June, 1992.

Witness my hand and official seal.

Darwin E. Pearson Notary Public

My commission expires June 30, 1995

93040925076

June 2, 1992

Dear Friend:

I am writing to you as a fellow citizen in Virginia's new 11th congressional district. I have lived in Falls Church for the past six years and have attended McLean Presbyterian Church for the past five. I am writing you because I am concerned about the coming June 9th Republican Party Primary for the newly created U.S. Congressional seat in this district.

This race is important because there is no incumbent. Once elected, most congressmen remain in office for many terms so this race could determine our congressional representative for the next ten years. Also, in a primary election of this type, we can expect that only about 10% of the eligible voters will participate. With approximately 20,000 votes split five ways, it is quite possible that the winning margin will be less than a couple hundred votes.

Two of the strongest candidates, Henry Butler and Jack Rollison, are frankly "pro-choice" and waffle when discussing other family issues. As you probably know, there are two strong pro-family, pro-life candidates: Mark Siljander and Andy Schlafly. I am afraid that by splitting the pro-family, pro-life vote, both of these candidates may lose. With this concern, I am writing you and others whom I believe may share my interests.

I became interested in this race when I received a letter from Mark Siljander encouraging me to support his candidacy. I was excited about having a strong pro-family, pro-life, economic conservative candidate, and was preparing to become actively involved in his campaign. Unfortunately, as I spoke with various individuals who knew and worked with Mark, as I met him at several functions, as I reviewed his literature, and as I spoke with those knowledgeable about Mark's previous tenure as a Congressman, I became personally convinced that he is not a good candidate for this race.

I say this with an apologetic tone. Many of my friends are also his friends. I believe that Mark Siljander is a talented, earnest, and hardworking person, and has dedicated much of his energy to causes that are important to me. But I believe that he would lose the general election to the Democratic candidate, Delegate Leslie Byrne, who is being funded by the radical pro-choice group EMILY's LIST and has consistently voted to raise taxes. I came to the conclusion that Mark would lose before Andy Schlafly entered the race.

In getting to know the other candidates, I found that I agreed with several of them on most issues, but none had a good pro-life stance. As a lobbyist for the Family Research Council, a division of Focus on the Family, I know the fine points of the pro-family, pro-life issues and tried to find another candidate whom I could support.

During this period of searching, Andy Schlafly announced his candidacy. I knew at the outset that he would be strongly pro-family and pro-life. Andy graduated from Harvard Law where he was editor of the Harvard Law Review and most recently was a clerk for Judge Douglas Ginsburg on the United States Court of Appeals for

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the D.C Circuit. After talking with Andy on several occasions, I was impressed. He is extremely intelligent, and he has a profound understanding of the economic and social issues that face our nation. Most importantly for a political candidate, I found that he can discuss these issues in language that is straightforward and compelling.

These conversations were just after he decided to run, and Andy had not yet organized his campaign. Since then he has made tremendous progress, building a large, dedicated staff supported by many volunteers. He is running a low-budget campaign based on walking precincts and meeting voters directly. While the other candidates are spending money on direct mail, radio and television advertising, and engaging in road sign wars, he and his campaign workers have visited over 12,000 homes in the district, concentrating on those who have consistently voted in previous Republican primaries.

Why am I against the Siljander candidacy? There are a variety of intangible, subjective factors that are hard to discuss, but one objective fact stands out. After serving his Michigan district in Congress for five years, Mark lost his seat to a candidate from his own party in a primary election. This is very unusual.

Mark may have been unfairly treated by the press during that election, but these facts remain: 1) with all the advantages of a five year incumbency, the voters of his own party turned him down, and 2) he didn't attempt to continue his political career in that district.

I do not care to discuss the specific issues reported in that unfortunate Michigan primary. However The Washington Post and Journal newspapers have already displayed a ruthless willingness to publish negative material on the topic. If Mark wins this primary, his Democratic opponent will use the same issues against him in November, with probable success.

I also note that, despite being one of the first candidates to enter the race, Mark was barely able to get sufficient petition signatures to be placed on the ballot. Andy Schlafly, facing the petition deadline just four weeks after he entered the race, qualified easily.

