



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3616

DATE FILMED 6-2-94 CAMERA NO. 2

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RECEIVED
FEDERAL ELECTION
OFFICE

OGC 6565

92 SEP 24

Sandra M. Monteiro
133 Crystal Street
Harrison, New York 10528
(914) 835-3786

MUR 3616

September 14, 1992

Hon. Joan D. Aikens, Chairman
Federal Election Commission
999 E St. N.W.
Washington, D.C. 20463

Dear Chairman Aikens:

This letter is a complaint against Congresswoman Nita Lowey and the Lowey for Congress Committee for clear violations of the Federal Election Campaign Act.

First, the Lowey Committee failed to file a 1992 primary election pre-election disclosure report on or before September 3, as required by law. Of course, the Commission last year heavily fined the Lowey Committee for failing to disclose its activity in past elections.

Secondly, as the attached ads indicate, Congresswoman Lowey or her committee bought newspaper advertising, but failed to state who paid for the ads, as required by law.

Finally, Congresswoman Lowey sent out a mailing announcing her campaign kick-off, again without the required disclaimer.

I urge the Commission to promptly investigate and publish this pattern of failure by Congresswoman Lowey to abide by the campaign laws.

Sincerely,

Sandra M Monteiro
Sandra M. Monteiro

County of Westchester
State of New York

Subscribed and sworn before me, a Notary Public, this 14th day of September, 1992.

Henry J Logan

HENRY J. LOGAN
Notary Public, State of New York
No. 60-2393225
Qualified in Westchester County
Commission Expires March 20, 1993

Notary Public
Qualified in Westchester County
Commission Expires March 20, 1993

94043522668

94043522669

*Italian
City
Club
Journal
Sept. 1992*

CONGRATULATIONS AND
BEST WISHES

TO JOHN ROMANO

AND ALL MY FRIENDS AT
ITALIAN CITY CLUB

REPRESENTATIVE

NITA M. LOWEY

**I salute
the
working
men and
women
of
America!**



**Best Wishes!
U.S. Representative
Nita M. Lowey**

Labor Day 1992

Whitestone Times 9/7/92

94043522670

Representative
Nita M. Lowey
Joins the People of
Throggs Neck in
Celebrating 350 Years
of Progress



A NEW KIND OF LEADERSHIP
*"The Commitment to Fight for
Change...the Energy to get Results"*

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ALWAYS
USE ZIP CODE

WESTCHESTER, NY 10581
WESTCHESTER, NY 10581
10 AUG 82
PM

Nita Lowey for Congress
P.O. Box 271
White Plains, New York 10605

NITA LOWEY

U.S. REPRESENTATIVE

The Commitment to Fight for Change
.... The Energy to Get Results



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HONORABLE NITA M. LOWEY
c/o Nita Lowey for Congress
P.O. Box 271
White Plains, New York 10605

NITA LOWEY
U.S. REPRESENTATIVE

Dear Friend:

Serving in the Congress has given me an opportunity to make a difference in people's lives. We have made considerable progress, but there is much more to be done. Dramatic changes around the world pose important challenges, but also present opportunities to address a wide range of compelling needs facing our nation.

On August 24, I will be officially beginning my campaign for election to the House of Representatives from the new 18th Congressional District. It would mean a great deal to have you with us.

Sincerely,

If you have any questions, please call 914-683-3275 or 718-268-9365.

MONDAY, AUGUST 24, 1992

Regional Announcements

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10:00 AM
JAMAICA ESTATES, QUEENS
P.S. 178
189-10 Radnor Road
(188th St. exit off Grand Central Parkway)

11:30 AM
NORTHEAST BRONX
Senior Center, St. Benedict's Church
29-68 Bruckner Blvd.
(one block east of Tremont Avenue)

2:00 PM
YONKERS
Fire Station # 11
433 Bronxville Road
(at Cross Street)

4:00 PM
MAMARONECK
Harbor Island Park
Boston Post Road
(at Mamaroneck Avenue)

Announcement Day Celebration

5:30 to 7:30 PM

NEW ROCHELLE

Iona College, Spellman Lounge, 715 North Avenue

Dear Nita:

I (we) do want to be with you on the 24th. I (we) will be joining you for:

- The Regional Announcement in _____
- The Announcement Day Celebration
- I (we) cannot be with you on the 24th, but I (we) want to help with your campaign.
- Yes, include my (our) name(s) when you publish a list of your supporters.

Signature(s) _____

Name (please print or type) _____

Address _____

Telephone(s) (H) _____ (O) _____



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 23, 1992

Sandra M. Monterio
133 Crystal Street
Harrison, NY 10528

RE: MUR 3616

Dear Ms. Monterio:

This letter acknowledges receipt on September 22, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Nita M. Lowey, Nita Lowey for Congress, and Aaron Eidelman, 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 3616. 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 "Jonathan A. Bernstein".

Jonathan A. Bernstein
Assistant General Counsel

Enclosure
Procedures

94043522674



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 23, 1992

Nita Lowey for Congress
Aaron Eidelman, Treasurer
1185 Avenue of the Americas
New York, NY 10036

RE: MUR 3616

Dear Mr. Eidelman:

The Federal Election Commission received a complaint which indicates that Nita Lowey 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 3616. 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.

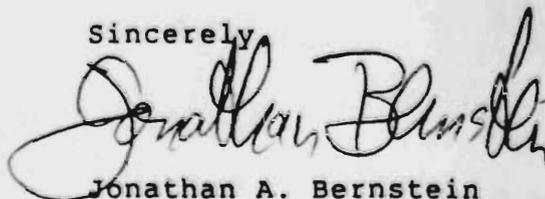
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed 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.

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Nita Lowey for Congress
Aaron Eidelman, Treasurer
Page 2

If you have any questions, please contact Jose Rodriguez, the attorney assigned to this matter, at (202) 219-3490. 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

24043522676



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 23, 1992

Representative Nita M. Lowey
105 Beverly Road
Rye, NY 10580

RE: MUR 3616

Dear Ms. Lowey:

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 3616. 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.

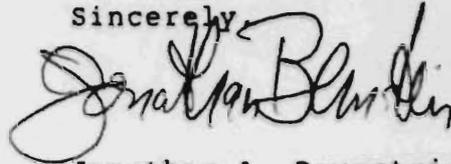
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed 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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Representative Nita M. Lowey
Page 2

If you have any questions, please contact Jose Rodriguez, the attorney 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,



Jonathan A. Bernstein
Assistant General Counsel

Enclosures

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

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COMMISSION
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October 9, 1992

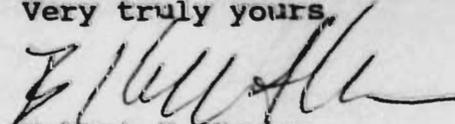
Mr. Jose Rodriguez
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3616

Dear Mr. Rodriguez:

On behalf of Nita Lowey for Congress and Aaron Eidelman, as Treasurer, we request an extension of time to respond to the complaint filed by Sandra M. Monteiro on September 14, 1992. Due to the recent designation of Perkins Coie as counsel (attached), we do not have an adequate opportunity to respond. An extension of time is necessary in order to review the record, have an adequate opportunity to discuss the issues with our client, collect factual information, and prepare a comprehensive response. Therefore we are requesting an extension until November 5.

Very truly yours,


Robert F. Bauer
B. Holly Schadler

Attachment

BHS:mah

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FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL
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[19874-0001 D492282/0.008]

STATEMENT OF DESIGNATION OF COUNSEL

NUR 3616

NAME OF COUNSEL: Robert F. Bauer and B. Holly Schadler

ADDRESS: Perkins Coie
607 Fourteenth Street, NW, Suite 800
Washington, DC 20005

TELEPHONE: (202) 628-6600

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.

10/9/92
Date

Aaron Eidelman
Signature

RESPONDENT'S NAME: Nita Lowey for Congress and Aaron Eidelman, as Treasurer

ADDRESS: 1135 AVENUE OF THE AMERICAS
NEW YORK NY 10036

TELEPHONE: HOME (914) 295 6373
BUSINESS (212) 523-1440

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 14, 1992

B. Holly Schadler, Esq.
Perkins Coie
607 Fourteenth St., N.W.
Washington, DC 20005-2011

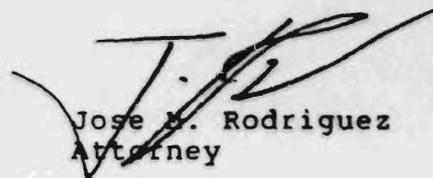
RE: MUR 3616
Nita Lowey for Congress and
Aaron Eidelman, as treasurer

Dear Ms. Schadler:

This is in response to your letter dated October 9, 1992, which we received on the same date, requesting an extension until November 5, 1992, to respond to the complaint in this matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on November 5, 1992.

Additionally, please clarify if you are also representing Congresswoman Nita M. Lowey, who has been named separately, in this matter. If so, please provide this Office with an executed designation of counsel form for her. If you have any questions, please contact me at (202) 219-3690.

Sincerely,


Jose B. Rodriguez
Attorney

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FEDERAL ELECTION
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November 3, 1992

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

Re: MUR 3616 - Representative Nita Lowey, Nita Lowey
for Congress and Aaron Eidelman, as Treasurer

Dear Mr. Noble:

This letter constitutes a response on behalf of Representative Nita Lowey, the Lowey for Congress Committee, (the "Committee") and Aaron Eidelman, as Treasurer (hereinafter referred to as "Respondents") to the complaint filed by Sondra M. Monteiro alleging violations by Respondents of the Federal Election Campaign Act of 1971, as amended (the "FECA"), 2 U.S.C. §§ 431 et seq.

Pre-Primary Report

First, Ms. Monteiro alleges that the Committee did not file its pre-primary report in a timely manner. In a letter filed with the report, the Committee explained that the report was not filed on September 3 because FEC staff specifically advised the Committee that no report was required. Upon receipt of the original notification that the pre-primary reports were due on September 3, Dorothy Heffernan of the Committee contacted Janet Hess in the FEC Enforcement Division to determine if this report was indeed due in light of the fact that Nita Lowey's name would not appear on the September 15 New York primary ballot. Ms. Hess informed Mrs. Heffernan that candidates not appearing on the primary ballot were not required to file pre-primary reports.

Rona Susman, campaign administrator for the Committee, made a similar inquiry to the FEC in July and was also advised that a candidate whose name does not appear on the primary ballot is not required to submit a pre-primary filing. Representative Lowey was unopposed for the Democratic nomination in the 18th Congressional District and therefore, under New York State law, her name did not appear on the

[11874-0001/DA922970.027]

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FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL

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Lawrence M. Noble, Esq.
November 3, 1992
Page 2

primary ballot this year. Based on the unequivocal advice from two FEC staff, the Committee did not file a pre-primary report.

After several press inquiries about the filing deadline, the Committee contacted the FEC to confirm the advice previously given by Commission staff. Ms. Audrey Mills of the FEC, in two separate conversations with campaign staff members, confirmed this information. She said that candidates whose names do not appear on primary election ballots are definitely not required to file the pre-primary report.

