



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3603

DATE FILMED 2/22/93 CAMERA NO. 1

CAMERAMAN E.E.S.

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RECEIVED  
FEDERAL ELECT  
COMMISSION  
MAIL ROOM

SEP 1 2 09 PM '92

1205  
125 St. Paul St.  
Rochester, N.Y.  
14604  
8-28-92

Federal Election Comm.

MUR 3603

Gentlemen:

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Locally on radio WBBF-AM  
and WHAM-AM charges have been  
divided maligning Louise Slaughter N.Y. 30.  
These charges made by "Meinike Muffler"  
Spokesman for Bill Politis running for  
the 30th dist seat, claim Mrs. Slaughter  
raised her salary by \$40,000. This is not  
true the House as a whole voted a raise  
but not \$40,000. Mrs. Slaughter didn't do it  
alone. Homer G. Whitmore

CHERY A. MAGWOOD  
Notary Public, State of New York  
MONROE COUNTY  
Commission Expires May 20, 1995

Sworn to before me  
this 28th day of August  
1992 - Chery A. Magwood



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 11, 1992

Meinke Muffler  
Mr. Ted Pearce, General Counsel  
128 South Tryon Street  
Suite 900  
Charlotte, NC 28202

RE: MUR 3603

Dear Mr. Pearce:

The Federal Election Commission received a complaint which indicates that Meinke Muffler 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 3603. 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 Meinke Muffler 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.

93040932326

Meinke Muffler  
Mr. Ted Pearce, General Counsel  
Page 2

If you have any questions, please contact Joi L. Roberson, the staff member assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

*Teresa A. Hennessy*

Teresa A. Hennessy  
Assistant General Counsel

Enclosures

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

93040932327



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 11, 1992

Mr. Bill Cloutier  
500 B. Forman Building  
Midtown Plaza  
Rochester, NY 14604

RE: MUR 3603

Dear Mr. Cloutier:

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 3603. 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.

93040932328

Mr. Bill Cloutier  
Page 2

If you have any questions, please contact Joi L. Roberson, the staff member assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

*Teresa A. Hennessy*

Teresa A. Hennessy  
Assistant General Counsel

Enclosures

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

93040932329



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 11, 1992

Mr. Jeff Howlett, Station Manager  
207 Midtown Plaza  
Post Office Box 40400  
Rochester, NY 14604

RE: MUR 3603

Dear Mr. Howlett:

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 3603. 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.

93040932330

Mr. Jeff Howlett  
Page 2

If you have any questions, please contact Joi L. Roberson, the staff member assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

*Teresa A. Hennessy*

Teresa A. Hennessy  
Assistant General Counsel

Enclosures

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

93040932331



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 11, 1992

Bill Polito for Congress Committee  
Mr. Preston L. Vaden, Treasurer  
59 West Main Street  
Webster, NY 14580

RE: MUR 3603

Dear Mr. Vaden:

The Federal Election Commission received a complaint which indicates that Bill Polito for Congress Committee ("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 3603. 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.

93040932332

Bill Polito for Congress Committee  
Mr. Preston L. Vaden, Treasurer  
Page 2

If you have any questions, please contact Joi L. Roberson,  
the staff member assigned to this matter, at (202) 219-3400.  
For your information, we have enclosed a brief description of  
the Commission's procedures for handling complaints.

Sincerely,

*Teresa A. Hennessy*

Teresa A. Hennessy  
Assistant General Counsel

Enclosures

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

93040932333



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 11, 1992

Mr. William P. Polito  
1124 Brooktree Lane  
Webster, NY 14580

RE: MUR 3603

Dear Mr. Polito:

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 3603. 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.

93040932334

Mr. William P. Polito  
Page 2

If you have any questions, please contact Joi L. Roberson, the staff member assigned to this matter, at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

*Teresa A. Hennessy*

Teresa A. Hennessy  
Assistant General Counsel

Enclosures

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

93040932335



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 11, 1992

Mr. Homer Whitmore  
125 Saint Parel Street  
Rochester, NY 14604

RE: MUR 3603

Dear Mr. Whitmore:

This letter acknowledges receipt on September 2, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by William P. Polito, Bill Polito for Congress Committee, and Preston L. Vaden, as treasurer, Jeff Howlett, Bill Cloutier, and Meinke Muffler. 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 3603. 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,

A handwritten signature in cursive script that reads "Teresa A. Hennessy".

Teresa A. Hennessy  
Assistant General Counsel

Enclosure  
Procedures

93040932336

STATEMENT OF DESIGNATION OF COUNSEL

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
MAIL ROOM

SEP 17 10 18 AM '92

MUR 3603

NAME OF COUNSEL: DR. ALAN ROSKOWITZ

ADDRESS: KAYE, SCHOLER, FIERMAN, HAYS & HANDLER  
901 - 15TH ST, N.W. 11TH FLOOR  
WASHINGTON, D.C. 20005

TELEPHONE: A.C. 202 - 682 - 3580

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.

92 SEP 17 PM 4:24

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF COUNSEL

9/15/92  
Date

Jack Palvino C.M. WHATM  
Signature

RESPONDENT'S NAME: JACK PALVINO C.M. WHATM

ADDRESS: P.O. Box 40340  
207 HILDTOWN TOWER  
ROCHESTER, N.Y. 14604

HOME PHONE: 454 - 3942

BUSINESS PHONE: 454 - 4884

93040932337

**WBBF 95 AM**  
**WBEE 92 FM**

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
MAIL ROOM

SEP 21 11 09 AM '92

September 18, 1992

Ms. Teresa A. Hennessy  
Assistant General Counsel  
Federal Election Commission  
Washington, DC 20463

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF THE CLERK  
92 SEP 21 PM 3:34

Dear Ms. Hennessy:

RE: MUR 3603

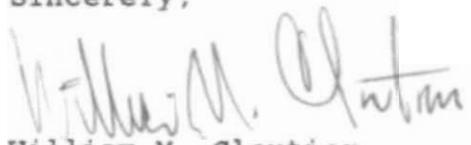
In reply to your letter of September 11, 1992, regarding the above-captioned matter, please be advised that WBBF-AM did not violate the Federal Election Campaign Act of 1971.

The charges allegedly made against Ms. Slaughter were aired in the context of a paid political announcement. This announcement was ordered and paid for by the Polito for Congress Committee as evidenced by Enclosures (1) and (2).

Enclosure (3), which is a transcript of the subject political broadcast, readily demonstrates that the only information provided accurately reflects the record of Ms. Slaughter.

I trust this satisfactorily explains the matter. Should you require any further information, we will be happy to comply with your request.