I very much want to see a strong, conservative, pro-family, pro-life candidate become our next congressman. Because of his early commitment, hard work, and his close ties to several of my friends, I wish I could support Mark Siljander, but I can't. I wish him well in his other endeavors, but I urge you to give Andy Schlafly your serious consideration for this congressional race. Recent reports from Henry Butler's campaign show Butler and Schlafly battling for the lead.

If you do not have his campaign literature or if you would like to speak with Andy, please call his campaign organization at 255-5552. Feel free to call me as well if you have any questions.

Above all else, whomever you decide to support, please vote on June 9th.

Sincerely,

John Walker

9 3 0 4 0 9 2 5 0 7 8

Timothy L. Brown
10403 Forest Avenue, Fairfax VA 22030

27 May 1992

Dear Bart and Beth,

I am writing you as a fellow citizen in Virginia's new 11th congressional district. I am writing you because I am concerned about the coming June 9th Republican Party Primary for the newly created U.S. Congressional seat in this district.

This race is important. There is no incumbent. Once elected, most congressmen remain in office for many terms. I think of this race as determining my congressional representative for the next ten years. Also, in a primary election of this type, we can expect that only about 10% of the eligible voters will participate. With approximately 20,000 votes split five ways, it is quite possible that the winner will lead by less than a couple hundred votes.

Two of the strongest candidates, Henry Butler and Jack Rollison, are frankly "pro-choice." As you probably know, there are two strong pro-life candidates: Mark Siljander and Andy Schlafly. I am afraid that by splitting the pro-life vote, both of the pro-life candidates may lose. With this concern, I am writing you and other voters whom I believe may share my interests.

I became interested in this race when I received a letter from Christy Ann Collins encouraging me to support Mark Siljander for Congress. I was excited about having a strong pro-life, pro-family, economic conservative candidate, and was preparing to become actively involved in his campaign. I looked into his candidacy. Unfortunately, as I spoke with various individuals who knew and worked with Mark, as I met him at several Republican Party functions, as I reviewed his literature, and as I heard and saw him speak in public at these functions, I became personally convinced that *he is not a good candidate for this race.*

I say this with an apologetic tone. Many of my friends are also his friends. I believe that Mark Siljander is a talented, earnest, and hardworking person, and has dedicated much of his energy to causes that are important to me. But I believe that he would lose the general election to the Democratic candidate, Leslie Byrne. (More on this later.) I came to this conclusion before Andy Schlafly entered the race.

I decided to get to know the other candidates. (At the time there were six others.) I spoke at length with each of them either face to face or on the phone. I met three of them one-on-one for breakfast or lunch at a local restaurant. I found that I agreed with several of the candidates on most issues, but none of them had a good pro-life stance. I spoke with Louisa Rucker twice about the fine points of the abortion issue as I tried to find another candidate whom I could support.

During this period of searching, Andy Schlafly announced his candidacy. I knew at the outset that he would be strongly pro-life. I wanted to learn whether he had the strength of personality to mount a successful campaign, and I wanted to find out his positions and depth of understanding on other issues.

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I met Andy for lunch at Anita's in Vienna and we talked for over ninety minutes. I was impressed. He is extremely intelligent, and he has a profound understanding of the economic, social, and technical issues that face our nation. Most importantly for a political candidate, I found that he can discuss these issues in language that is straightforward and compelling. I have since found these qualities in his public speaking as well.

That conversation was just after he decided to run, and Andy had not yet organized his campaign. Since then he has made tremendous progress. He has built a large, dedicated staff supported by many volunteers. He is running a low-budget campaign based on meeting the voters directly. While the other candidates are spending money on direct mail, radio and television advertising, and engaging in road sign wars, Andy and his campaign workers have visited in person over 12,000 homes in the district, concentrating on those who have consistently voted in previous Republican primaries.

Why am I against Mark Siljander's candidacy? There are a variety of intangible, subjective factors that are hard to discuss, but one objective fact stands out. After serving his Michigan district in Congress for five years, *Mark lost his seat to a candidate from his own party in a primary election.* This is very unusual.