Moreover, page 13 of the January, 1992 Federal Election Commission Record supports the advice the Committee was provided by the Commission. The "Guide to 1992 Reporting" expressly states that 1992 House and Senate campaign candidates are required to file pre-primary reports "only if candidate runs in election". See Exhibit 1. Representative Lowey's name did not appear on the primary ballot. Therefore, Representative Lowey could not have been considered to have "run" in the election.

The Committee filed its report promptly upon the FEC's notification to do so. This notification and the press statement made by FEC staff were contrary to the Commission's advice discussed above. Nevertheless, the Committee complied immediately.¹

Newspaper Advertisements

The second allegation in Ms. Monteiro's letter relates to certain newspaper advertisements purchased by Representative Lowey. She raises the issue of whether a disclaimer was required on these advertisements. The ads, placed by Congresswoman Lowey with personal funds in several small newspapers, including the Italian City Club Journal and The

¹Ms. Monteiro makes the gratuitous and inaccurate statement that the Commission "heavily" fined the Committee for failing to disclose its activity in past elections. The matter she refers to involved minor technical errors on the Committee's 48-hour reports. The Committee did not fail to disclose any activity in past elections.

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Lawrence M. Noble, Esq.
November 3, 1992
Page 3

White Stone Times, were run simply to extend her congratulations or greeting to readers of the newspaper. They do not advocate Ms. Lowey's election. Nor, in fact, do the ads make any reference to any election or candidacy. As such, no disclaimer is required on these ads.

The regulations require that any communication paid for and authorized by a candidate that "expressly advocates the election or defeat of a clearly identified candidate, or that solicits any contribution" through any form of public political advertising must include a disclaimer. 11 C.F.R. § 110.11; see also Federal Election Commission Record, May, 1990 at 9. The regulations are not applicable, therefore, to an advertisement unless it is for the purpose of soliciting funds for or expressly advocating the election of a candidate.

Here, the advertisement that appeared neither solicited contributions on behalf of the Committee nor expressly advocated the election of Representative Nita Lowey. The advertisement was not intended as an election-related communication. The Commission affirmed its position on this issue in MUR 3376. In that case an advertisement appeared in a local newspaper with a picture of the candidate speaking before a large crowd, and his name below with the words "caring, fighting, winning". The ad had no disclaimer. The Commission found no reason to believe a violation had occurred. Similarly here, the advertisements included no express advocacy. They extend the congratulations or greetings of Congresswoman Nita Lowey, but do not expressly advocate her election. Therefore, no disclaimer was required.

Campaign Kick-off Announcement

Finally, Ms. Monteiro alleges that a disclaimer was required on the campaign announcement piece sent out by the Committee. Here again, there is no express advocacy or solicitation of contributions. Representative Lowey's announcement includes a note to her constituents about her experiences in Congress and an invitation to recipients to attend one of the announcement day celebrations. Nowhere in the communication does she advocate her reelection. She is simply informing recipients about her decision to run again for Congress and related events surrounding her announcement.

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Lawrence M. Noble, Esq.
November 3, 1992
Page 4

Ms. Monteiro's allegations are wholly unfounded and should be dismissed with no further action.

Sincerely,



Robert F. Bauer
E. Holly Schadler
Counsel for Respondent

Enclosure

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GUIDE TO 1992 REPORTING (All committees must also file a 1991 year-end report due 1/31/92.)

Required Reports

Type of Filer	Semi-annual	Quarterly	Monthly	Pre-Primary ¹	Pre-General	Post-General
House and Senate Campaigns of 1992 Candidates		✓		✓	✓	✓
Other House and Senate Campaigns	✓					
1992 Presidential Campaigns Anticipating Activity of \$100,000 or Above			✓		✓	✓
1992 Presidential Campaigns With Activity Less Than \$100,000		✓		✓	✓	✓
Other Presidential Campaigns ²		✓—or—✓				
PACs and Party Committees Filing Monthly			✓		✓	✓
PACs and Party ³ Committees Filing Quarterly		✓		✓	✓	✓

(Reporting Tables continued)

¹Category also includes pre-convention and pre-runoff reports.

²Presidential committees in this category that wish to change their filing frequency during 1992 should notify the Commission in writing.

³PACs and party committees that filed on a semiannual basis in 1991 file on a quarterly basis in 1992. To avoid the need to file pre-primary and pre-runoff reports, these committees may change to monthly filing if they first notify the Commission in writing. Committees may change filing frequency only once a year. 11 CFR 104.5(c).

⁴A reporting period begins with the close of the last report filed and ends with the closing date for the applicable report.

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COMMISSION
MAIN COPY ROOM

Nov 12 1 04 PM '92

November 10, 1992

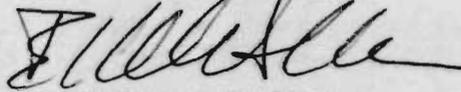
Mr. Jose Rodriguez
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3616 - Representative Nita Lowey, Nita Lowey
for Congress and Aaron Eidelman, as Treasurer

Dear Mr. Rodriguez:

Enclosed is the Statement of Designation of Counsel for
the referenced MUR.

Very truly yours,



B. Holly Schadler

Enclosure

BHS:mah

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FEDERAL ELECTION COMMISSION

94043522687

[11874-0001/DA923150.029]

STATEMENT OF DESIGNATION OF COUNSEL

NR 3616

NAME OF COUNSEL: Robert F. Bauer and B. Holly Schadler

ADDRESS: Perkins Coie
607 14th Street, NW, Suite 800
Washington, DC 20005

TELEPHONE: (202) 628-6600

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

11-5-92
Date

Nita M. Lowey
Signature

RESPONDENT'S NAME: Nita M. Lowey

ADDRESS: 105 Beverly Road
Rye, NY 10580

HOME PHONE: _____

BUSINESS PHONE: (202) 225-6506

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 3616
DATE COMPLAINT RECEIVED
BY OGC: 9/22/92
DATE OF NOTIFICATION TO
RESPONDENTS: 9/23/92
STAFF MEMBER: Jose M. Rodriguez

COMPLAINANT: Sandra M. Monterio

RESPONDENT: Representative Nita M. Lowey
Nita Lowey for Congress and Aaron Eidelman,
as treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(a)
2 U.S.C. § 434(b)(2)(B)
2 U.S.C. § 441d(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter arises from a complaint filed with the Federal Election Commission ("Commission) by Sandra M. Monterio alleging that Nita Lowey for Congress and Aaron Eidelman, as treasurer, ("Committee") failed to timely file a 12 day pre-primary election report for the 1992 election. The complaint also alleges that Representative Nita M. Lowey and the Committee failed to include appropriate disclaimers on certain communications. Representative Lowey was a candidate for the U.S. House of Representatives from New York's 18th district. Representative Lowey ran unopposed in the primary election and won the general election with 55% of the vote.

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A response from counsel for Respondents has been received.
Attachment 1.

II. FACTUAL AND LEGAL ANALYSIS

A. Untimely Reporting

The Act provides that the treasurer of a principal campaign committee of a candidate for the House of Representatives must file, in a year when there is a regularly held election in which the candidate is seeking election, or nomination for election, a pre-primary report. See 2 U.S.C. § 434(a)(2)(A)(i). Such report shall be filed no later than the 12th day before the primary election. See id.

Complainant alleges that the Committee violated 2 U.S.C. § 434(a) by failing to file a 1992 12 day pre-primary election report by its due date of September 3, 1992. The Commission's disclosure indices confirm that the Committee did not file its 1992 pre-primary report for New York's September 15th primary until September 11, 1992. However, the Committee in response argues that its failure to timely file the report resulted from its reliance on the Commission's initial representation that, because the candidate was running unopposed in the primary election and therefore not appearing on the ballot, it was not required to file a pre-primary report.

Counsel relates that upon notice of the pre-primary filing requirement the Committee contacted the Commission's Information Division to "determine if this report was indeed due in light of the fact that Nita Lowey's name would not appear on the September 15 New York primary ballot." Attachment 1, at 1.

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Counsel continues that the Committee was informed that because the candidate was not appearing on the ballot, the Committee was not required to file the report. Counsel notes that a similar inquiry to the Commission in July of 1992 produced the same advice. It is further related that in response to several press inquiries concerning the filing of the report, the Committee additionally twice contacted the Commission's Reports Analysis Division ("RAD") and was again informed that the Committee was not required to file the pre-primary report. Counsel lastly notes that the Committee promptly filed the report upon subsequent notice from the Commission that a report was in fact required.

It is initially clear that Respondents may not raise their reliance on informal information obtained from Commission personnel as a defense to a violation of the Act. See 2 U.S.C. § 437f(b). Moreover, presently there appears to be some disagreement as to the actual advice provided the Committee. RAD confirms that they were contacted by the Committee concerning the filing requirement. A written record of the communication, however, establishes that although it was initially unclear whether the candidate was to appear on the primary election ballot, once having determined that the candidate was in fact appearing on the ballot, RAD informed the Committee that they were required to file a pre-primary report. RAD also informed the Committee that even if not on the ballot they would be required to file the report if Representative Lowey had triggered candidate status for the election (i.e.,

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if the Committee raised in excess of \$5,000 for the election).¹ Furthermore, while there is no record of Respondents' conversations with the Commission's Information Division, division staff notes that consistent with RAD's approach their normal course is to advise those Committees whose candidate does not appear on the ballot that if funds in excess of \$5,000 were raised for the election a report must be filed. Consequently, there is some question as to the actual advice relied on by Respondents.

The substance of the conversation between the Committee and the Commission, however, is immaterial because the candidate was in fact on the primary ballot. Although counsel contends that the candidate "was unopposed for the [primary election] and therefore, under New York State law, her name did not appear on the primary ballot," the State Board of Elections for the State of New York confirms that the candidate did appear on the ballot. Attachment 1, at 1-2. Therefore, the Committee was required to file a pre-primary report.

Accordingly, the Office of the General Counsel recommends that the Commission find reason to believe the Committee and its treasurer violated 2 U.S.C. § 434(a). Although late, the

1. There appears to be some conflict between the information provided by RAD and information appearing in the January 1992 edition of the Federal Election Commission Record. On page ten of the January 1992 edition, authorized committees of a candidate are informed that if the candidate withdraws from the ballot, a pre-primary report need not be filed. See Federal Election Commission Record, January 1992, at 10 n.1. However, because as discussed infra the candidate did appear on the primary election ballot, this apparent conflict need not be resolved presently.

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Committee did file the report four days before the date of the primary, thereby disclosing the required information prior to election day, and indeed the candidate ran unopposed in this election. For these reasons, the Office of the General Counsel also recommends that the Commission take no further action as concerns this violation.

B. Disclaimer

The complaint also alleges that both the candidate and the Committee failed to provide disclaimers for communications distributed by them. These allegations concern three communications paid for and distributed by the candidate: the first appears to be an electioneering piece, while the other two are best described as congratulatory or salutatory announcements. The allegations also involve a communication paid for and distributed by the Committee which serves as an invitation to Ms. Lowey's candidacy announcement events.