Sincerely,



William M. Cloutier  
President & General Manager

WMC/mp

Enclosures - 3

cc: Paul Fiddick  
Heritage Media Corporation

93040932338



# AGREEMENT FORM FOR POLITICAL BROADCASTS

STATION and LOCATION WBBF-AM / WBEE-FM 8/13 19 92

I, SCOTT KAHN (being) (on behalf of) BILL POLITO

a legally qualified candidate of the REPUBLICAN political party for the office of U.S. CONGRESS - N.Y.  
28TH DISTRICT

In the PRIMARY election to be held on 9/15/92, do hereby request station time as follows:

Length of Broadcast	Time of Day, Rotation or Package	Days	Class of Time	Times Per Week	No. of Weeks	Rate
:30 (60)	600A to 1000A	MON thru FRI		30	1	92 SEP 21 PM 3:30

Date of First Broadcast 8/17/92 Date of Last Broadcast 8/21/92  
Total Charges: \$ 1,800.00

The broadcast time will be used by BILL POLITO FOR CONGRESS COMMITTEE

I represent that the payment for the above-described broadcast time has been furnished by BILL POLITO FOR CONGRESS COMMITTEE, 59 W. MAIN ST., WEBSTER, NY 14580

and you are authorized to announce the time as paid for by such person or entity. The entity furnishing the payment, if other than an individual person, is ( ) a corporation; () a committee; ( ) an association; or ( ) other unincorporated group. The names and offices of the chief executive officers of the entity are:  
PRESTON L. BADEN - TREASURER

I agree to indemnify and hold harmless the station from any damages or liability, including reasonable attorney's fees, that may ensue from the performance of the above-stated broadcasts. For the above-stated broadcasts I also agree to prepare a script or transcription, which will be delivered to the station at least \_\_\_\_\_ before the time of the scheduled broadcasts. (Note: the two preceding sentences are not applicable if the candidate personally appears during the broadcast.) The station has disclosed to me its political advertising policies, including: applicable classes and rates; and discount, promotional and other sales practices. (Note: The preceding sentence may be deleted). The purchase of the time described herein is controlled, approved or authorized by the candidate or his/her authorized committee. (Note: the preceding sentence applies only to candidates for non-federal office.)

Date: 8-13-92 By: Scott Kahn (Candidate, or Agent)  
 Accepted  Rejected By: William M. Clinton Title: PRES

This request, whether accepted or rejected, will be available for public inspection for a period of two years.

93040932339



# AGREEMENT FORM FOR POLITICAL BROADCASTS

STATION and LOCATION WBBF-AM / WREF-FM Date AUG. 21 19 92

I, SCOTT KAHN (being) BILL POLITO (on behalf of)

a legally qualified candidate of the REPUBLICAN political party for the office of U.S. CONGRESS - N.Y. 28TH DISTRICT

in the PRIMARY election to be held on 9/15/92, do hereby request station time as follows:

Length of Broadcast	Time of Day, Rotation or Package	Days	Class of Time	Times Per Week	No. of Weeks	Rate
:30 (60)	600A to 700P	MON thru FRI		30	1	

Date of First Broadcast <u>8/24</u> /92	Date of Last Broadcast <u>8/28</u> /92
--	---

Total Charges: \$ 1,800.00

The broadcast time will be used by BILL POLITO FOR CONGRESS COMMITTEE

I represent that the payment for the above-described broadcast time has been furnished by BILL POLITO FOR CONGRESS COMMITTEE, 59 W. MAIN ST., WEBSTER, NY 14580

\_\_\_\_\_ and you are authorized to announce the time as paid for by such person or entity. The entity furnishing the payment, if other than an individual person, is ( ) a corporation; (  ) a committee; ( ) an association; or ( ) other unincorporated group. The names and offices of the chief executive officers of the entity are:

PRESTON L. BADEN - TREASURER

I agree to indemnify and hold harmless the station from any damages or liability, including reasonable attorney's fees, that may ensue from the performance of the above-stated broadcasts. For the above-stated broadcasts I also agree to prepare a script or transcription, which will be delivered to the station at least \_\_\_\_\_ before the time of the scheduled broadcasts. (Note: the two preceding sentences are not applicable if the candidate personally appears during the broadcast.) The station has disclosed to me its political advertising policies, including: applicable classes and rates; and discount, promotional and other sales practices. (Note: The preceding sentence may be deleted). The purchase of the time described herein is controlled, approved or authorized by the candidate or his/her authorized committee. (Note: the preceding sentence applies only to candidates for non-federal office.)

Date: 8-21-92 Scott Kahn  
(Candidate, or Agent)

Accepted  Rejected By William M. Clinton Title Pres/GM

This request, whether accepted or rejected, will be available for public inspection for a period of two years.

93040932340

TO: WHAM & WBBF/WBEE  
FROM: SCOTT KAHN  
RE: BILL POLITO FOR CONGRESS COMMITTEE  
DATE: AUGUST 21, 1992

Attached please find a check, schedule, and political broadcast form for Bill Polito For Congress Committee.

FLIGHT DATES: MONDAY, AUGUST 24 THRU FRIDAY, AUGUST 28, 1992.

CONTINUE AIRING "INDEEDAMUNDO" :60 100%

*Please contact me if you have any questions.*

93040932341



**MULTI MEDIA SERVICES CORPORATION**

801 NORTH FAIRFAX STREET, SUITE 312 • ALEXANDRIA, VIRGINIA 22314 • (703) 739-2160

PALITO FOR CONGRESS  
"Indeedamundo"  
:60 Raido  
8/13/92  
Forrest Communications

(IN THE STYLE OF ROBIN LEACH)

IT'S LIFESTYLES OF THE RICH AND INCUMBENT IN WASHINGTON D.C., WHERE  
IT'S ALWAYS "SPEND, SPEND, SPEND," AND IT'S ALWAYS YOUR MONEY. TAKE  
LIBERAL LOUISE SLAUGHTER, PLEASE! LIBERAL LOUISE SLAUGHTER VOTED TO  
SPEND THREE QUARTERS OF A MILLION BUCKS ON A FERRY BOAT FOR FAR AWAY  
SAMOA, WHERE IT'S ALWAYS A VACATION. HEY, THEY MAY NEVER NAME A  
MONROE COUNTY SCHOOL AFTER HER, BUT A SAMOAN FERRY BOAT? INDEEDAMUNDO!  
SPENDING OUR DINARO, LIBERAL LOUISE SLAUGHTER APPRECIATES THE FINER  
THINGS IN LIFE, LIKE THE 20 MILLION SHE SPENT ON TRENDY ART FOR THE  
US CAPITOL. GEEZ LOUISE!!! BUT IT'S NOT LIKE IT'S HER MONEY, LIBERAL  
LOUISE SLAUGHTER VOTED FOR THE LARGEST TAX INCREASE IN AMERICAN HISTORY.  
NUMBER 1. NUMERO UNO! THE BIG KAHUNA!! BUT, SHE CAN AFFORD IT LIBERAL  
LOUISE SLAUGHTER VOTED TO RAISE HER OWN PAY 40 GRAND A YEAR. ISN'T THAT  
AMAZING? REMEMBER, WHEN IT COMES TO WASTING OUR TAX DOLLARS, LIBERAL  
LOUISE SLAUGHTER TAKES THE CAKE AND THE CHAMPAGNE, TOO. TA TA ...

TAG: PAID FOR BY THE BILL POLITO FOR CONGRESS COMMITTEE.