Mark may have been unfairly treated by the press during that election, but these facts remain: 1) with all the advantages of a five year incumbency, the voters of his own party turned him down, and 2) he didn't attempt to continue his political career in that district.

I do not care to discuss the specific issues reported in that unfortunate Michigan primary. However our local press has already displayed a ruthless willingness to publish negative material on the topic. If Mark wins this primary, his Democratic opponent will use the same issues against him in November, with probable success.

I also note that, despite being one of the first candidates to enter the race, Mark was barely able to get sufficient petition signatures to be placed on the ballot. Andy Schlafly, facing the petition deadline just four weeks after he decided to enter the race, qualified easily.

I very much want to see a strong, conservative, pro-life, pro-family candidate become our next congressman. Because of his early commitment, hard work, and his close ties to several of my friends at Truro, I wish I could support Mark Siljander, but I can't. I wish him well in his other endeavors, but I urge you to give Andy Schlafly your serious consideration for this congressional race.

If you do not already have his campaign literature or if you would like to speak with Andy, please call his campaign organization at 255-5552. Feel free to call me as well if you have any questions - my number is in the Truro directory.

Above all else, whomever you decide to support, please vote and encourage others to vote as well. The election is June 9th.

Sincerely,



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FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

June 24, 1992

Michael Herrick
13436 Nascoby Lane
Dale City, VA 22193

RE: MUR 3550

Dear Mr. Herrick:

This letter acknowledges receipt on June 22, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by John S. Walker, Timothy L. Brown, Andy Schlafly for Congress, and Peter W. Dunton, as treasurer. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3550. 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.

Sincerely,

Jonathan A. Bernstien
Assistant General Counsel

Enclosure
Procedures

93040925081



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 24, 1992

John S. Walker
2850 Hogan Court
Falls Church, VA 22043

RE: MUR 3550

Dear Mr. Walker:

The Federal Election Commission received a complaint which indicates 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 3550. Please refer to this number in all future correspondence.

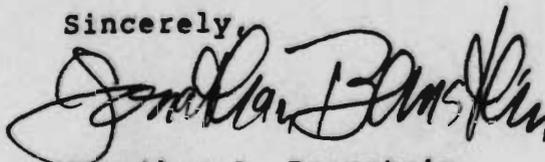
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under 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 Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein
Assistant General Counsel

Enclosures

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

93040925083



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 24, 1992

Timothy L. Brown
10403 Forest Avenue
Fairfax, VA 22030

RE: MUR 3550

Dear Mr. Brown:

The Federal Election Commission received a complaint which indicates 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 3550. Please refer to this number in all future correspondence.

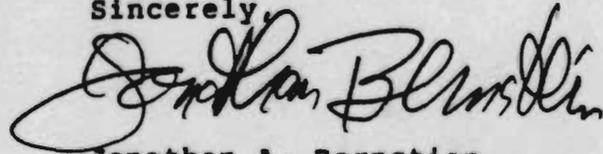
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under 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 Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein
Assistant General Counsel

Enclosures

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

93040925085



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 24, 1992

Andy Schlafly for Congress
Peter W. Dunton, Treasurer
9652 Motley Lane
Vienna, VA 22181

RE: MUR 3550

Dear Mr. Dunton:

The Federal Election Commission received a complaint which indicates that Andy Schlafly for Congress ("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 3550. Please refer to this number in all future correspondence.

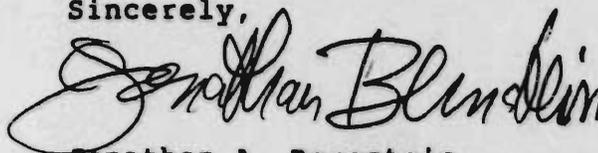
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against Andy Schlafly for Congress and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, 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.

93040925086

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein
Assistant General Counsel

Enclosures

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

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OBC 5089
RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

JUL 7 11 34 AM '92

June 29, 1992

Federal Election Commission
Office of the General Counsel
Washington, D.C. 20463
Attn: Richard M. Zanfardino

RE: MUR 3550

Dear Mr. Zanfardino:

I received a letter from the FEC dated June 24 indicating that a complaint had been filed against a letter I wrote during the campaign for the 11th Congressional District of Virginia. From reading the complaint, I am not exactly clear on what FEC rules Mr. Herrick thinks I violated. Nor am I certain that the complaint is filed against me in that he speaks of "politicians" following the same rules and never mentions me by name. Given this, however, I will simply explain why and how I wrote the letter.