1. Candidate Communications

Complainant alleges that the candidate failed to provide disclaimers for two communications placed in local newspapers and one communication placed in a club newsletter. The first of these communications was placed in an August 1992 issue of the Bronx Times Reporter and includes a picture of Respondent, above which appears the caption "Representative Nita M. Lowey" - "Joins the People of Throggs Neck in Celebrating 350 Years of Progress." Attachment 2. Below the picture appears the caption "A NEW KIND OF LEADERSHIP" - "The Commitment to Fight for

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Change...the Energy to get Results." Id. (emphasis in original).

A separate piece was placed in the September 7, 1992, edition of the Whitestone Times. This communication also includes a picture of the candidate, to the right of which appears the caption "I salute the working men and women of America!" Attachment 3. Below the picture appears the caption "Best Wishes!" - "U.S. Representative Nita M. Lowey" - "Labor Day 1992." Id.

A similar piece appeared in the September 1992 edition of Italian City Club Journal. This ad did not contain a picture of Respondent, consisting of only the following text:

CONGRATULATIONS AND
BEST WISHES

TO JOHN ROMANO

AND ALL MY FRIENDS AT

ITALIAN CITY CLUB

REPRESENTATIVE

NITA M. LOWEY

Attachment 4 (emphasis in original).

In response, counsel essentially argues that none of the ads require a disclaimer as they fail to advocate the candidate's election or even make any reference to any election or candidacy. Counsel contends that the ads simply extend the "congratulations or greeting" of Representative Lowey.

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Attachment 1, at 3. Counsel also notes that the candidate paid for all three communications from her personal funds.

The Act provides that whenever any person makes an expenditure for the purpose of financing any communication expressly advocating the election or defeat of any candidate, or soliciting contributions, such communication if paid for and authorized by the candidate or an authorized political committee of the candidate shall clearly state that the communication was paid for by the candidate's authorized political committee. See 2 U.S.C. § 441d(a)(1). As noted, the candidate did pay for the communications at issue. Because the communications did not serve to solicit any contributions for the campaign, a disclaimer would be required only if they expressly advocated Representative Lowey's election or defeat. To be "express advocacy" under the Act, speech must, "when read as a whole and with limited reference to external events, be susceptible of no other reasonable interpretation but an exhortation to vote for or against a specific candidate." FEC v. Furgatch, 807 F.2d 857, 864 (9th Cir.), cert. denied, 484 U.S. 850 (1987).

There is no question that the communications clearly identify the candidate as all three refer to Representative Lowey by name and two of the three contain a likeness of the candidate. See 2 U.S.C. § 431(18). However, it does not appear that the ads appearing in the Whitestone Times or the Italian City Club Journal expressly advocate the candidate's election. The ads do not contain any reference to the upcoming election or the campaign, nor do they exhort the reader to take any kind of

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action, much less action in support of the candidate. In fact, for both ads there appears to be a legitimate alternative reason for their inclusion in the publications. These ads appear to be either congratulatory or salutatory announcements, consistent with activities associated with any officeholder.

Unlike the above ads, the caption in the first ad, appearing in the Bronx Times Reporter, includes what subsequent campaign communications suggest was the candidate's campaign slogan ("The Commitment to Fight for Change...the Energy to get Results"). See Discussion of Committee communication, infra at 10. While also couched in congratulatory language, the inclusion of the campaign slogan at a time when the candidate announced her candidacy -- when the phrase may have become recognized by voters and associated with Ms. Lowey's candidacy -- raises a question as to the ad's intended message. In the past the Commission has considered the combination of content and timing in determining a communication's message. In A.O. 1992-23 the Commission, in holding that ads appearing in close proximity to the election that satirized the record of a candidate constituted "express advocacy," placed a clear emphasis on the timing of the communications. Although no specific words of exhortation were present in the communications, the Commission reasoned that the communications' critique of the candidate just prior to the election demonstrated an intent to advocate the defeat of the candidate. The present ad appeared in August, two months prior to the general election and at the beginning of the political season in

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New York State, when the public's attention and focus began to turn on the race (the Primary date was September 15, 1992). The ad not only clearly promotes Ms. Lowey by including what appears to be the campaign's slogan, but does so concurrently with the beginning of the campaign and election season. Either factor alone may not suffice to render the piece "express advocacy," but when the content and timing are viewed together, as they must be, they suggest that the ad served to promote the candidate's election.²

Accordingly, although the timing of the Whitestone Times and Italian City Club Journal distribution may have engendered some ancillary electoral benefit, such benefit was incidental to the ads' alternative purpose where no electoral message appeared in the text. However, the inclusion of what may prove to be the candidate's campaign slogan in the Bronx Times Reporter ad distinguishes this ad and raises a question regarding its intended message. Because an investigation into

2. Counsel also cites MUR 3376 (Studds for Congress) in support of his argument. Counsel specifically contends that the Commission in that matter "found no reason to believe a violation had occurred" where a communication considerably similar to the three present ads failed to provide a disclaimer. Attachment 1, at 3. In fact, although the communication in that matter was similar to the Whitestone Times and Italian City Club Journal ads, the Commission was divided on the question of whether under the facts then present the communication contained express advocacy. For this reason, counsel's representation is not accurate. Moreover, the Studds ad is distinguishable from the Bronx Times Reporter ad in that the caption appearing in the Studds ad ("Caring, Fighting, Winning") was not associated solely with the campaign, but rather was used also during a non-election year by the incumbent candidate as an officeholder. Presently, there is no indication that the slogan appearing in the Bronx Times Reporter ad was associated with anything other than the campaign.

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the use of the cited language may shed light on the communication's message, the Office of the General Counsel recommends that the Commission find reason to believe Nita M. Lowey violated 2 U.S.C. § 441d(a), as concerns this communication. Moreover, because this Office concludes that the Whitestone Times and Italian City Club Journal ads do not contain "express advocacy" and therefore do not require any disclaimer, this Office recommends that the Commission find no reason to believe Ms. Lowey violated 2 U.S.C. § 441d(a), as concerns these two communications.

All contributions from a candidate, including in-kind contributions, must be reported by the candidate's campaign committee. See 2 U.S.C. § 434(b)(2)(B); 11 C.F.R. § 104.3(a)(3)(ii). Because the Committee failed to report the candidate's costs for the Bronx Times Reporter ad as an in-kind contribution, the Office of the General Counsel also recommends that the Commission find reason to believe Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. § 434(b)(2)(B).

2. Committee Communication

Complainant additionally alleges that the Committee violated Section 441d by failing to include disclaimers with mailed invitations for Representative Lowey's candidacy announcement events. The invitation was mailed in an envelope containing a picture of the candidate, to the right of which appears the caption "NITA LOWEY" - "U.S. REPRESENTATIVE" - "The Commitment to Fight for Change....The Energy to Get Results."

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Attachment 5, at 1 (emphasis in original). The enclosed invitation paid for by the Committee consists of a one page communication reading:

Dear Friend:

Serving in Congress has given me an opportunity to make a difference in people's lives. We have made considerable progress, but there is much more to be done. Dramatic changes around the world pose important challenges, but also present opportunities to address a wide range of compelling needs facing our nation.

On August 24, I will be officially beginning my campaign for election to the House of Representatives from the new 18th Congressional District. It would mean a great deal to have you with us.

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Id., at 2. Below this language is a schedule of five announcement events and below the schedule is a short questionnaire addressing the recipient's support for the announcement day celebrations and the campaign. The questionnaire asks if the recipient will attend any of the announcement day celebrations and/or otherwise help with the campaign. The questionnaire also asks if the recipient's name may be included on a list of the candidate's supporters. Included with the letter is an envelope in which to return the short questionnaire.

In response, counsel again argues that the communication contains no express advocacy or solicitation of contributions. Counsel continues that "[n]owhere in the communication does [the candidate] advocate her reelection" and that the candidate "is simply informing recipients about her decision to run again for

Congress and related events surrounding her announcement."
Attachment 1, at 3.

As with the other communications, this communication clearly identifies the candidate, containing a likeness of the candidate and referring to her by name. Moreover, despite counsel's contentions to the contrary, this announcement is clearly related to Representative Lowey's congressional campaign and serves no other purpose but to elicit support for the candidate's electoral effort. Although couched in terms of an invitation to the candidate's announcement events, the clear import of the communication is to encourage recipients to support Representative Lowey's election. As noted by the court in FEC V. Furgatch, 807 F.2d 857, 862-63 (9th Cir. 1987), "'express advocacy' is not strictly limited to communications using certain key phrases" such as "vote for" or "defeat," but may be properly determined by "considering speech as a whole." This communication invites recipients to support Representative Lowey's candidacy, the inherent purpose of which is to gain elected office. Soliciting support for Representative Lowey's campaign cannot be reasonably viewed as separate from advocating her election. Accordingly, because this communication expressly advocates the election of Representative Lowey, therefore requiring a disclaimer, this Office recommends that the Commission find reason to believe Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. § 441d(a).

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The investigation in this matter should prove brief. This Office's inquiry will be limited to the slogans used by the candidate, and the costs associated with the Bronx Times Reporter ad and the announcement day invitations.

III. RECOMMENDATIONS

1. Find reason to believe that Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(B) and 441d(a).
2. Find reason to believe that Nita Lowey for Congress and Aaron Eidelman as treasurer, violated 2 U.S.C. § 434(a), but take no further actions as concerns this violation.
3. Find reason to believe Representative Nita M. Lowey violated 2 U.S.C. § 441d(a), in connection with the Bronx Times Reporter ad.
4. Find no reason to believe Representative Nita M. Lowey violated 2 U.S.C. § 441d(a), in connection with the Whitestone Times and Italian City Club Journal ads.
5. Approve the attached Factual and Legal Analysis and appropriate letter.

Lawrence M. Noble
General Counsel

Date

10/6/93

BY:


Lois G. Lerner
Associate General Counsel

Attachments

1. Response
2. Bronx Times Reporter ad
3. Whitestone Times ad
4. Italian City Club Journal ad
5. Announcement Day Invitations
6. Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS 
COMMISSION SECRETARY

DATE: OCTOBER 14, 1993

SUBJECT: MUR 3616 - FIRST GENERAL COUNSEL'S REPORT
DATED OCTOBER 6, 1993.

The above-captioned document was circulated to the
Commission on Thursday, October 7, 1993 at 11:00.

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

Commissioner Aikens	<u>XXX</u>	
Commissioner Elliott	<u>XXX</u> <u>FOR THE RECORD ONLY</u>
Commissioner McDonald	<u> </u>	
Commissioner McGarry	<u>XXX</u>	
Commissioner Potter	<u>XXX</u>	
Commissioner Thomas	<u>XXX</u>	

This matter will be placed on the meeting agenda
for Tuesday, October 19, 1993.

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3616
Representative Nita M. Lowey;)
Nita Lowey for Congress and Aaron)
Eidelman, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary of the Federal Election Commission executive session on October 19, 1993, do hereby certify that the Commission took the following actions in MUR 3616:

1. Decided by a vote of 6-0 to find reason to believe that Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. 434(b)(2)(B).