93040932342

OGC 6576

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

THE McPHERSON BUILDING  
901 FIFTEENTH STREET, N.W., SUITE 1100  
WASHINGTON, D.C. 20005

425 PARK AVENUE  
NEW YORK, N.Y. 10022  
(212) 836-8000

1999 AVENUE OF THE STARS  
SUITE 1800  
LOS ANGELES, CA 90067  
(213) 788-1000

WRITER'S DIRECT DIAL NUMBER

(202) 682-3500

TELECOPY NUMBER  
(202) 682-3580

ADMIRALTY CENTRE  
TOWER 1, 32<sup>ND</sup> FLOOR  
18 HARCOURT ROAD  
HONG KONG  
(852) 665-7676  
SQUARE DE MECUS 30  
1040 BRUSSELS, BELGIUM  
(322) 514-4300

(202) 682-3501

September 22, 1992

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

Re: MUR 3603

Dear Sir or Madame:

On behalf of the Lincoln Group, Ltd., licensee of Radio Station WHAM(AM), Rochester, New York, this will serve as the official response to the above-referenced complaint (MUR 3603) received by the Federal Election Commission from Mr. Homer S. Whitmore and sent to WHAM(AM), dated September 11, 1992.<sup>1</sup>

Mr. Whitmore's August 28, 1992 complaint alleges that WHAM(AM) broadcast a political commercial spot for Bill Polito, candidate for the U.S. Congress in the 30th District (actually the 29th District in New York) which claimed that Mr. Polito's opponent, Congresswoman Louise Slaughter, raised her salary by \$40,000. Mr. Whitmore states that:

This is not true, the House as a whole voted a raise but not \$40,000. Mrs. Slaughter did not do it alone.

Attached hereto as Exhibit 1 is a copy of the tape and a transcript of the commercial spot which was broadcast by WHAM(AM) on behalf of and paid for by the Bill Polito for Congress Committee. The commercial was produced by Forrest Communications. WHAM(AM) herein represents that the statement

<sup>1</sup> The respondent has previously indicated that undersigned counsel will be representing Lincoln Group, Ltd. in this matter.

93040932343

92 SEP 22 PM 4: 05

RECEIVED  
FEDERAL ELECTION COMMISSION  
OFFICE OF THE GENERAL COUNSEL

"Paid for by the Bill Polito Committee for Congress" is announced by the candidate, Bill Polito, himself.

First, Bill Polito is a legally qualified candidate who appeared on the ballot and, in fact, recently won the primary election. Attached hereto as Exhibit 2 is an Agreement between WHAM(AM) and the "Bill Polito for Congress Committee" which reflects that Mr. Polito is a candidate for the Republican Party for the U.S. Congress.

Second, the fact that the candidate, Mr. Polito made the sponsorship identification announcement constitutes an appearance by the candidate and, therefore, qualifies the entire announcement as a "use" of WHAM(AM)'s broadcast facilities by legally qualified candidate. In the Federal Communications Commission's Letter to Radio Station WITL, 54 FCC 2d 650 (1975), the Commission stated that in the case of political spots, if a candidate makes any appearance in which he is identified or identifiable by voice or picture, even if it is only to identify sponsorship of the spot, the whole announcement will be considered a use. See also, Charles F. Dykas, 35 FCC 2d 937 (1972).

Section 315(a) of the Communications Act of 1934, as amended, states:

If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other candidates for that office in the use of such broadcasting station: provided, that such licensee shall have no power of censorship over the material broadcast under the provisions of this section.

The United States Supreme Court has specifically ruled that a broadcast station may not delete material in a broadcast by a candidate even if it believed the material contained therein is or may be libelous as that would entail the censorship which is expressly prohibited by Section 73.315 of the Communications Act. Farmers Educational and Cooperative Union of America v. WDAY, Inc., 360 U.S. 525 (1959).

Consequently, since Mr. Polito is a qualified candidate whose political "spot" commercial constituted a "use" of WHAM(AM)'s facilities, Section 315 of the Communications Act of 1934, as amended, prohibits WHAM(AM) from altering or in any way censoring the material in Mr. Polito's political spot.

93040932344

Ofc. of General Counsel

- 3 -

September 22, 1992

The actual facts behind Mr. Polito's commercial are that on November 16, 1989, Congresswoman Slaughter voted in favor of HR 3660, the Ethics Reform Act of 1989, which, in essence, proposed a pay raise to Members of Congress and other high ranking government officials. The House of Representatives ultimately passed HR 3660 and the bill subsequently became law. Since Mrs. Slaughter was re-elected in 1990 and the pay raise took effect that year, she ultimately benefited from the raise in salary to Members of Congress.

Therefore, in light of the specific facts, the prohibitions of Section 315 of the Communications Act of 1934, as amended, and the judicial and administrative decisions of the U.S. Supreme Court and the Federal Communications Commission, WHAM(AM) had no choice but to broadcast Mr. Polito's political spot commercial in an unaltered and uncensored form and has no discretion over the content of the spot. As a result, WHAM(AM) believes no violation of the Federal Elections Commission Act of 1971 has occurred and that no action should be taken against the station in this matter.

If you have any questions, please don't hesitate to call.

Very truly yours,



Allan G. Moskowitz

cc: Joi L. Roberson, Federal Elections Commission

93040932345

93040932346

EXHIBIT 1



COPY



CLIENT: PALITO FOR CONGRESS "INDEEDAMUNDO"

DATE: 8/92 CO-OP: TIME: :60

IT'S LIFESTYLES OF THE RICH AND INCUMBANT IN WASHINGTON D.C. WHERE IT'S ALWAYS SPEND, SPEND, SPEND AND IT'S ALWAYS YOUR MONEY! TAKE LIBERAL CONGRESSWOMAN LOUISE SLAUGHTER. PLEASE! LIBERAL LOUISE SLAUGHTER VOTED TO SPEND THREE QUARTERS OF A MILLION BUCKS ON A FERRY BOAT FOR FAR AWAY SIMOA, WHERE IT'S ALWAYS A VACATION. HEY THEY MAY NEVER NAME A MONROE COUNTY SCHOOL AFTER HER, BUT A SIMOAN FERRY BOAT? INDEEDAMUNDO! SPENDING OUR DINERO, LIBERAL LOUISE SLAUGHTER APPRECIATES THE FINER THINGS IN LIFE, LIKE THE TWENTY MILLION SHE SPENT ON TRENDY ART FOR THE U.S. CAPITOL. JEEZ LOUISE! IT'S NOT LIKE ITS HER MONEY, LIBERAL LOUISE SLAUGHTER VOTED FOR THE LARGEST TAX INCREASE IN AMERICAN HISTORY! NUMBER ONE, NUMERO UNO, THE BIG KAHUNA--BUT SHE CAN AFFORD IT! LIBERAL LOUISE SLAUGHTER VOTED TO RAISE HER OWN PAY 40 GRAND A YEAR, ISN'T THAT AMAZING! REMEMBER, WHEN IT COMES TO WASTING OUR TAX DOLLARS, LIBERAL LOUISE SLAUGHTER TAKES THE CAKE AND THE CHAMPAGNE TOO, TA TA!

TAG: PAID FOR BY THE BILL PALITO FOR CONGREE COMMITTEE.