A couple of weeks before the election, I received in the mail a brochure from Mark Siljander's campaign. Attached inside the brochure was a note from a well known lady in my church who also happens to head up our church's pro-life group. In her remarks, she recommends Mark as a strong pro-family, pro-life candidate, which he is. I no longer have the brochure.

I was concerned, however, that her remarks did not also explain some of Mark's weaknesses and would mislead our church as to his electability in the fall election. Specifically, as a Congressman in Michigan, he said some things which caused his own party to turn him out, and I felt certain that these remarks would be brought up again in the general election. On Sunday the 31st of May, I asked people at church that lived in the eleventh district if they received the mailing. They had. At this point I became fairly certain that the church telephone and address directory had been used to send out the Siljander mailing.

Knowing that the majority of our church would be looking for a pro-life, pro-family candidate, and feeling that our church had been steered toward an unelectable candidate, I decided to write a letter to our church members letting them know that Mark had some real problems from his past and that another pro-life, pro-family candidate was available for their consideration. Around this same time, I learned that Tim Brown had written his church raising these same concerns.

I got a copy of Mr. Brown's letter and tailored it to fit my needs. I saw no reason to totally rewrite the letter in that it seemed to address almost exactly the same concerns that I had. This wasn't surprising given that Mark's Michigan troubles were fairly well known. I mailed the letter to approximately 440 members of my church.

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL
92 JUL -7 PM 2:40

I don't believe that the letter I sent out would qualify as a political direct mail piece in any typical sense of the word. It was just a small mailing to members of my church to respond to a mailing from another member. I didn't mention her by name just to avoid any animosity.

I also didn't expressly advocate that anyone support Andy Schlafly but rather that they consider his candidacy. Likewise, I didn't ask anyone to vote against Mark. I simply informed them that I was opposed based on some factors in his past. My letter was to counter the information in the previous mailing. I felt that a well-known pro-life leader in my church had not given all the facts on Mark and did not indicate that there was an alternative. I sent my letter for purposes of information, not advocacy. You will also notice that I encouraged everyone to vote no matter how they voted.

I noticed that the complaint was filed a week after the election and two weeks after I wrote the letter. This makes me wonder why the complaint was submitted except to help Mark and his campaign staff feel better. I don't see that pursuing this matter would serve any useful purpose.

Should you need any additional information, please let me know.

Sincerely,

John S Walker
John S. Walker

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RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

JUL 7 11 39 AM '92

Timothy L. Brown
10403 Forest Avenue, Fairfax VA 22030

3 July 1992

General Counsel's Office
Federal Election Commission
Washington, D.C. 20463

RE: MUR 3550

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF THE
GENERAL COUNSEL
92 JUL -7 PM 2:56

General Counsel, et al:

I am writing in response to your letter of 24 June 1992. Enclosures to that letter included a letter I wrote to some members of my church, and a similar letter written by John Walker to members of his church.

I knew that some influential members of my church were working together to encourage support of Mark Siljander for Congress in Virginia's 11th Congressional District. In my judgement, Mr. Siljander was not a good candidate to support certain political positions important to members of the church, and I wrote to some of the members of the church to tell them why I held that opinion, and to suggest another candidate whom they might consider supporting instead.

My letter was written on my own initiative, using my own Macintosh computer, within the confines of my own home, expressing my ideas in my own words. I did not receive any assistance from Andy Schlafly or Andy Schlafly for Congress. (I did receive beneficial comments on a draft of the letter from my wife Deborah Brown and from Louisa Rucker, a member of my church who is mentioned in the letter. At the time, neither individual was connected with Andy Schlafly's campaign in any way.) I used my own envelopes and stamps, addressed and stuffed the envelopes myself, and took the letters myself to the post office for mailing.

Of approximately 1500 households having members attending my church, of which probably 800 households are within the 11th Congressional District, I sent the letter to only about 110 households.