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

2. Decided by a vote of 4-2 to find reason to believe that Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. § 441d(a).

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

(continued)

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3. Decided by a vote of 6-0 to find reason to believe that Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. § 434(a), but take no further actions as concerns this violation.

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

4. Failed on a vote of 3-3 to pass a motion to find reason to believe Representative Nita M. Lowey violated 2 U.S.C. § 441d(a) in connection with the Bronx Times Reporter ad.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott, and Potter dissented.

5. Decided by a vote of 6-0 to find no reason to believe Representative Nita M. Lowey violated 2 U.S.C. § 441d(a) in connection with the Whitestone Times and Italian City Club Journal ads.

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

(continued)

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6. Decided by a vote of 6-0 to direct the Office of General Counsel to circulate an appropriate Factual and Legal Analysis and an appropriate letter for Commission approval on a tally vote basis.

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

Attest:

10-20-93
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

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SENSITIVE
EXECUTIVE SESSION

DEC 07 1993

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

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

Subject: MUR 3616 (Nita Lowey for Congress, et al.)
Re-vote of Reason to Believe Findings and
Approval of Factual and Legal Analysis

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The First General Counsel's Report in this matter was originally before the Commission at the October 19, 1993, Executive Session, prior to the Court's decision in FEC v. NRA Political Victory Fund, et al., No. 91-5360 (D.C. Cir. Oct. 22, 1993) ("NRA"). At that time the Commission made its reason to believe determinations. (Attached is a copy of the original Reason to Believe Certification.) Because agreement could not be reached on whether the candidate generated ad appearing in the Bronx Times Reporter required a disclaimer, the Commission instructed this Office to redraft the proposed Factual and Legal Analysis consistent with the Commission's vote and to recirculate the amended Factual and Legal Analysis for a vote.

Because the Commission made its reason to believe findings prior to reconstituting itself, consistent with the Commission's November 9, 1993, decisions concerning compliance with the Court's opinion in NRA, this Office recommends that the Commission re-vote all its October 19, 1993, findings and determinations regarding reason to believe.

Remaining for the Commission's decision will be approval of a Factual and Legal Analysis. The Factual and Legal Analysis proposed by this Office is appended to the General Counsel's Report dated October 6, 1993. Additionally, pursuant to the Commission's direction, attached is a revised Factual and Legal Analysis.

After

the Commission re-votes the reason to believe recommendations, this Office recommends that the Commission approve the appropriate Factual and Legal Analysis.

Because this matter is not easily disposed of via the usual tally vote procedure, this Office requests that the Commission consider it at the December 7, 1993 Executive Session.

RECOMMENDATIONS

1. Find reason to believe that Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. § 434(a), but take no further action as concerns this violation.
2. Find reason to believe that Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. § 441d(a).
3. Find reason to believe that Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. § 434(b)(2)(B).
4. Find reason to believe Representative Nita M. Lowey violated 2 U.S.C. § 441d(a) in connection with the Bronx Times Reporter ad.
5. Find no reason to believe Representative Nita M. Lowey violated 2 U.S.C. § 441d(a) in connection with the Whitestone Times and Italian City Club Journal ads.
6. Approve the appropriate Factual and Legal Analysis and letter.

Attachments:

- 1 - Modified Factual and Legal Analysis per Commission direction
- 2 - Reason to Believe Certification dated October 19, 1993

Staff Assigned: Jose Rodriguez

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3616
Representative Nita M. Lowey;)
Nita Lowey for Congress and Aaron)
Eidelman, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 7, 1993, do hereby certify that the Commission took the following actions in MUR 3616:

1. Decided by a vote of 5-0 to
- a) Find reason to believe that Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. § 434(a), but take no further action as concerns this violation.
 - b) Find reason to believe that Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. § 441d(a).
 - c) Find reason to believe that Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. § 434(b)(2)(B).

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

(continued)

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2. Failed in a vote of 2-3 to pass a motion to find reason to believe Representative Nita M. Lowey violated 2 U.S.C. § 441d(a) in connection with the Bronx Times Reporter ad.

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

3. Decided by a vote of 5-0 to:

- a) Find no reason to believe Representative Nita M. Lowey violated 2 U.S.C. § 441d(a) in connection with the Whitestone Times and Italian City Club Journal ads.
- b) Approve the appropriate Factual and Legal Analysis and appropriate letter as recommended in the General Counsel's memorandum submitted on December 1, 1993, subject to amendment as agreed during the meeting discussion.

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

Attest:

12-9-93
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 13, 1993

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

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

SUBJECT: MUR 3616
Representative Nita M. Lowey

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On December 7, 1993, the Commission revoked this Office's reason to believe recommendations in this matter. Although the Commission agreed with this Office's recommendation to find that there is no reason to believe Representative Lowey violated 2 U.S.C. § 441d(a) in connection with the ads appearing in the Whitestone Times and Italian City Club Journal, the Commission was unable to agree on this Office's recommendation to find reason to believe Representative Lowey violated 2 U.S.C. § 441d(a) in connection with the ad in the Bronx Times Reporter. In light of the Commission's December 7, 1993 vote, this Office now recommends that the Commission close the file as to Representative Lowey.

RECOMMENDATION

Close the file in this matter as it pertains to Representative Nita M. Lowey.

Staff Assigned: Jose M. Rodriguez

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Representative Nita M. Lowey.) MUR 3616

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on December 16, 1993, the Commission decided by a vote of 4-0 to close the file in this matter as it pertains to Representative Nita M. Lowey, as recommended in the General Counsel's Memorandum dated December 13, 1993.

Commissioners Aikens, Elliott, McGarry, and Thomas voted affirmatively for the decision; Commissioners McDonald and Potter did not cast votes.

Attest:

12-16-93
Date

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

Received in the Secretariat: Mon., Dec. 13, 1993 3:44 p.m.
Circulated to the Commission: Tues., Dec. 14, 1993 11:00 a.m.
Deadline for vote: Wed., Dec. 15, 1993 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20541

December 27, 1993

B. Holly Schadler, Esq.
Perkins Coie
607 Fourteenth St., N.W.
Washington, DC 20005-2011

RE: MUR 3616
Representative Nita M. Lowey
Nita Lowey for Congress and
Aaron Edelman, as treasurer

Dear Ms. Schadler:

On September 23, 1992, the Federal Election Commission notified your clients, Representative Nita M. Lowey, Nita Lowey for Congress and Aaron Edelman, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on October 19, 1993, found that there is reason to believe Nita Lowey for Congress and Aaron Edelman, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(B), 441d(a), and 434(a), provisions of the Act. The Commission, however, decided to take no further action as concerned the Section 434(a) violation. On the same date the Commission also found no reason to believe Representative Lowey violated 2 U.S.C. § 441d(a) in connection with advertisements she placed in the Whitestone Times and the Italian City Club Journal.

Prior to adoption of a Factual and Legal Analysis in this matter, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, No. 91-5360 (D.C. Cir. Oct. 22, 1993). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open

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enforcement matters.

In this matter, on December 7, 1993, the Commission revoked its prior findings of reason to believe. At the same time the Commission also adopted a Factual and Legal Analysis, which formed a basis for the Commission's findings and is attached for your information. The Commission has also closed this matter as it pertains to your client, Representative Lowey. However, Representative Lowey remains a witness in the matter.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

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

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

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 your clients wish the matter to be made public. If you have any questions, please contact Jose M. Rodriguez, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Scott E. Thomas
Chairman

Enclosures
Questions - 2 sets
Factual & Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 3616

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Nita Lowey for Congress and
Aaron Eidelman, treasurer
c/o B. Holly Schadler, Esq.
Perkins Coie
607 Fourteenth St., N.W.
Washington, DC 20005-2011

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 30 days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from August 1, 1992 to November 30, 1992.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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QUESTIONS

1. With respect to the announcement day events mailing referenced in the accompanying Factual and Legal Analysis:
 - a. State the total number of letters mailed and the dates of the mailing.
 - b. To whom were the letters mailed? If sent to names on a mailing list, identify the list by its name and owner.
 - c. Identify the persons/vendors which produced and distributed the mailing.
 - d. State the cost for the mailing; identify separately the amount paid for the mailing's production, publication and distribution (including mailing list rentals and postage costs).
 - e. Produce copies of checks (front and back), invoices, or any other documents relating to the costs and/or payment of costs for the mailing.
2. Indicate whether you conducted any other mailings concerning Nita Lowey's 1992 candidacy announcement. If so, produce copies of each mailing and its attachments.
3. Was the phrase "The Commitment to Fight for Change . . . The Energy to Get Results" used by Representative Lowey's 1992 campaign advertising? If so, was the phrase used by the candidate in any prior election or otherwise associated with the candidate prior to the 1992 election.

94043522717

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 3616

INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS

TO: Representative Nita M. Lowey
c/o B. Holly Schadler, Esq.
Perkins Coie
607 Fourteenth St., N.W.
Washington, DC 20005-2011

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 30 days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from August 1, 1992 to November 30, 1992.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named witness in this action to whom these discovery requests are addressed.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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QUESTIONS

1. With respect to the advertisement ("ad") you paid for which ran in the Bronx Times Reporter during August 1992:
 - a. Provide each of the dates that the ad appeared in the Bronx Times Reporter.
 - b. State the cost for the ad; identify separately the amount paid for the ad's production, publication and distribution.
 - c. Produce copies of checks (front and back), invoices, or any other documents relating to the costs and/or payment of costs for the ad.
 - d. Indicate whether you placed the ad in any additional newspaper, newsletter, or other publication. If so, identify each publication.
2. Indicate whether you placed any other ads making mention of you or your 1992 campaign. If so, identify where each ad was published and produce a copy of each ad.
3. Was the phrase "The Commitment to Fight for Change . . . The Energy to Get Results" used by your 1992 campaign advertising? If so, was the phrase used by you in any prior election or otherwise associated with you prior to the 1992 election.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Representative Nita M. Lowey MUR: 3616
Nita Lowey for Congress and
Aaron Eidelman, as treasurer

I. GENERATION OF MATTER

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This matter arises from a complaint filed with the Federal Election Commission ("Commission) by Sandra M. Monterio alleging that Nita Lowey for Congress and Aaron Eidelman, as treasurer, ("Committee") failed to timely file a 12 day pre-primary election report for the 1992 election. The complaint also alleges that Representative Nita M. Lowey and the Committee failed to include appropriate disclaimers on certain communications. Representative Lowey was a candidate for the U.S. House of Representatives from New York's 18th district. Representative Lowey ran unopposed in the primary election and won the general election with 55% of the vote.

A response from counsel for Respondents has been received.

II. FACTUAL AND LEGAL ANALYSIS

A. Untimely Reporting

The Act provides that the treasurer of a principal campaign committee of a candidate for the House of Representatives must file, in a year when there is a regularly held election in which the candidate is seeking election, or nomination for election, a pre-primary report. See 2 U.S.C. § 434(a)(2)(A)(i). Such

report shall be filed no later than the 12th day before the primary election. See id.