:15

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RECEIVED  
 FEDERAL ELECTION COMMISSION  
 OFFICE OF THE CLERK  
 92 SEP 22 PM 4:06

93040932348

EXHIBIT 2

NAB FORM PB 14 July 1992 - (Item #404)

**NAB**  
BROADCASTERS

**AGREEMENT FORM FOR  
POLITICAL BROADCASTS**

STATION and LOCATION WHAM-AM Date Aug. 13 19 92

I, SCOTT KAHN (being) BILL POLITO  
(on behalf of)

a legally qualified candidate of the REPUBLICAN political party for the office of U.S. CONGRESS - N.Y.  
28TH DISTRICT

in the PRIMARY election to be held on 9/15/92, do hereby request station time as follows:

Length of Broadcast	Time of Day, Rotation or Package	Days	Class of Time	Times Per Week	No. of Weeks	Rate
:30 (60)	530A to 700P	MON thru FRI		30	1	
Date of First Broadcast <u>8/17/92</u>		Date of Last Broadcast <u>8/31/92</u>		Total Charges: <u>\$2,940.00</u>		

The broadcast time will be used by BILL POLITO FOR CONGRESS COMMITTEE  
I represent that the payment for the above-described broadcast time has been furnished by  
BILL POLITO FOR CONGRESS COMMITTEE, 59 W. MAIN ST., WEBSTER, NY 14580

and you are authorized to announce the time as paid for by such person or entity. The entity furnishing the payment, if other than an individual person, is ( ) a corporation; () a committee; ( ) an association; or ( ) other unincorporated group. The names and offices of the chief executive officers of the entity are:  
PRESTON L. BADEN - TREASURER

I agree to indemnify and hold harmless the station from any damages or liability, including reasonable attorney's fees, that may ensue from the performance of the above-stated broadcasts. For the above-stated broadcasts I also agree to prepare a script or transcription, which will be delivered to the station at least \_\_\_\_\_ before the time of the scheduled broadcasts. (Note: the two preceding sentences are not applicable if the candidate personally appears during the broadcast.) The station has disclosed to me its political advertising policies, including: applicable classes and rates; and discount, promotional and other sales practices. (Note: The preceding sentence may be deleted). The purchase of the time described herein is controlled, approved or authorized by the candidate or his/her authorized committee. (Note: the preceding sentence applies only to candidates for non-federal office.)

Date: 8-13-92 Scott Kahn  
(Candidate, or agent)

Accepted  Rejected By \_\_\_\_\_ Title \_\_\_\_\_

This request, whether accepted or rejected, will be available for public inspection for a period of two years.

TURN OVER FOR POST-BROADCAST FOLLOW-UP

930409302349

#1205  
125 St. Paul St.  
Rochester N.Y.  
14604  
10-2-92

Dear Mrs. Hemmery:

My previous complaint  
re: radio election item for  
W<sup>m</sup> Polito vs. Rep. Slaughter  
has seemed to be more  
moderate on radio.

However the same has gone  
over to T. V. in cartoon and  
picture, same voice and charges.

(over)

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2

It was in the News program  
tonight as an ad (about 6 P.M.)  
on Channel 8 WROC-TV located  
on Humboldt St. in Rochester,  
N.Y.

Thank you,  
Homer S. Whitmore

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**meineke**  
DISCOUNT MUFFLER SHOPS, INC.

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
MAIL ROOM

Oct 6 8 59 AM '92

Ted P. Pearce  
Vice President and General Counsel

October 2, 1992

Ms. Teresa A. Henasy  
Assistant General Counsel  
Federal Election Commission  
Washington, DC 20463

RE: MUR3603; Meineke Discount Muffler Shops, Inc.

Dear Ms. Henasy:

I am enclosing with this letter a Statement of Designation of Counsel for the above referenced matter.

You and I spoke recently about responding to the Complaint filed by Homer Whitmore. Meineke has been investigating this matter and under separate cover I will send to you our response which will incorporate the results of our investigation. I estimate that the response will be ready to forward to you sometime next week.

In the interim, if you should have any additional questions, please feel free to contact me.

Very truly yours,



Ted P. Pearce  
Vice President and General Counsel  
Meineke Discount Muffler Shops, Inc.

TPP/jlf

Enclosure(s)

92 OCT -6 PH11:21  
RECEIVED  
FEDERAL ELECTION  
COMMISSION  
MAIL ROOM

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3603

NAME OF COUNSEL: Ted P. Pearce

ADDRESS: Meineke Discount Muffler Shops, Inc.  
128 S. Tryon St., Suite 900  
Charlotte, NC 28202

TELEPHONE: 704/377-3855-130

RECEIVED  
FEDERAL CREDIT UNION COMMISSION  
OFFICE OF THE ATTORNEY GENERAL  
COUNSEL  
92 OCT -6 PM 11:21

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.

10/2/92  
Date

Ted P. Pearce  
Signature

RESPONDENT'S NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

HOME PHONE: \_\_\_\_\_

BUSINESS PHONE: \_\_\_\_\_

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**meineke**  
DISCOUNT MUFFLER SHOPS, INC.

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
MAIL ROOM

Oct 19 3 01 PM '92

Ted P. Pearce  
Vice President and General Counsel

October 16, 1992

Ms. Joi L. Roberson  
Federal Election Commission  
Washington, DC 20463

RE: Action Number MUR 3603

Dear Ms. Roberson:

Enclosed please find the Response to Complaint and Exhibits in the above entitled matter.

If you should have any questions or comments, please contact my office.

Very truly yours,



Ted P. Pearce  
Vice President and General Counsel  
Meineke Discount Muffler Shops, Inc.

TPP/jlf

Enclosure(s)

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
92 OCT 20 AM 11:20

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FEDERAL ELECTION COMMISSION  
WASHINGTON DC  
ACTION NUMBER MUR 3603

92 OCT 20 AM 11:21  
FEDERAL RECEIVED  
OFFICE OF THE  
FEDERAL ELECTION COMMISSION

RESPONSE TO COMPLAINT

NOW COMES Meineke Discount Muffler Shops, Inc. ("Meineke") by and through its attorney, Ted P. Pearce, in response to the Complaint filed by the Federal Election Commission on behalf of Homer S. Whittmore. By this response, Meineke will show that it did not make nor is it responsible for any statements allegedly aired on two radio stations in Rochester, New York known as WBBF-AM and WHAM-AM ("Radio Stations").

ARGUMENT

I. MEINEKE DID NOT MAKE THE STATEMENTS ALLEGED IN THE COMPLAINT.

Meineke did not make the statements allegedly made on the above referenced radio stations; therefore, it can not be held liable. Meineke has caused to be conducted a diligent search of its advertising records to determine what advertisements, if any, were aired by Meineke or under the auspices of Meineke on these Radio Stations during the months of July and August 1992. The review of the records indicate that no advertisements were placed by Meineke or any of its agents on the Radio Stations during this time. Additionally, no radio advertisements authorized by Meineke were aired on any Rochester, New York radio station for the past one and a half (1 1/2) years. See the Affidavit of Eugene J. Zhiss attached to this response as Exhibit A and incorporated by reference for all purposes.

II. NONE OF MEINEKE'S FRANCHISEES IN THE ROCHESTER MARKET HAVE ADMITTED TO MAKING THE STATEMENTS ALLEGED BY HOMER S. WHITTMORE.

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Meineke currently has three (3) Meineke Discount Muffler Shops located in Rochester, New York. All of these shops are independently owned and operated. Meineke has contacted each owner of the Rochester shops inquiring whether they had placed their own radio advertisements in Rochester, New York during the time in question. Each of the franchisees represented to Meineke that they had not. Additionally, each franchisee represented that they had no knowledge of the allegations asserted in the Affidavit of Homer S. Whittmore. See Affidavit of Eugene J. Zhiss attached as Exhibit A.