Because of the way in which the letter was prepared and addressed by me personally to various individuals, because I did not explicitly advocate voting for any candidate but sought to provide information about the election in general (I encouraged people to seriously consider Andy Schlafly's candidacy), and because of its restricted distribution to persons connected to me by association within the congregation, I did not consider it to be a "form of general public political advertising" as described in 11 CFR 1.110.11(a)(1). Accordingly, no disclaimer appears in the letter.

The complainant Mr. Herrick suggests that the letter "clearly represents the intent or desire to mislead." I can't find any misleading information in either my letter or John Walker's. It is true that the letters are very similar. My letter was written and mailed before John ever saw it. When he did see a copy of it, he was impressed and asked my permission to use

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some of my words in a letter that he was writing to members of his church. I told him that as far as I was concerned he was free to borrow as much as he wanted.

I never saw John's letter in any form, draft or final, until I received your letter with his enclosed. On reading it, I see that he used a lot of my material! ("... the sincerest form of flattery.") Although I would not have *advised* John to borrow the form and structure of my letter in a personal letter from him, he did have my permission to use as much as he wanted.

Mr. Herrick's concern may be that there could have been *many* other letters of the same form sent in coordinated fashion by the Andy Schlafly campaign. Please be assured that other than John Walker, no one else asked or received permission from me to use my writing in this way. I am not aware of anyone else writing such a letter. There was to my knowledge no effort on the part of Andy Schlafly for Congress to coordinate or encourage the writing or distribution of such letters.

For the forgoing reasons, and because I am not aware of any possible "violation of the FEC rules" as charged by Mr. Herrick, I recommend that the FEC close the file on this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Timothy Brown". The signature is written in dark ink and is positioned below the word "Sincerely,".

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RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

Jul 9 10 22 AM '92

July 3, 1992

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

Attention: Mr. Jonathan A. Bernstein
Assistant General Counsel

Re: MUR 3550

92 JUL -9 PM 3:30

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Dear Mr. Bernstein:

Reference is made to your letter dated June 24, 1992 which pertained to a complaint filed by Michael Herrick.

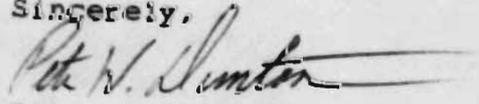
Please note that I am no longer the treasurer of the Andy Schlafly for Congress Committee. A letter sent by certified mail to the Clerk of the House (Office of Records and Registration) on June 12, 1992 states clearly that Andy Schlafly, who resides at 9652 Motley Lane, Vienna, Virginia, on June 12, 1992 became the new treasurer. Further, the campaign ended on June 9th when Mr. Schlafly lost in the primary election. Please also note that there was no assistant treasurer for the Andy Schlafly for Congress committee.

In response to the complaint (MUR 3550), I would like to point out that, as Treasurer for the committee, I never authorized, coordinated, or financed these letters in question.

Additionally, contrary to 11CFR 111.4(d)(1), the complaint does not identify as a respondent the person or entity who is alleged to have committed the violation. Also, 11CFR 111.4(d)(2) requires that "statements which are not based upon personal knowledge should be accompanied by the source of information which gives rise to the complainant's belief in the truth of the statements". Mr. Herrick's letter of complaint does not reveal the source of these letters. One is addressed to "Dear Friend" and the other to "Bart and Beth".

For the above reasons, I feel this complaint is without merit and should be dismissed by your commission.

Sincerely,



Peter W. Dunton

93040925092

RECEIVED
F.E.C.
SECRETARIAT

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

92 NOV 13 PM 5:13

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 3550
DATE COMPLAINT RECEIVED
BY OGC: 6/22/92
DATE OF NOTIFICATION TO
RESPONDENTS: 6/24/92
STAFF MEMBERS: Jonathan A. Bernstein
Richard M. Zanfardino

COMPLAINANT: Michael Herrick

RESPONDENTS: John S. Walker, Timothy L. Brown, Andy Schlafly
for Congress and Andy Schlafly, as treasurer