Complainant alleges that the Committee violated 2 U.S.C. § 434(a) by failing to file a 1992 12 day pre-primary election report by its due date of September 3, 1992. The Commission's disclosure indices confirm that the Committee did not file its 1992 pre-primary report for New York's September 15th primary until September 11, 1992. However, the Committee in response argues that its failure to timely file the report resulted from its reliance on the Commission's initial representation that, because the candidate was running unopposed in the primary election and therefore not appearing on the ballot, it was not required to file a pre-primary report.

Counsel relates that upon notice of the pre-primary filing requirement the Committee contacted the Commission's Information Division to "determine if this report was indeed due in light of the fact that Nita Lowey's name would not appear on the September 15 New York primary ballot." Response at 1. Counsel continues that the Committee was informed that because the candidate was not appearing on the ballot, the Committee was not required to file the report. Counsel notes that a similar inquiry to the Commission in July of 1992 produced the same advice. It is further related that in response to several press inquiries concerning the filing of the report, the Committee additionally twice contacted the Commission's Reports Analysis Division ("RAD") and was again informed that the Committee was not required to file the pre-primary report. Counsel lastly

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notes that the Committee promptly filed the report upon subsequent notice from the Commission that a report was in fact required.

It is initially clear that Respondents may not raise their reliance on informal information obtained from Commission personnel as a defense to a violation of the Act. See 2 U.S.C. § 437f(b). Moreover, presently there appears to be some disagreement as to the actual advice provided the Committee. RAD confirms that they were contacted by the Committee concerning the filing requirement. Available information, however, establishes that although it was initially unclear whether the candidate was to appear on the primary election ballot, once having determined that the candidate was in fact appearing on the ballot, RAD informed the Committee that they were required to file a pre-primary report. RAD also informed the Committee that even if not on the ballot they would be required to file the report if Representative Lowey had triggered candidate status for the election (i.e., if the Committee raised in excess of \$5,000 for the election). Furthermore, the Commission's Information Division notes that consistent with RAD's approach their normal course is to advise those Committees whose candidate does not appear on the ballot that if funds in excess of \$5,000 were raised for the election a report must be filed. Consequently, there is some question as to the actual advice relied on by Respondents.

The substance of the conversation between the Committee and the Commission, however, is immaterial because the candidate was

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in fact on the primary ballot. Although counsel contends that the candidate "was unopposed for the [primary election] and therefore, under New York State law, her name did not appear on the primary ballot," the State Board of Elections for the State of New York confirms that the candidate did appear on the ballot. Response at 1-2. Therefore, the Committee was required to file a pre-primary report.

Accordingly, there is reason to believe the Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. § 434(a). However, the Commission has decided to take no further action as concerns this violation.

B. Disclaimer

The complaint also alleges that both the candidate and the Committee failed to provide disclaimers for communications distributed by them. These allegations concern three communications paid for and distributed by the candidate: the first appears to be an electioneering piece, while the other two are best described as congratulatory or salutatory announcements. The allegations also involve a communication paid for and distributed by the Committee which serves as an invitation to Ms. Lowey's candidacy announcement events.

1. Candidate Communications

Complainant alleges that the candidate failed to provide disclaimers for two communications placed in local newspapers and one communication placed in a club newsletter. The first of these communications was placed in an August 1992 issue of the Bronx Times Reporter and includes a picture of Respondent, above

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which appears the caption "Representative Nita M. Lowey" - "Joins the People of Throggs Neck in Celebrating 350 Years of Progress." Below the picture appears the caption "A NEW KIND OF LEADERSHIP" - "The Commitment to Fight for Change...the Energy to get Results." (emphasis in original).

A separate piece was placed in the September 7, 1992, edition of the Whitestone Times. This communication also includes a picture of the candidate, to the right of which appears the caption "I salute the working men and women of America!" Below the picture appears the caption "Best Wishes!" - "U.S. Representative Nita M. Lowey" - "Labor Day 1992."

A similar piece appeared in the September 1992 edition of Italian City Club Journal. This ad did not contain a picture of Respondent, consisting of only the following text:

CONGRATULATIONS AND
BEST WISHES
TO JOHN ROMANO
AND ALL MY FRIENDS AT
ITALIAN CITY CLUB
REPRESENTATIVE
NITA M. LOWEY

(emphasis in original).

In response, counsel essentially argues that none of the ads require a disclaimer as they fail to advocate the candidate's election or even make any reference to any election or candidacy. Counsel contends that the ads simply extend

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the "congratulations or greeting" of Representative Lowey. Response at 3. Counsel also notes that the candidate paid for all three communications from her personal funds.

The Act provides that whenever any person makes an expenditure for the purpose of financing any communication expressly advocating the election or defeat of any candidate, or soliciting contributions, such communication if paid for and authorized by the candidate or an authorized political committee of the candidate shall clearly state that the communication was paid for by the candidate's authorized political committee. See 2 U.S.C. § 441d(a)(1). As noted, the candidate did pay for the communications at issue. Because the communications did not serve to solicit any contributions for the campaign, a disclaimer would be required only if they expressly advocated Representative Lowey's election or defeat. To be "express advocacy" under the Act, speech must, "when read as a whole and with limited reference to external events, be susceptible of no other reasonable interpretation but an exhortation to vote for or against a specific candidate." FEC v. Furgatch, 807 F.2d 857, 864 (9th Cir.), cert. denied, 484 U.S. 850 (1987).

There is no question that the communications clearly identify the candidate as all three refer to Representative Lowey by name and two of the three contain a likeness of the candidate. See 2 U.S.C. § 431(18). However, it does not appear that the ads appearing in the Whitestone Times or the Italian City Club Journal expressly advocate the candidate's election. The ads do not contain any reference to the upcoming election or

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the campaign, nor do they exhort the reader to take any kind of action, much less action in support of the candidate. In fact, for both ads there appears to be a legitimate alternative reason for their inclusion in the publications. These ads appear to be either congratulatory or salutatory announcements, consistent with activities associated with any officeholder.

Accordingly, although the timing of the Whitestone Times and Italian City Club Journal distribution may have engendered some ancillary electoral benefit, such benefit was incidental to the ads' alternative purpose where no electoral message appeared in the text. Because the Whitestone Times and Italian City Club Journal ads do not contain "express advocacy" and therefore do not require any disclaimer, there is no reason to believe Ms. Lowey violated 2 U.S.C. § 441d(a), as concerns these two communications.

Unlike the above ads, the caption in the first ad, appearing in the Bronx Times Reporter, includes what subsequent campaign communications suggest was the candidate's campaign slogan ("The Commitment to Fight for Change...the Energy to get Results"). See Discussion of Committee communication below. While also couched in congratulatory language, the inclusion of the campaign slogan at a time when the candidate announced her candidacy -- when the phrase may have become recognized by voters and associated with Ms. Lowey's candidacy -- indicates that this ad was made for the purpose of influencing the candidate's election. See 2 U.S.C. § 431(8) (definition of a contribution). All contributions from a candidate, including

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in-kind contributions, must be reported by the candidate's campaign committee. See 2 U.S.C. § 434(b)(2)(B); 11 C.F.R. § 104.3(a)(3)(ii). Because the Committee failed to report the candidate's costs for the Bronx Times Reporter ad as an in-kind contribution, there is reason to believe Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. § 434(b)(2)(B).¹

2. Committee Communication

Complainant additionally alleges that the Committee violated Section 441d by failing to include disclaimers with mailed invitations for Representative Lowey's candidacy announcement events. The invitation was mailed in an envelope containing a picture of the candidate, to the right of which appears the caption "NITA LOWEY" - "U.S. REPRESENTATIVE" - "The Commitment to Fight for Change....The Energy to Get Results." (emphasis in original). The enclosed invitation paid for by the Committee consists of a one page communication reading:

Dear Friend:

Serving in Congress has given me an opportunity to make a difference in people's lives. We have made considerable progress, but there is much more to be done. Dramatic changes around the world pose important challenges, but also present opportunities to address a wide range of compelling needs facing our nation.

On August 24, I will be officially beginning my campaign for election to the House of Representatives from the new 18th Congressional District. It would mean a great deal to have you with us.

1. The Commission was unable to agree on whether the ad appearing in the Bronx Times Reporter required a disclaimer under the Act.

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Below this language is a schedule of five announcement events and below the schedule is a short questionnaire addressing the recipient's support for the announcement day celebrations and the campaign. The questionnaire asks if the recipient will attend any of the announcement day celebrations and/or otherwise help with the campaign. The questionnaire also asks if the recipient's name may be included on a list of the candidate's supporters. Included with the letter is an envelope in which to return the short questionnaire.

In response, counsel again argues that the communication contains no express advocacy or solicitation of contributions. Counsel continues that "[n]owhere in the communication does [the candidate] advocate her reelection" and that the candidate "is simply informing recipients about her decision to run again for Congress and related events surrounding her announcement." Response at 3.

As noted by the court in FEC V. Furgatch, 807 F.2d 857, 862-63 (9th Cir. 1987), "'express advocacy' is not strictly limited to communications using certain key phrases" such as "vote for" or "defeat," but may be properly determined by "considering speech as a whole." This communication first clearly identifies the candidate, containing a likeness of the candidate and referring to her by name. Second, the invitation contains a clear reference to election-related activity when it says "I will be officially beginning my campaign for election." And third, it exhorts the reader to take action by stating "It would mean a great deal to have you with us." Accordingly,

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because the invitation exhorts election-related activity on behalf of a clearly identified candidate, it contains express advocacy and requires a disclaimer. Because no disclaimer appeared on the communication, there is reason to believe Nita Lowey for Congress and Aaron Eidelman, as treasurer, violated 2 U.S.C. § 441d(a).

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

94 JAN -5 PM 3:04

January 5, 1994

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

Re: MUR 3616 - Representative Nita M. Lowey
Nita Lowey for Congress and
Aaron Bidelman, as Treasurer

Dear Mr. Rodriguez:

This is to request an extension of time of 20 days to respond to the Commission's finding of reason to believe and interrogatories and requests for production of documents.

Holly Schadler, the principal attorney on this case, is out of the office on maternity leave until the middle of January. Because she is already familiar with the facts of the case, we would like her to participate in the preparation of the response. We also need the additional time to collect the information and materials requested in the Commission's interrogatories and requests for documents.

With an extension of 20 days, the response would be due on February 1, 1994.

If you have any questions, please do not hesitate to contact me (202/434-1622).