III. MEINEKE IS NOT LIABLE FOR THE ACTS OF ITS FRANCHISEES.

Even if the alleged statements were in fact made by a Meineke franchisee, Meineke is still not liable for such statements. Each franchised shop is individually owned and operated. The franchisees are not agents of Meineke. For an agency relationship to arise there must be three (3) elements present: (1) the agent is subject to the principals right of control; (2) the agent has a duty to act primarily for the benefit of the principal; and (3) the agent holds the power to alter the legal relations of the principal. State v. Cottman Transmission Systems, Bus. Fran. Guide (CCH) ¶ 9806 (MD. 1991).

A. MEINEKE DOES NOT RETAIN CONTROL OVER ITS FRANCHISEES DAY-TO-DAY OPERATIONS.

Meineke operates an automotive exhaust and brake franchise business. Meineke grants licenses to operate under its name to franchisees and provides the franchisees with the benefit of its experience and knowledge. However this License Agreement does not create an agency relationship between Meineke and its franchisees. The Franchise and Trademark Agreement while governing the general standards of operation does not empower Meineke to control the day-to-day operations of the shop. Hayman v. Ramada Inn, 86 N.C. App. 274, 277,

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357 S.E. 2d 394, cert. den. 320 N.C. 631 (1987).

Also, the use of the Meineke name does not in itself create an agency relationship between Meineke and its franchisees. The use of tradenames and trademarks is governed by the Lanham Act. The purpose of the Lanham Act is not to create an agency relationship, but to insure the integrity of the registered trademarks. Overland v. Moreland American Corp., 596 F. 2d 1322, 1327 (7th Cir. 1979). A franchisor's duty with regard to supervision associated with a registered trademark is narrowly tailored to the purpose of ensuring the integrity of such marks. This duty does not give the franchisor/licensor control over the day-to-day operations of the licensee beyond that necessary to ensure the uniform quality of the product or service covered by the mark. Id.

Admittedly, a certain degree of control is inherent and necessary in any franchise relationship in order for the franchisor to protect its name, goodwill, trademarks and service marks. Mann v. Prudential Real Estate Affiliates, Inc., Bus. Fran. Guide (CCH) ¶ 9732 (N.D. Ill. 1990). However, a principal/agent relationship requires the retention of a certain amount of control which exceeds the normal franchisor's control. Id.

Meineke, through its Franchise and Trademark Agreement, reserves only a limited amount of control over its franchisees. However, this control does not exceed that which is normally associated with the Franchisor's rights to protect its name, goodwill, trademarks and servicemarks. Additionally, Meineke's control over its franchisees is limited by its means of its contract enforcement. Meineke's sole remedy for non-compliance with any of the provisions in the Franchise and Trademark Agreement is the termination of that Agreement. Meineke does not retain control to force a franchisee to alter his day-to-day operation without either terminating the franchise or seeking a court ordered injunction. The quality control provisions over the use

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of its service marks does not give Meineke the control over the day-to-day operations of its franchisees' shops. Coty v. US Slicing Machine Company, 58 Ill. App. 3d 237, 373 N.E. 2d 1371 (2d Dist. 1978). Therefore, Meineke's franchisees are not its agents.

**B. MEINEKE'S FRANCHISEES DO NOT ACT  
PRIMARY FOR THE BENEFIT OF MEINEKE.**

Meineke's franchisees act primarily for the benefit of themselves. Although Meineke does receive some economic benefit from the franchisees that mere fact alone is insufficient to establish an agency relationship. State v. Cottman Transmissions Systems, Bus. Fran. Guide (CCH) ¶ 9806 (MD. 1991). Meineke's franchisees pay a franchise fee of seven percent (7%) of the shops gross sales. Also the franchisees make contributions to the advertising program by way of a weekly advertising contribution amounting to ten percent (10%) of the shops gross revenue. However, the advertising contributions are used to benefit the franchisees by way of advertising. Therefore, the amount of economic benefit that Meineke receives is insufficient to establish that the franchisees are acting primarily for the benefit of Meineke.

**C. MEINEKE'S FRANCHISEES DO NOT HOLD  
THE POWER TO ALTER THE LEGAL  
RELATIONS OF MEINEKE.**

Meineke's franchisees are specifically denied the power to alter Meineke's legal relations. Article 7.11 of Meineke's Franchise and Trademark Agreement provides that the agreement does not create a relationship of agent and principal and the franchisee is prohibited from attempting to create an obligation on behalf of Meineke. See Article 7.11 of Meineke's Franchise and Trademark Agreement which is attached to this response as Exhibit B and incorporated by reference for all purposes.

**IV. EVEN IF MEINEKE COULD BE HELD VICARIOUSLY  
LIABLE FOR THE ACTS OF ITS FRANCHISEES, THE ACTS  
ALLEGED IN THE COMPLAINT ARE OUTSIDE THE SCOPE**

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OF THAT AUTHORITY.

Even if it were found that an agency relationship exists between Meineke and its franchisees, the alleged statements about a political candidate would be well out of the scope of the franchise relationship or the general business of Meineke. The principal is not liable when the agent is about his own business or acting beyond the scope and range of his authority, irrespective of the agent's intent. Snow v. Debutts, 212 N.C. 120, 193 S.E. 2d 224 (1937). Meineke's Franchise and Trademark Agreement specifically states the purpose of the relationship between Meineke and its franchisees. See Article 1.1 of the Franchise and Trademark Agreement attached to this Response as Exhibit C and incorporated by reference for all purposes. The Agreement grants the franchisee the right, franchise and license for the following purpose:

- (a) To establish and operate a Meineke Discount Muffler Shop...;
- (b) To use in connection with the operation of [the] shop, the Meineke names and marks and the Meineke system;
- (c) To sell and install in or from [the] shop only those products set forth in the operations manual; and
- (d) To perform in the shop only those services set forth in the operations manual.

Nowhere does the Franchise and Trademark Agreement grant the right to franchisees to act as spokesperson for Meineke. Nor does the Agreement authorize the franchisee to make political statements on behalf of Meineke.

Additionally, if the alleged statements attributed to Meineke violated the Federal Elections Campaign Act of 1977, they would certainly violate the provisions in the Franchise and Trademark Agreement which directs the franchisees to comply with all laws, regulations or rules of any government or quasi-government entity. See Article 7.10 of the Franchise Agreement

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attached to this response as Exhibit D and incorporated for reference for all purposes.

WHEREFORE, Meineke requests the Federal Election Commission to dismiss the Complaint filed against Meineke in that Meineke is not responsible for the statements alleged in the Complaint.

Respectfully submitted,



Ted P. Pearce  
Vice President and General Counsel  
Meineke Discount Muffler Shops, Inc.  
128 S. Tryon Street, Suite 900  
Charlotte, NC 28202  
(704) 377-8855

(LGFECJLF)

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STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

AFFIDAVIT OF EUGENE J. ZHISS

Before me, the undersigned authority, personally appeared Eugene J. Zhiss, who being duly sworn, deposed and said:

1. My name is Eugene J. Zhiss. I am over twenty-one (21) years of age, have never been convicted of a crime, and am competent to make this Affidavit. I reside in Charlotte, Mecklenburg County, North Carolina. I am Vice President in charge of Dealer Services for Meineke Discount Muffler Shops, Inc. ("Meineke") and am authorized to make this affidavit on behalf of Meineke. As Vice President of Dealer Services I am responsible for supervising Meineke's retail advertising program and the company's relations with its franchisees. The statements made in this affidavit are true and correct to the best of my knowledge.