RELEVANT STATUTE: 2 U.S.C. § 441d(a)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter arose from a complaint by Michael Herrick about two mailings which supported Andy Schlafly and opposed Mark Siljander, two candidates in Virginia's Republican primary for the 11th congressional district. The primary took place on July 9, 1992, and neither Schlafly nor Siljander prevailed, receiving 11% and 22% of the vote respectively. Timothy Brown and John Walker, the two authors of the letters, were notified, as was the Schlafly for Congress committee and Peter Dunton, as its treasurer.^{1/}

^{1/} Mr. Dunton resigned at or near the time of the complaint, and notified this Office to that effect. The new treasurer of the Andy Schlafly for Congress Committee is the candidate. Mr. Dunton, however, responded to the complaint nonetheless and will have his response discussed below.

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On July 7 and 9, 1992, this Office received responses to the complaint (Attachments 1 and 2), and in follow-up telephone conversations on July 22 and 23, 1992, respondents Brown and Walker provided additional information to staff of this Office.

II. LEGAL AND FACTUAL ANALYSIS

Section 441d(a)(3) 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 direct mailing or any general public political advertising that is not authorized by a candidate, that person shall clearly state the name of the person who paid for the communication and that the communication is not authorized by any candidate.

The complaint alleges that the letters lack the required disclaimer. In substance, each letter discusses the merits of the two competing primary candidates and supports the primary bid of Andy Schlafly. The letter signed by Mr. Brown is personally addressed, while Mr. Walker's letter is addressed "Dear Friend."

In response to the complaint, Messrs. Brown and Walker explain that they sent these letters to members of their respective churches. Mr. Brown initially authored the letter and sent it to approximately 110 households. According to Mr. Brown, Mr. Walker asked for permission to use language from the letter for one he wished to send to members of his church. According to Walker, he procured a copy of Mr. Brown's letter, altered it in some respects, and mailed it to 440 members of his

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church. Mr. Brown states that the approximate cost of his endeavor was \$44, while Mr. Walker estimated the cost expended for his mailing as \$193.

Both individuals indicate in their response that they did not view their effort as direct mail or view it as explicitly advocating the election of Mr. Schlafly, and for this reason did not include a disclaimer statement. Both maintain, however, that each's effort was entirely independent of the Schlafly campaign. The response of the Schlafly for Congress Committee treasurer states, consistently, that the letters at issue were never authorized by or coordinated with him. Attachment 3.

The letters plainly opposed the candidacy of Mr. Siljander and promoted the candidacy of Mr. Schlafly.^{2/} Thus, notwithstanding the contention of Messrs. Brown and Walker, there is no question that the letters expressly advocated the election of a clearly identified candidate. This Office also believes that the size of the mailings are within the scope of general public political advertising which requires a disclaimer.^{3/} On the other hand, there is no basis to infer that any contact or coordination took place between the two persons responsible for the letters and the Schlafly campaign, the scope of the apparent violations is not great, and the two candidates

2/ Both letters state: "I became personally convinced that he [Siljander] is not a good candidate for this race," and "I wish I could support Mark Siljander, but I can't...but I urge you to give Andy Schlafly your serious consideration for this congressional race."

3/ This conclusion appears more clear with respect to Mr. Walker's letter than to Mr. Brown's.

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who were objects of the mailings are no longer in the race. Under all the circumstances of this matter and in the exercise of prosecutorial discretion, see Heckler v. Chaney, 470 U.S. 821 (1985), this Office recommends the Commission find reason to believe that John Walker and Timothy Brown violated 2 U.S.C. § 441d(a), but to take no further action and close the file. An appropriate cautionary statement will be included in the notification letters to these individuals.

III. RECOMMENDATIONS

1. Find reason to believe that John Walker violated 2 U.S.C. § 441d(a)(3) and take no further action.
2. Find reason to believe that Timothy Brown violated 2 U.S.C. § 441d(a)(3) and take no further action.
3. Find no reason to believe that the Andy Schlafly for Congress Committee and Andy Schlafly, as treasurer violated 2 U.S.C. § 441d(a)(3).
4. Approve the appropriate letters.
5. Close the file.