Very truly yours,



Judith L. Corley
Counsel to Respondents

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[11874-0001/DA940054.024]



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JANUARY 7, 1994

Judith L. Corley, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 3616
Representative Nita M. Lowey
Nita Lowey for Congress and
Aaron Eidelman, as Treasurer

Dear Ms. Corley:

This is in response to your letter dated January 5, 1994, which we received that day requesting an extension of 20 days to respond to the Commission's finding of reason to believe, interrogatories and requests for production of documents. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on February 1, 1994.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Jose Rodriguez
Jose M. Rodriguez 
Attorney

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RECEIVED
FEDERAL ELECTION COMMISSION
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February 2, 1994

**Mr. Jose Rodriguez
Federal Election Commission
Office of General Counsel
999 E Street, NW
6th Floor
Washington, DC 20463**

Re: MUR 3616

Dear Mr. Rodriguez:

Enclosed please find the original Responses to Interrogatories and Request for Production of Documents submitted by the Nita Lowey for Congress Committee and Representative Nita M. Lowey. A copy was delivered by certified mail on February 1, 1994.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

B. Holly Schadler/dma
B. Holly Schadler
Counsel to Nita Lowey
for Congress Committee

BHS:dma

Enclosure

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[11847-0001 LETTER.01]

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(202) 628-6600 • FACSIMILE (202) 434-1690

February 1, 1994

Mr. Jose Rodriguez
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3616

Dear Mr. Rodriguez:

Enclosed you will find responses to the Interrogatories and Request for Production of Documents submitted by Aaron Eidelman, Treasurer of the Nita Lowey for Congress Committee, and Representative Nita Lowey. This letter provides additional information regarding the Bronx Times Reporter advertisement and the invitations for Representative Lowey's candidacy announcement events.

1. Bronx Times Reporter Advertisement. The Commission found reason to believe that the Committee failed to report the candidate's costs for the Bronx Times Reporter ad as an in-kind contribution. Upon reviewing its records, the campaign has determined that this advertisement was paid for by Nita Lowey for Congress, not Representative Lowey. Attached as Attachment A is the canceled check made payable to the newspaper in full payment for the ad and Schedule B of the FEC Report disclosing this payment.

In light of the fact that the campaign paid for the advertisement there was no in-kind contribution from Representative Lowey. Moreover, because the Committee did not fail to report an in-kind contribution, there was clearly no violation of 2 U.S.C. § 434(b)(2)(B).

2. Invitations to Candidacy Announcement Events. The Commission also found reason to believe that Respondents failed to include disclaimers with invitations to the Committee's candidacy announcement events. While the Committee's general practice is to include a disclaimer on all campaign materials, even those that do not solicit contributions or expressly advocate the reelection of Representative Lowey, the disclaimer was mistakenly left off some of the announcement invitations. This oversight was due

[11847-0501/DA940270.056]

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Mr. Jose Rodriguez
February 1, 1994
Page 2

to the printer's error. Moreover, as soon as the campaign staff discovered the error, it was immediately corrected.

Shortly after Efficiency Printing Co. printed the invitations, campaign volunteers began preparing them for distribution. Upon discovering that an error had been made in printing the invitations, campaign staff immediately suspended distribution until a correction could be made. Efficiency Printing Co. was alerted that the disclaimer was left off the mailing. Mr. Paul Franzese, Executive Vice-President of Efficiency Printing, immediately offered to reprint the announcement at no charge to the campaign, acknowledging that the company had made the error in failing to print the disclaimer. See Attachment B - facsimile from Mr. Franzese dated August 10, 1992; Attachment C - affidavit from Mr. Franzese.

Operating under tremendous time pressure to distribute the announcements, the Committee chose to stamp each invitation with the disclaimer rather than having the invitation reprinted. A copy of the stamp "Paid for & Authorized by Nita Lowey for Congress" used for this purpose is enclosed as Attachment D. Campaign workers stamped the remaining invitations prior to distribution.

The Committee was not responsible for the printer's oversight and made every effort to address the printer's error upon discovering that the disclaimer did not appear on the original printed invitation. On the basis of these facts and the steps taken by the Committee to fully correct the omission, Respondents request that the Commission take no further action in this matter.

Sincerely,



B. Holly Schadler
Counsel for Respondents

/bhs

Attachments

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NITA LOWEY FOR CONGRESS

P. O. BOX 271
WHITE PLAINS, NY 10615

1099

8/5/92

PAY TO THE ORDER OF

Don James Reporter

\$52500.00

Five hundred twenty five 00/100

DOLLAR

CHEMICAL BANK

240 FIFTH AVENUE NEW YORK, NY 10010

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FOR

James J. ...

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FEDERAL RESERVE BOARD OF GOVERNORS REG. CC

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CITIBANK
NEW YORK, NY
AUG 11 1992

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
BE FIVE TO ONE HUNDRED THIRTYTHREE AND SEVEN

REPORT OF RECEIPTS AND DISBURSEMENTS

For An Authorized Committee
(Summary Page)

USE FEC MAILING LABEL OR TYPE OR PRINT

1. NAME OF COMMITTEE (in full) Aaron Eidelman, CPA Nita Lowey for Congress		2. FEC IDENTIFICATION NUMBER 124273
ADDRESS (number and street) <input type="checkbox"/> Check if different than previously reported. 1185 Avenue of the Americas		3. IS THIS REPORT AN AMENDMENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
CITY, STATE and ZIP CODE New York, NY 10036	STATE/DISTRICT NY/20	

4. TYPE OF REPORT

<input type="checkbox"/> April 15 Quarterly Report	<input checked="" type="checkbox"/> Twelfth day report preceding <u>Primary</u> (Type of Election)
<input type="checkbox"/> July 15 Quarterly Report	election on <u>Sept. 15</u> in the State of <u>New York</u>
<input type="checkbox"/> October 15 Quarterly Report	<input type="checkbox"/> Thirtieth day report following the General Election on _____ in the State of _____
<input type="checkbox"/> January 31 Year End Report	
<input type="checkbox"/> July 31 Mid-Year Report (Non-election Year Only)	<input type="checkbox"/> Termination Report

This report contains activity for Primary Election General Election Special Election Runoff Election

SUMMARY

5. Covering Period <u>7-01-92</u> through <u>8-26-92</u>	COLUMN A This Period	COLUMN B Calendar Year-to-Date
6. Net Contributions (other than loans)		
(a) Total Contributions (other than loans) (from Line 11(e))	\$ 64,010.08	\$381,070.02
(b) Total Contribution Refunds (from Line 20(d))		250.00
(c) Net Contributions (other than loans) (subtract Line 6(b) from 6(a))	64,010.08	380,820.02
7. Net Operating Expenditures		
(a) Total Operating Expenditures (from Line 17).	91,226.37	194,010.66
(b) Total Offsets to Operating Expenditures (from Line 14)		85.42
(c) Net Operating Expenditures (subtract Line 7(b) from 7(a)).	91,226.37	193,925.24
8. Cash on Hand at Close of Reporting Period (from Line 27)	652,162.94	For further information contact: Federal Election Commission 999 E Street, NW Washington, DC 20463 Toll Free 800-424-9530 Local 202-376-3120
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D)		
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D)	\$153,044.36	

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer Aaron Eidelman	
Signature of Treasurer	Date

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

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FEC FORM 3

(revised 4/87)

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SCHEDULE B

ITEMIZED DISBURSEMENTS

See separate schedule(s) for each category of the Detailed Summary Page

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full)

NITA LOWEY FOR CONGRESS

94043522739

A. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
Joel Malina 303 West 80th Street New York, NY 10024	Expenses - \$30.49 Consulting - \$1000.00 Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	7.31.92	\$ 1030.49
NY Telephone PO BOX 1100 Albany, NY 12250	Phone - June Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	7.31.92	\$ 416.13
Postmaster White Plains Fisher Street White Plains, NY 10601	Bulk Mail Permit Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	8.03.92	\$ 75.00
On-Line Telephone 1 Summit Avenue Elmsford, NY	Phone Repair Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	8.03.92	\$ 209.14
Noam Bramson 86 Aberfoyle Road New Rochelle, NY 10804	Salary \$615.15 Expenses \$36.27 Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	8.01.92	\$ 651.42
Martha-Lee Bohn 151 Sixth Street Pelham, NY 10803	Salary Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	8.01.92	\$ 1124.57
PX Printing PO BOX 1082 White Plains, NY 10602	Printing Business Cards Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	8.04.92	\$ 33.68
Bronx Times Reporter 37-11 East Tremont Avenue Bronx, NY 10465	Advertisement Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	8.04.92	\$ 525.00
Ronna Sussman 24 Burning Tree Road Greenwich, CT 06830	Petty Cash Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	8.06.92	\$ 100.00

SUBTOTAL of Disbursements This Page (optional)

\$ 4165.43

TOTAL This Period (last page this line number only)

FAX TRANSMITTAL COVER SHEET

DATE August 10, 1992

TO: Martha Lee

FROM: EFFICIENCY PRINTING CO., INC.

126 So. Lexington Avenue Parking at Entrance

MAIN STATION • P. O. BOX 935

WHITE PLAINS, N.Y. 10602-0935

ORIGINATOR FAX: (914) 949-8516

DESTINATION FAX:

ORIGINATOR PHONE: (914) 949-8611

DESTINATION PHONE:

TOTAL OF 1 PAGES ARE BEING SENT (INCLUDING THIS COVER SHEET).

IF TRANSMISSION IS INCOMPLETE, PLEASE CALL — (914) 949-8611

ADDITIONAL MESSAGE:

We will gladly reprint
At no charge the Announcement
Day Celebration Invitation —
do to our error in leaving
the disclaimer off —

Paul Franzese

ATTACHMENT B

94043522740

BEFORE THE
FEDERAL ELECTION COMMISSION

IN THE MATTER OF
Nita Lowey for Congress and)
Aaron Eidelman, as Treasurer)

MUR 3616

AFFIDAVIT OF PAUL FRANZESE

I, Paul Franzese, under penalty of perjury pursuant to Section 1746 of Title 28, declare as follows:

1. I have personal knowledge of the facts set forth herein and, if called upon to testify in this matter, I would testify as set forth herein.
2. I am the Executive Vice-President of Efficiency Printing Co., Inc.
3. Efficiency Printing printed the candidacy announcement invitations for Nita Lowey for Congress.
4. The campaign contacted Efficiency Printing when it was discovered that the invitations did not carry the FEC disclaimer.
5. I sent the attached note, dated August 10, 1992, by facsimile acknowledging the company's error in not including the disclaimer and offering to reprint the invitations at no charge to the campaign.

Further Affiant sayeth not.


Paul Franzese

94043522741

FAX TRANSMITTAL COVER SHEET

DATE: August 10, 1992

TO: Martha Lee

FROM: EFFICIENCY PRINTING CO., INC.
126 So. Lexington Avenue Parking at Entrance
MAIN STATION • P. O. BOX 935
WHITE PLAINS, N.Y. 10602-0935

ORIGINATION FAX: (914) 949-8516

DESTINATION FAX:

ORIGINATION PHONE: (914) 949-8611

DESTINATION PHONE:

TOTAL OF 1 PAGES ARE BEING SENT (INCLUDING THIS COVER SHEET).