2. Meineke is the national franchisor of Meineke Discount Muffler Shops, which are muffler and brake shops located throughout the United States and parts of Canada. All but six Meineke shops are independently owned and operated by individual franchisees or their designee.

3. The relationship between Meineke and its franchisees is governed by a Franchise and Trademark Agreement ("Agreement"), which each franchisee must sign before he can open his Meineke Discount Muffler Shop. Under the terms of the Agreement the franchisee is granted a license to:

- (i) Establish and operate a Meineke Discount Muffler Shop within a prescribed market or area;
- (ii) Use, in connection with the operation of that shop, the Meineke names and marks

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and the Meineke system;

(iii) Sell and install in or from said shop only those products set forth in the Operations Manual; and

(iv) Perform in the shop only those services set forth in the Operations Manual.

4. Under the terms of the Agreement the franchisee agrees inter alia to the following:

(i) Pay to Meineke a weekly continuing license fee in the amount of Seven percent (7%) of the gross sales generated by his shop;

(ii) Remit to the Weekly Advertising Account Fund an amount equal to Ten Percent (10%) of the weekly gross revenue generated at his shop;

(iii) Franchisee shall not do anything or aid or assist any other party to do anything which would infringe upon, harm, or contest Meineke's rights in any of the Meineke names or marks which are owned in whole or in part by Meineke.

5. One of the elements of the Meineke Franchise System is the cooperative advertising program which every franchisee agrees to participate in when they purchase a Meineke Discount Muffler Franchise. Under this program local and national advertising is placed on behalf of each franchisee. The costs of this advertising are funded by the franchisee's weekly contributions into the Weekly Advertising Account Fund.

6. For purposes of local advertising the Country is divided into a series of areas of dominant influence ("ADI"). These designations are set by Arbitron corresponding with the dominant television viewing patterns of local television signals as measures on a county by county basis.

7. All advertising placed through the Weekly Advertising Account fund is supervised

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and placed by Meineke or its authorized agent in order to protect the integrity of Meineke's registered service marks. In addition to the advertising placed by Meineke through the Weekly Advertising Account Fund, from time to time each dealer may place his own local advertising, but only if the intended advertisement is reviewed by Meineke before it is aired or appears in print media. The use of the tradename Meineke or any of Meineke's service marks for any reason other than in conjunction with the sale of Meineke's authorized products and services is prohibited.

6. Meineke does not control the day-to-day operation of each dealer's Meineke shop. Section 7.11 of the Agreement states that the Agreement does not in any way create the relationship of principal agent or employer and employee. In the event that a franchisee is found to be in violation of his Agreement, Meineke's sole legal remedy authorized by the Agreement is to notify the franchisee in writing of the violation, and advise him that if the violation is not cured within a specified number of days, his franchise will be terminated.

7. I have reviewed the complaint filed by Homer S. Whittmore in which he asserts that certain statements concerning a congressional candidate were attributed to a Meineke spokesperson. These statements were allegedly aired on two radio stations in Rochester, New York known as WBBF-AM and WHAM-AM. Meineke has caused to be conducted a diligent search of its advertising records to determine what advertisements, if any, were aired by Meineke or under the auspices of Meineke on these two radio stations during the months of July and August 1992. In conducting this search Meineke reviewed media placement summaries provided to it from its advertising agent. A review of these records indicates that no advertisements were placed by Meineke or any of its agents on the above referenced radio stations during this time

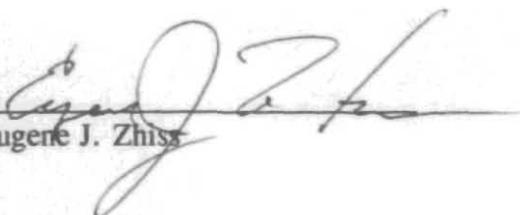
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period. In fact, no radio advertisements aired on any Rochester, New York radio station for the past one and one-half years.

8. Meineke currently has three Meineke Discount Muffler Shops located in Rochester, New York. All of these shops are independently owned and operated. Each owner of the Rochester shops was contacted to determine whether any of them placed their own radio advertisement in Rochester, New York during this time frame. Each of these franchisees represented to Meineke that they did not. In addition, each franchisee represented that they had no knowledge of the allegations asserted in the affidavit of Homer S. Whittmore.

9. No employee or agent of Meineke has made the statements asserted by Homer S. Whittmore in his affidavit.

SIGNED THIS \_\_\_\_\_ day of October, 1992

  
Eugene J. Zhisz

SWORN AND SUBSCRIBED before me, this 16 day of October, 1992.

  
Notary Public in and for The State of  
North Carolina

ANNE E. GARDNER-IRT  
Printed Name

My Commission Expires: My Commission Expires October 27, 1994

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FEDERAL PROTECTION OF CONSUMERS  
OFFICE

7.11 Franchisee Not Agent of Meineke.

a) This Agreement does not in any way create the relationship of principal and agent or employer and employee between Meineke and Franchisee, and in no circumstances shall Franchisee be considered an agent or employee of Meineke. Franchisee shall not act or attempt to act or represent himself directly or by implication as an agent of Meineke or in any manner assume or create or attempt to assume or create any obligation on behalf of or in the name of Meineke, nor shall Franchisee act or represent himself as an affiliate of any other authorized Meineke Franchisee.

Franchisee agrees to indemnify and hold harmless Meineke from any liability or damage Meineke, its officers, directors, employees and/or its legal representatives may incur, including reasonable attorneys' fees, as a result of claims demands, costs or judgments, of any kind or nature, by anyone whomsoever, arising out of, or otherwise connected with this Agreement, the franchise, the Licensed Rights, or the ownership, maintenance or operation of the shop by the Franchisee or an agent or employee of Franchisee. This paragraph shall survive termination of the Agreement pursuant to Article 9.

b) Under no circumstances shall Meineke or Franchisee be liable for any act, omission, debt or any other obligations of the other. Each party shall indemnify and save the other harmless against any such claim and the cost of defending against such claims arising directly or indirectly from, or as a result of, or in connection with, the Franchisee's operation of his Shop.

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ARTICLE ONE

GRANT, INITIAL FEE, TERM, AND RENEWAL

1.1 Grant of License. Meineke hereby grants to Franchisee, and Franchisee hereby accepts from Meineke, the right, franchise, and license, for the term and upon the terms and following purposes hereafter set forth:

(a) To establish and operate a Meineke Discount Muffler Shop only within the following market \_\_\_\_\_, which is to be selected in accordance with Article 5 of this Agreement;

(b) To use, in connection with the operation of said Shop, the Meineke Names and Marks and the Meineke System;

(c) To sell and install in or from said Shop only those products set forth in the Operations Manual; and

(d) To perform in the Shop only those services set forth in the Operations Manual.

provided, however, such right, franchise and license shall be conditioned upon the fulfillment of the various requirements set out in Article 1.6 of this Agreement.

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"EXHIBIT" C

7.10 Compliance with Laws. Franchisee shall comply with federal, state, county, municipal, or other statutes, laws, ordinances, regulations, rules or orders of any governmental or quasi-governmental entity, body, agency, commission, board, or official applicable to the Franchisee's Shop or business. Nothing herein shall prevent Franchisee from engaging in a bona fide contest of the validity or applicability thereof in any manner permitted by law.