Lawrence M. Noble
General Counsel

11/12/92
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachments

1. Response of John Walker
2. Response of Timothy Brown
3. Response of Peter Dunton

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
John S. Walker;) MUR 3550
Timothy L. Brown;)
Andy Schlafly for Congress and)
Andy Schlafly, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on November 19, 1992, the Commission decided by a vote of 6-0 to take the following actions in MUR 3550:

1. Find reason to believe that John Walker violated 2 U.S.C. § 441d(a)(3) and take no further action.
2. Find reason to believe that Timothy Brown violated 2 U.S.C. § 441d(a)(3) and take no further action.
3. Find no reason to believe that the Andy Schlafly for Congress Committee and Andy Schlafly, as treasurer violated 2 U.S.C. § 441d(a)(3).

(Continued)

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4. Approve the appropriate letters, as recommended in the General Counsel's Report dated November 12, 1992.
5. Close the file.

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

Attest:

11-19-92
Date

Delores R. Hardy
for Harjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Fri. Nov. 13, 1992 5:13 p.m.
Circulated to the Commission: Fri. Nov. 16, 1992 11:00 a.m.
Deadline for vote: Thurs., Nov. 19, 1992 4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael Herrick
13436 Nascoby Lane
Dale City, VA 22193

RE: MUR 3550

Dear Mr. Herrick:

This is in reference to the complaint you filed with the Federal Election Commission on June 24, 1992, concerning John S. Walker, Timothy L. Brown, and the Andy Schlafly for Congress Committee and Andy Schlafly, as treasurer.

Based on that complaint, on November 19, 1992, the Commission found that there was reason to believe Messrs. Walker and Brown violated 2 U.S.C. § 441d(a)(3), a provision of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission determined to take no further action against Messrs. Walker and Brown, and closed the file in this matter on that same date. Also on that date, the Commission found that there is no reason to believe the Andy Schlafly for Congress Committee and Andy Schlafly, as treasurer, violated 2 U.S.C. § 441d(a)(3). 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 me at (202) 219-3690.

Sincerely,

Richard M. Zanfardino
Staff Member

Enclosure
General Counsel's Report

93040925099



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 1992

CLOSED

John S. Walker
2850 Hogan Court
Falls Church, VA 22043

RE: MUR 3550

Dear Mr. Walker:

On November 19, 1992, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441d(a)(3), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act."). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that direct mailings expressly advocating the election or defeat of a candidate without a disclaimer appear to be a violation of 2 U.S.C. § 441d(a)(3). You should take immediate steps to insure that this activity does not occur in the future.

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

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John S. Walker
Page 2

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosure
General Counsel's Report

93040925101



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 8, 1992

Timothy L. Brown
10403 Forest Avenue
Fairfax, VA 22030

RE: MUR 3550

Dear Mr. Brown:

On November 19, 1992, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441d(a)(3), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act."). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that direct mailings expressly advocating the election or defeat of a candidate without a disclaimer appear to be a violation of 2 U.S.C. § 441d(a)(3). You should take immediate steps to insure that this activity does not occur in the future.

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

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Timothy L. Brown
Page 2

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosure
General Counsel's Report

93040925103



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 1992

Andy Schlafly for Congress
Andy Schlafly, treasurer
9652 Motley Lane
Vienna, VA 22181

RE: MUR 3550

Dear Mr. Schlafly:

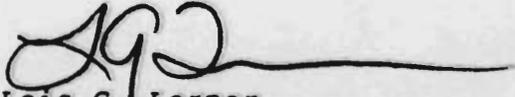
On June 24, 1992, the Federal Election Commission notified the Andy Schlafly for Congress Committee ("Committee") and Peter Dunton, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On November 19, 1992, the Commission found, on the basis of the information in the complaint, and information provided by Mr. Dunton, that there is no reason to believe the Committee, and you, as treasurer violated 2 U.S.C. § 441d(a)(3). Accordingly, the Commission closed its file in this matter.

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

Sincerely,

Lawrence M. Noble
General Counsel


BY: Lois G. Lerner
Associate General Counsel

Enclosure
GC Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE END OF MUR # 3550

DATE FILMED 1/8/93 CAMERA NO. 4

CAMERAMAN A.C.S.

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