IF TRANSMISSION IS INCOMPLETE, PLEASE CALL — (914) 949-8611

ADDITIONAL MESSAGE:

We will gladly reprint
At no charge the Announcement
Day Celebration Invitation —
do to our error in leaving
the disclaimer off —

PAUL FRANZOSA

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~~Paid For & Authorized by Mrs Lowry For Congress~~

BEFORE THE FEDERAL ELECTION COMMISSION

MUR 3616

RESPONDENT: Representative Nita M. Lowey

RESPONSE TO INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS

94 FEB -2 AM 11:07

RECEIVED
FEDERAL ELECTION COMMISSION

INTERROGATORY NO. 1

1. With respect to the advertisement ("ad") you paid for which ran in the Bronx Times Reporter during August 1992:
 - a. Provide each of the dates that the ad appeared in the Bronx Times Reporter.
 - b. State the cost for the ad; identify separately the amount paid for the ad's production, publication and distribution.
 - c. Produce copies of checks (front and back), invoices, or any other documents relating to the costs and/or payment of costs for the ad.
 - d. Indicate whether you placed the ad in any additional newspaper, newsletter, or other publication. If so, identify each publication.

RESPONSES TO INTERROGATORY NO. 1

1. a. The ad ran one time in the August, 1992 edition of the Bronx Times Reporter.
- b. The ad cost \$525 for publication. There were no additional production or distribution costs.
- c. See Attachment A:
 - (1) Check to Bronx Times Reporter from Nita Lowey for Congress Campaign.
 - (2) Copy of FEC Report disclosing payment of \$525 to Bronx Times Reporter.
- d. I did not place this ad in any other publication, newspaper or newsletter.

94043522744

INTERROGATORY NO. 2

Indicate whether you placed any other ads making mention of you or your 1992 campaign. If so, identify where each ad was published and produce a copy of each ad.

RESPONSE TO INTERROGATORY No. 2

I assume this question is meant to determine whether I personally paid for any other ads mentioning my 1992 campaign. I did not personally pay for other ads making mention of my 1992 campaign.

INTERROGATORY NO. 3

Was the phrase "The Commitment to Fight for Change . . . The Energy to Get Results" used by your 1992 campaign advertising? If so, was the phrase used by you in any prior election or otherwise associated with you prior to the 1992 election.

RESPONSES TO INTERROGATORY No. 3

The phrase "The Commitment to Fight for Change . . . The Energy to Get Results" was used in the 1992 campaign. It was not used in any prior election.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 1 day of February, 1994.


Representative Nita M. Lowey

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NITA LOWEY FOR CONGRESS

P. O. BOX 271
WHITE PLAINS, NY 10615

1099

PAY TO THE ORDER OF

Box Times Reporter

8/5/92

12/20

Five hundred twenty five 00/100

525040
DOLLAR

CHEMICAL BANK

340 FIFTH AVENUE, NEW YORK, NY 10014

03 001092 00 51989045 24062915 0212295

FOR

Bozell Newman

⑆001099⑆ ⑆021000128⑆ 003-398595⑆

⑆0000052500⑆

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FEDERAL RESERVE BOARD OF GOVERNORS, DC

CITIBANK, N.A. 5612
BRO120 24069915
03131299 06-10-92

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PAID 1-12

⑆1255880⑆

2036715
CITIBANK
NEW YORK, NY
10014

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
IN FEDERAL RESERVE BOARD OF GOVERNORS, DC

SCHEDULE B

ITEMIZED DISBURSEMENTS

separate schedule(s)
for each category of the
Detailed Summary Page

PAGE 5 OF 12
FOR LINE NUMBER

Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee.

NAME OF COMMITTEE (in Full)

NITA LOWEY FOR CONGRESS

94043522748

A. Full Name, Mailing Address and ZIP Code	Purpose of Disbursement	Date (month, day, year)	Amount of Each Disbursement This Period
Joel Malina 303 West 80th Street New York, NY 10024	Expenses - \$30.49 Consulting - \$1000.00 Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	7.31.92	\$ 1030.49
B. Full Name, Mailing Address and ZIP Code NY Telephone PO BOX 1100 Albany, NY 12250	Purpose of Disbursement Phone - June Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	7.31.92	\$ 416.13
C. Full Name, Mailing Address and ZIP Code Postmaster White Plains Fisher Street White Plains, NY 10601	Purpose of Disbursement Bulk Mail Permit Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	8.03.92	\$ 75.00
D. Full Name, Mailing Address and ZIP Code On-Line Telephone 1 Summit Avenue Elmsford, NY	Purpose of Disbursement Phone Repair Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	8.03.92	\$ 209.14
E. Full Name, Mailing Address and ZIP Code Noam Branson 86 Aberfoyle Road New Rochelle, NY 10804	Purpose of Disbursement Salary \$615.15 Expenses \$36.27 Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	8.01.92	\$ 651.42
F. Full Name, Mailing Address and ZIP Code Martha-Lee Bohn 151 Sixth Street Pelham, NY 10803	Purpose of Disbursement Salary Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	8.01.92	\$ 1124.57
G. Full Name, Mailing Address and ZIP Code PX Printing PO BOX 1082 White Plains, NY 10602	Purpose of Disbursement Printing Business Cards Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	8.04.92	\$ 33.68
H. Full Name, Mailing Address and ZIP Code Bronx Times Reporter 37-11 East Tremont Avenue Bronx, NY 10465	Purpose of Disbursement Advertisement Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	8.04.92	\$ 525.00
I. Full Name, Mailing Address and ZIP Code Ronna Sussman 24 Burning Tree Road Greenwich, CT 06830	Purpose of Disbursement Petty Cash Disbursement for: <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify)	8.06.92	\$ 100.00

SUBTOTAL of Disbursements This Page (optional)

\$ 4165.43

TOTAL This Period (last page this line number only)

BEFORE THE FEDERAL ELECTION COMMISSION

MUR 3616

RESPONDENT: Nita Lowey for Congress and Aaron Edelman,
treasurer

RESPONSE TO INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS

94 FEB - 2 AM 11: 07

RECEIVED
FEDERAL ELECTION COMMISSION

INTERROGATORY NO. 1

1. With respect to the announcement day events mailing referenced in the accompanying Factual and Legal Analysis:
 - a. State the total number of letters mailed and the dates of the mailing.
 - b. To whom were the letters mailed? If sent to names on a mailing list, identify the list by its name and owner.
 - c. Identify the persons/vendors which produced and distributed the mailing.
 - d. State the cost for the mailing; identify separately the amount paid for the mailing's production, publication and distribution (including mailing list rentals and postage costs).
 - e. Produce copies of checks (front and back), invoices, or any other documents relating to the costs and/or payment of costs for the mailing.

RESPONSES TO INTERROGATORY NO. 1

1. a. With respect to the announcement day events, the total number of letters distributed was approximately 6,000. Based on the postmarks on the mailing, the letters were mailed on or around August 10, 1992.

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9 4 0 4 3 5 2 2 7 5 0

b. The letters were mailed to the campaign's contributors, district leaders and other community leaders. No vendor lists were used.

c. The vendor that produced the mailing is:

Efficiency Printing Co.
P.O. Box 935
White Plains, NY 10602

Campaign volunteers assisted with the preparation for distribution.

d. The costs of mailing were as follows:

printing: \$685
postage: \$725

e. Attached as Attachment A are:

- (1) Invoices from Efficiency Printing Co., Inc., for invitations;
- (2) Check as payment for printing costs.

There is no receipt for the postage because the mailing was stamped on the campaign's postage meter.

INTERROGATORY NO. 2

Indicate whether you conducted any other mailings concerning Nita Lowey's 1992 candidacy announcement. If so, produce copies of each mailing and its attachments.

RESPONSE TO INTERROGATORY NO. 2

No other mailings to announce the August 24 Regional Announcements were conducted.

INTERROGATORY NO. 3

Was the phrase "The Commitment to Fight for Change . . . The Energy to Get Results" used by Representative Lowey's 1992 campaign advertising? If so, was the phrase used by the candidate in any prior election or otherwise associated with the candidate prior to the 1992 election.

RESPONSE TO INTERROGATORY NO. 3

The phrase "The Commitment to Fight for Change . . . The Energy to Get Results" was used in Representative Lowey's 1992 campaign advertising. It was not used in prior elections.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 31 day of JANUARY 31, 1994.

Aaron Edelman TREASURER
Aaron Edelman, Treasurer
Nita Lowey for Congress

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EFFICIENCY PRINTING CO. INC.

Printers & Publishers

125 SO. LEXINGTON AVENUE
P. O. Box 925 • Main Street

Corner Poplar Avenue • White Plains, NY 10602

(914) 949-8511

Fax: (914) 949-8518

MARKETING & PUBLISHING
FOR THREE GENERATIONS

James Robert Parsons
President & Publisher

Marion Rose Parsons, J.
Vice-President

INVOICE

78867

CUSTOMER NO. **LOWEY**

BILL TO:

Wita Lowey for Congress
Post Office Box 271
White Plains, NY 10605-9972

SHIP TO:

Wita Lowey for Congress
Post Office Box 271
White Plains, NY 10605-9972

Quantity	Unit	Description	Unit Price	Total Price
1	1	1000 Invitations, Aug. 24th, 67 lb. 8.5 x 11, red & blue perforated, scored & folded	238.50	238.50
		Invoice subtotal		238.50
		Sales tax @ 7.25%		17.29
		Invoice total		255.79

Invoices are subject to a finance charge of 1.5% per month

EFFICIENCY PRINTING CO. INC.

Advertisers & Publishers

188 GQ. LEXINGTON AVENUE
 P O BOX 1221 - Manh Stown
 Corner 42nd Street - 4th Fl. - NY 10017
 (914) 349-8511 Fax: (914) 349-8513

FOR TRADE COUNTERTOPS

James Robert Johnson
 Post & Publisher

George Paul Johnson
 Manager

INVOICE

78816

CUSTOMER NO: LOWEY

BILL TO:

Nita Lowey for Congress
 Post Office Box 271
 White Plains, NY 10605-9972

SHIP TO:

Nita Lowey for Congress
 Post Office Box 271
 White Plains, NY 10605-9972

DATE		PURCHASE ORDER NUMBER		ORDER DATE	SHIP TO	OUR ORDER NUMBER
08/18/92					WHITE PLAINS	
QUANTITY RECEIVED	QUANTITY SHIPPED	P.O.	ITEM NUMBER	DESCRIPTION	UNIT PRICE	AMOUNT
5	5			5000 Brochures 8.5 x 11, (Mon. Aug. 24th) 67 lb. white, vellum Bristol, printing on 2 sides, in 2 colors: red and blue, scored perforated and folded @ \$178.50 per M	178.50	892.50
					Invoice subtotal	892.50
					Sales tax @ 7.25%	64.71
					Invoice total	957.21

Invoices are subject to a finance charge of 1.5% per month

NTA LOWEY FOR CONGRESS
P. O. BOX 271

WHITE PLAINS, NY 10615

1-12/810

9/8 1981

PAY TO THE ORDER OF

Efficiency Printing Co. 137525 53210654 4158100

Seven thousand fifty eight 03/100 DOLLARS

CHEMICAL BANK

340 FIFTH AVENUE NEW YORK, NY 10018

Roscoe J. ...