"EXHIBIT" D

7.10 Compliance with Laws. Franchisee shall comply with all federal, state, county, municipal, or other statutes, laws, ordinances, regulations, rules or orders of any governmental or quasi-governmental entity, body, agency, commission, board, or official applicable to the Franchisee's Shop or business. Nothing herein shall prevent Franchisee from engaging in a bona fide contest of the validity or applicability thereof in any manner permitted by law.

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"EXHIBIT" D



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 19, 1992

Mr. Homer Whitmore  
125 Saint Parel Street  
Rochester, NY 14604

RE: MUR 3603

Dear Mr. Whitmore:

This is to acknowledge receipt of your letter dated October 2, 1992, pertaining to MUR 3603. You will be notified as soon as the Federal Election Commission takes action on this matter.

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

Sincerely,

A handwritten signature in cursive script that reads "Teresa A. Hennessy".

Teresa A. Hennessy  
Assistant General Counsel

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F.E.C.  
SECRETARIAT

92 DEC 23 AM 10:52

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

FIRST GENERAL COUNSEL'S REPORT

**SENSITIVE**

MUR # 3603  
DATE COMPLAINT RECEIVED  
BY OGC September 2, 1992  
DATE OF NOTIFICATION TO  
RESPONDENTS September 11, 1992  
STAFF MEMBER Joi L. Roberson

COMPLAINANT: Homer Whitmore

RESPONDENTS: William P. Polito  
Bill Polito for Congress Committee and Preston  
Vaden, as treasurer  
WHAM-AM  
WBBF-AM  
MEINEKE Discount Muffler Shops

RELEVANT STATUTES: 2 U.S.C. § 441b(a)  
2 U.S.C. § 441b(b)(2)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

On September 2, 1992, the Commission received a complaint from Homer Whitmore ("the Complainant") alleging that William P. Polito, the Bill Polito for Congress Committee and Preston L. Vaden, as treasurer, WHAM-AM, WBBF-AM, and MEINEKE Discount Muffler Shops were involved in the broadcasting of an advertisement which contained charges maligning Representative Louise Slaughter.<sup>1/</sup>

William P. Polito, the Bill Polito for Congress Committee and Preston L. Vaden, as treasurer, WHAM-AM,

<sup>1/</sup> William P. Polito was the Republican Party candidate for United States Congress, 29th District, New York, in 1992.

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WBBF-AM, and MEINEKE Discount Muffler Shops were notified of the complaint on September 11, 1992. WHAM-AM, WBBF-AM, and MEINEKE Discount Muffler Shops responded on September 22, 1992, September 18, 1992, and October 20, 1992, respectively. No responses have been received from William P. Polito or the Bill Polito for Congress Committee.

II. FACTUAL AND LEGAL ANALYSIS

Under 2 U.S.C. § 441b(a), it is unlawful for any corporation to make a contribution or expenditure in connection with any election to any political office. Furthermore, 2 U.S.C. § 441b(a) prohibits any candidate, political committee, or other person knowingly accepting or receiving any contribution prohibited by section 441. For purposes of this section, the term "contribution" is defined to include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any election to any political office. 2 U.S.C. § 441b(b)(2).

The allegations raised by the complainant appear to relate only to the contents of the political advertisement. The complainant contends that "the MEINEKE Muffler spokesman for Bill Polito" made false statements alleging Representative Slaughter raised her salary in the United States House of Representatives by \$40,000. (See Attachment 1, p. 1.) According to the complainant, these charges were aired locally in Rochester, New York on two radio stations,

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WHAM-AM and WBBF-AM.<sup>2/</sup> (See Attachment 3; see also Attachment 5, p. 5.)

The Commission has received responses from WHAM-AM, WBBF-AM, and MEINEKE Discount Muffler Shops. In its response, WBBF indicated that the Bill Polito for Congress Committee paid for the advertisement. (See Attachment 4, p. 1.) WBBF also stated in its response that the contents of the advertisement were accurate. WHAM's response concurred with WBBF's assertion that the contents of the advertisement were accurate. In addition, it stated that the Committee had paid for the advertisement. (See Attachment 5, p. 1.) Furthermore, WHAM stated that it was prohibited from censoring the advertisement by Section 315 of the Communications Act of 1934, as amended. See 47 U.S.C. § 315(a). In its response, MEINEKE indicated that neither it nor its Rochester, New York franchisees made the

<sup>2/</sup> Since filing his original complaint, the complainant sent an October 2, 1992 letter to this Office alleging that the same advertisement was aired on WROC-TV in Rochester, New York. However, the purported amendment to the complaint was not signed and sworn to in the presence of a notary public. See 2 U.S.C. § 437g(a)(1). Therefore, the letter could not be considered a proper amendment to the complaint. Ordinarily, this Office would have sent it back to the complainant requesting that he sign and swear to it to correct this defect. Because, based on the responses to the initial complaint there does not appear to be a violation in connection with the communication, this Office has included the complainant's letter in the file for informational purposes rather than asking the complainant to remedy the defect. (See Attachment 2.)

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advertisement.<sup>3/</sup> (See Attachment 6, pgs. 1 and 2.)

In the complaint, Mr. Whitmore stated that the political advertisement was made by the "Meineke Muffler spokesman". (See Attachment 1, p. 1.) This reference in the complaint suggests a possibility of a contribution by MEINEKE to the Committee. However, on September 10, 1992, a staff member of this Office spoke with the complainant. He explained that the voice heard on the advertisement in question was the same voice heard in MEINEKE Muffler advertisements. In addition, as noted above, MEINEKE indicated in its response that neither it nor its Rochester, New York franchisees made the advertisement. Thus, this Office recommends that the Commission find no reason to believe that the Bill Polito for Congress Committee and Preston L. Vaden, as treasurer, and MEINEKE Discount Muffler Shops violated 2 U.S.C. § 441b(a).

Aside from the Section 441b issue discussed above, no other issues which fall within the purview of the Commission appear to be raised by this complaint. For example, the complainant does not call into question the disclaimer in the advertisement and a review of the transcripts of the advertisement suggest no deficiency in the disclaimer. 2 U.S.C. § 441d(a). (See, e.g. Attachment 4, p. 5.) Instead the complainant appears to challenge the content of a

<sup>3/</sup> In addition, the response from MEINEKE also made certain legal arguments to address the contingency that its franchisees had sponsored the advertisement. However, since the Committee paid for the advertisements, these arguments are irrelevant to this matter.

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political advertisement. Therefore, this Office recommends that the Commission find no reason to believe that the Bill Polito for Congress Committee and Preston Vaden, as treasurer, and MEINEKE Discount Muffler Shops violated any other provision of the Federal Election Campaign Act and close the file as to these respondents. This Office also recommends that the Commission find no reason to believe that William P. Polito, WHAM-AM, and WBBF-AM violated the Federal Election Campaign Act and close the file as to these respondents.

III. RECOMMENDATIONS

1. Find no reason to believe the Bill Polito for Congress Committee and Preston L. Vaden, as treasurer, and MEINEKE Discount Muffler Shops violated 2 U.S.C. § 441b(a).
2. Find no reason to believe that the Bill Polito for Congress Committee and Preston Vaden, as treasurer, and MEINEKE Discount Muffler Shops violated any other provision of the Federal Election Campaign Act regarding the complaint in this matter.
3. Find no reason to believe that William P. Polito, WHAM-AM, and WBBF-AM violated the Federal Election Campaign Act regarding the complaint in this matter.
4. Approve the appropriate letters.
5. Close the file.

Lawrence M. Noble  
General Counsel

December 22, 1992  
Date

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

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Attachments

1. Complaint dated August 28, 1992
2. Letter dated October 2, 1992
3. Script of radio advertisement
4. Response from WBBF dated September 18, 1992
5. Response from WHAM dated September 22, 1992
6. Response from MEINEKE Discount Muffler Shops dated October 20, 1992

93040932374

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
William P. Polito; ) MUR 3603  
Bill Polito for Congress Committee )  
and Preston Vaden, as treasurer; )  
WHAM-AM; )  
WBBF-AM; )  
MEINEKE Discount Muffler Shops. )

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 6, 1993, the Commission decided by a vote of 6-0 to take the following actions in MUR 3603:

1. Find no reason to believe the Bill Polito for Congress Committee and Preston L. Vaden, as treasurer, and MEINEKE Discount Muffler Shops violated 2 U.S.C. § 441b(a).
2. Find no reason to believe that the Bill Polito for Congress Committee and Preston Vaden, as treasurer, and MEINEKE Discount Muffler Shops violated any other provision of the Federal Election Campaign Act regarding the complaint in this matter.
3. Find no reason to believe that William P. Polito, WHAM-AM, and WBBF-AM violated the Federal Election Campaign Act regarding the Complaint in this matter.

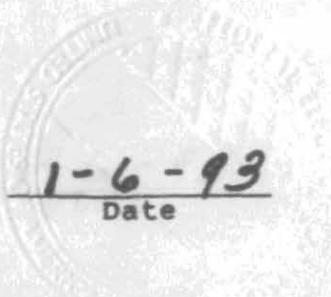
(Continued)

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4. Approve the appropriate letters,  
as recommended in the General  
Counsel's Report dated  
December 22, 1992.
5. Close the file.

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

Attest:



1-6-93  
Date

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

Received in the Secretariat:	Wed., Dec. 23, 1992 10:52 a.m.
Circulated to the Commission:	Wed., Dec. 23, 1992 4:00 p.m.
Deadline for vote:	Wed., Jan. 6, 1993 4:00 p.m.

dr

93040932376



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 5, 1993

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. Homer Whitmore  
125 Saint Parcel Street  
Rochester, NY 14604

RE: MUR 3603  
Homer Whitmore

Dear Mr. Whitmore:

On January 6, 1993, the Federal Election Commission reviewed the allegations of your complaint dated August 28, 1992, and found that on the basis of the information provided in your complaint, and information provided by Bill Polito for Congress Committee and Preston L. Vaden, as treasurer, WHAM-AM, WBBF-AM, and MEINEKE Discount Muffler Shops, there is no reason to believe Bill Polito for Congress Committee and Preston L. Vaden, as treasurer, WHAM-AM, WBBF-AM, and MEINEKE Discount Muffler Shops, violated any provisions of the Federal Election Campaign Act. Accordingly, on January 6, 1993, the Commission closed the file in this matter.

The Federal Election Campaign Act of 1971, as amended ("the Act") allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Lawrence M. Noble  
General Counsel

BY:   
Lois G. Lerner  
Associate General Counsel

Enclosure  
FGC Report

93040932377



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 5, 1993

Mr. William M. Cloutier  
President & General Manager  
WBBF-AM  
500 B. Forman Building  
Midtown Plaza  
Rochester, NY 14604

RE: MUR 3603  
WBBF-AM

Dear Mr. Cloutier:

On September 11, 1992, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On January 6, 1993, the Commission found, on the basis of the information in the complaint, and information provided by the Bill Polito for Congress Committee and Preston Vaden, as treasurer, WHAM-AM, WBBF-AM, and MEINEKE Discount Muffler Shops, that there is no reason to believe WBBF-AM violated any provisions of the Federal Election Campaign Act. 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  
FGC Report

93040932378



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20541

February 5, 1993

Mr. Allan G. Moskowitz  
901 Fifteenth Street, N.W.  
Suite 1100  
Washington, D.C. 20005

RE: MUR 3603  
WHAM-AM

Dear Mr. Moskowitz:

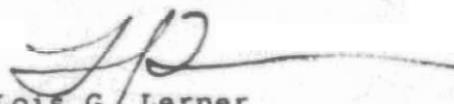
On September 11, 1992, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On January 6, 1993, the Commission found, on the basis of the information in the complaint, and information provided by the Bill Polito for Congress Committee and Preston Vaden, as treasurer, WHAM-AM, WBBF-AM, and MEINEKE Discount Muffler Shops, that there is no reason to believe WHAM-AM violated any provisions of the Federal Election Campaign Act. 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  
FGC Report

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 5, 1993

Mr. Ted P. Pearce  
Vice President and General Counsel  
MEINEKE Discount Muffler Shops, Inc.  
128 S. Tryon Street, Suite 900  
Charlotte, NC 28202

RE: MUR 3603  
MEINEKE Discount Muffler Shops

Dear Mr. Pearce:

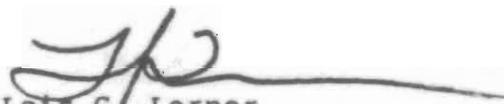
On September 11, 1992, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On January 6, 1993, the Commission found, on the basis of the information in the complaint, and information provided by the Bill Polito for Congress Committee and Preston Vaden, as treasurer, WHAM-AM, WBBF-AM, and MEINEKE Discount Muffler Shops, that there is no reason to believe MEINEKE Discount Muffler Shops violated any provisions of the Federal Election Campaign Act. 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  
FGC Report

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 5, 1993

Mr. William P. Polito  
1124 Brooktree Lane  
Webster, NY 14580

RE: MUR 3603  
William P. Polito

Dear Mr. Polito:

On September 11, 1992, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On January 6, 1993, the Commission found, on the basis of the information in the complaint, and information provided by the Bill Polito for Congress Committee and Preston Vaden, as treasurer, WHAM-AM, WBBF-AM, and MEINEKE Discount Muffler Shops, that there is no reason to believe you violated any provisions of the Federal Election Campaign Act. Accordingly, the Commission closed its file in this matter.

The confidentiality provisions at 2 U.S.C. §§ 441b(g) and 441b(b)(2) 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  
FGC Report

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 5, 1993

Bill Polito for Congress Committee  
Preston L. Vaden, Treasurer  
59 West Main Street  
Webster, NY 14580

RE: MUR 3603  
Bill Polito for Congress  
Committee and Preston L. Vaden,  
as Treasurer

Dear Mr. Vaden:

On September 11, 1992, the Federal Election Commission notified Bill Polito for Congress Committee and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On January 6, 1993, the Commission found, on the basis of the information in the complaint, and information provided by the Bill Polito for Congress Committee and Preston Vaden, as treasurer, WHAM-AM, WBBF-AM, and MEINEKE Discount Muffler Shops, that there is no reason to believe Bill Polito for Congress Committee and you, as treasurer, violated any provisions of the Federal Election Campaign Act. 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  
FGC Report

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3603

DATE FILMED 2/22/93 CAMERA NO. 1

CAMERAMAN E.E.S.

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