FOR 78515, 78516, 78551, 78554, 78567

003 398595

0000415863

78657, 78608

CHASE MANHATTAN BANK
NEW YORK, NY

09 SEP 92

20650898

PAID

500209371

FOR DEPOSIT ONLY, ACCOUNT OF
EFFICIENCY PRINTING CO. INC.
128 SO. LEXINGTON AVENUE
WHITE PLAINS, N.Y. 10606
Do not allow CHASEMAN BANK to close this
account without your written consent.

FEDERAL RESERVE BOARD OF GOVERNORS REG. AC 940435227



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEBRUARY 3, 1994

B. Holly Schadler, Esq.
Perkins Cole
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 3616
Nita Lowey for Congress and
Aaron Eidelman, as treasurer

Dear Ms. Schadler:

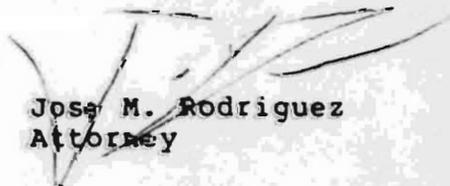
As discussed in our telephone conversation this afternoon, a review of your clients' responses raises certain questions. Specifically, concerning the August 10, 1992 facsimile from Efficiency Printing Co., Inc. to the committee, please indicate if a receipt date and time was imprinted on the original transmission by the committee's facsimile machine. If so, provide a copy of the transmission showing the imprint.

Also, Representative Lowey's response to question two of the Commission's interrogatories is not complete. She states that she did not pay for any other ads mentioning her 92 campaign, but does not disclose whether she paid for any other ads mentioning her. Please indicate if Representative Lowey paid for any other ads, other than those referenced in the Factual and Legal Analysis, containing in any way either her name or likeness. If so, produce a copy of each such ad.

Lastly, please let me know why the committee's Bronx Times Reporter ad did not include a disclaimer when it is the committee's usual practice to include a disclaimer with all campaign materials.

Please submit the requested responses by Thursday, February 10, 1994. Should you have any questions, please contact me at (202) 219-3690.

Sincerely,


Jose M. Rodriguez
Attorney

94043522755

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

February 9, 1994

94 FEB - 9 PM 2:03

RECEIVED
FEDERAL ELECTION COMMISSION

Mr. Jose M. Rodriguez
FEC-Office of General Counsel
999 E Street, NW
6th Floor
Washington, DC 20463

Re: MUR 3616

Dear Mr. Rodriguez:

This letter is to confirm our conversation that we will be filing a response to your letter dated February 3, 1994 on Wednesday, February 16.

Sincerely,



E. Holly Schadler
Counsel to Respondents

BHS:bhs

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[11874-0001/LETTER.01]

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

February 16, 1994

RECEIVED
FEDERAL ELECTION COMMISSION
94 FEB 16 PM 4:04

Mr. Jose Rodriguez
Office of General Counsel
Federal Election Commission
999 E Street, NW, 6th Floor
Washington, DC 20463

Re: MUR 3616

Dear Mr. Rodriguez:

We are responding on behalf of Representative Nita M. Lowey, Nita Lowey for Congress (the "Committee") and Aaron Eidelman, as treasurer ("Respondents"), to your letter dated February 3, 1994, in which you request additional information regarding this matter.

1. Facsimile from Efficiency Printing Co. The facsimile filed with the Committee's response was a copy of the document sent by Paul Francese, Executive Vice President of Efficiency Printing Co., to the Lowey Committee on August 10, 1992. In the process of preparing its response, the Lowey Committee asked Mr. Francese to provide a copy of the original document that he had sent to the Committee in 1992 explaining his error in leaving off the disclaimer. The document was telefaxed from Efficiency Printing to the Lowey staff and then to the Washington, D.C. offices of Perkins Coie. The imprints reflect these transmissions that occurred around the time the Committee filed its original response.

Since the imprints have no relevance to the matter before the Commission they were removed when copying the document for filing. In order to address the issue of when the facsimile was originally sent, Mr. Francese signed a sworn affidavit stating that he had sent the note to the Committee by facsimile on August 10, 1992.

2. Response to Interrogatory No. 2. You request that Representative Lowey indicate whether she paid for any other ads, other than those referenced in the Factual and Legal Analysis, containing in any way either her name or likeness. She has already provided the information relevant to this case in her interrogatory response stating that she did not pay for any other ads mentioning her 1992 campaign.

[11874-0001/DA940450.009]

94043522757

Mr. Jose Rodriguez
February 16, 1994
Page 2

The question presented in your letter is overly broad in light of the scope of issues raised in the original Complaint and thus far by the Commission. The complaint raised questions regarding the need for a disclaimer on three advertisements that appeared in local newspapers in Representative Lowey's district. No other advertisements placed by either the Committee or Representative Lowey were at issue. Pursuant to Section 111.6 of the Regulations, the Committee responded to Complainant's allegations regarding these three ads. Thereafter, the Commission found reason to believe with respect to only one ad. This case does not involve any other ads. No other ads have been alleged by the Complainant and none cited by the Commission.

It is a fundamental tenet of federal administrative law that an agency must observe procedures prescribed in the relevant statutes and regulations when investigating possible violations of the law:

. . . [The Commissioner] must show that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the Commissioner's possession and that the administrative steps required by the Code have been followed . . .

United States v. Powell, 379 U.S. 48, 57 (1964) (emphasis added); see also United States v. Gel Spice Co., Inc., 601 F. Supp. 1214, 1218 (E.D.N.Y.), aff'd, 773 F.2d 427 (2d Cir. 1985), cert. denied, 474 U.S. 1060 (1986).

Section 111.10 of the Regulations authorizes the Commission to conduct an investigation in any case where it finds reason to believe a violation has occurred. The Commission must follow procedures specified in the Regulations in order to initiate such an investigation.¹ If the

¹Indeed, in this particular case, there seems to be little justification for expanding the inquiry beyond these few ads. Of the three ads questioned in the original complaint, the Commission dismissed the complaint as to two of the ads. Therefore, at the same time the Commission is dismissing the violations alleged in the complaint, it is broadening the scope of its administrative inquiry. Moreover, this is not a case where a pattern of possible violations has been discovered. In fact, the evidence

94043522758

Mr. Jose Rodriguez
February 16, 1994
Page 3

Commission finds reason to believe that a violation occurred, the Commission must notify the respondent setting forth the legal and basis supporting such a finding. 11 C.F.R. § 111.9. Thereafter, the Commission may authorize the General Counsel to conduct an investigation within the parameters of the factual issues raised in the matter. These procedures do not allow the General Counsel to conduct a wide-ranging investigation into issues of fact not before the Commission and on which Respondent has received no prior notification.

Here the subject of the reason to believe finding was one advertisement. The Factual and Legal Analysis discusses the Commission's finding on this ad, but does not suggest or raise the issue that other ads not yet reviewed by the Commission, or raised in any context, are a subject of the inquiry. Indeed, as pointed out earlier, of the three ads raised by the Complaint and reviewed by the Commission only one ad is the subject of the reason to believe finding and was determined by the Commission to require additional inquiry. Nevertheless, in a simple letter of one page delivered in the middle of the proceeding dedicated to a particular complaint, the General Counsel has requested copies of every single ad Representative Lowey placed that has her name or likeness over a two year period, whether or not it has any relationship whatsoever to her campaign.

3. Bronx Times Reporter Advertisement. A review of the Bronx Times Reporter August edition in which the Lowey ad appeared indicates that none of the ads placed by Members of Congress and other public officials carried disclaimers. See Exhibit 1. When the Committee agreed to purchase the ad, it had little or no involvement with its preparation and printing. Indeed, the circulation area for the paper was in a new part of Representative Lowey's recently reconfigured district. The Committee had never previously placed an ad in this paper. Moreover, no proof of the ad was provided to the Committee prior to publication. Therefore, while it was and still is the Committee's general practice to include a disclaimer with all campaign materials, the inadvertent omission of the disclaimer on this ad congratulating the Throggs Neck Community on its 350th Anniversary and other

points precisely to the opposite conclusion -- that Complainant's allegations were unsupported.

94043522759

Mr. Jose Rodriguez
February 16, 1994
Page 4

similar ads appearing in the same edition is both understandable and excusable under the circumstances.

The Commission does not appear to be proceeding in this matter within the spirit of "prioritization" standards adopted by the Commission and announced at its press conference of December 13, 1993. None of the concerns expressed by the Commission here meet the specific factors identified by the Commission which compel the Agency to devote its resources to the pursuit of the matter. The Commission has correctly emphasized the importance of pursuing only those cases which "best warrant the use of our limited resources." A matter involving a single isolated inadvertent omission of a disclaimer from a campaign ad does not constitute one of those cases.

Sincerely,



Robert F. Bauer
B. Holly Schadler
Counsel for Respondents

BHS:dma

24043522760

Representative
Nita M. Lowey
Joins the People of
Throggs Neck in
Celebrating 350 Years
of Progress



A NEW KIND OF LEADERSHIP
*"The Commitment to Fight for
Change...the Energy to get Results"*

9 4 0 4 3 5 2 2 7 6 1

Congratulations, Throggs Neck

350 Years Calls for Celebration!



I am looking forward to the opportunity to serve you as part of the new Seventh Congressional District. Please don't hesitate to call or visit my office to get acquainted and I'll see you at the celebration.

Thomas J. Manton
Member of Congress
46-12 Queens Boulevard
Sunnyside, New York 11104
(718) 706-1400

9 4 0 4 3 5 2 2 7 6 2

Congratulations

& Continued
Success
to Throggs Neck
on Your

350th Anniversary

Throggs Neck has been an important and distinguished part of The Bronx throughout the years. It is a community that has fought proudly to maintain the quality of life and protect its unique residential character. Yet its diversity of people, parks and places of interest all combine to make it one of the leading neighborhoods in all of New York City.

Throggs Neck has added much to the positive growth of the Bronx and has been a shining example for other communities to follow. It is with great pride and respect that I congratulate and salute Throggs Neck on its 350th anniversary.



Fernando Ferrer

Bronx Borough
President

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250th ANNIVERSARY

Throggs Neck

1642-1992

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Best Wishes and Congratulations

ROBERT T. JOHNSON

District Attorney, Bronx County

Best Wishes

to the
Throggs Neck Community
as you Celebrate the
350th Anniversary of your
founding and the
Throggs Neck
Home Owners Association
on its 40th Anniversary of
Safeguarding and Caring
for the Community.



Senator Guy J. Veleva

34th Senatorial District
2019 Williamsbridge Road
(212) 792-7180

9 4 0 4 3 5 2 2 7 6 5

OF XPSA WATER

Bacio Caffè
4108 East Tremont Avenue
829-0941

Nunzio Castaldo and his family have owned and managed the Bacio Caffè since 1976. The caffè serves up coffee, tea, hot chocolate and excellent cappuccino. While you're sipping your choice of beverage, try a piece of their delicious cake. For our Italian speaking residents and Italian movie buffs, Bacio rents a wide range of Italian movies. In fact, the largest selection in the Bronx. The Castaldo family have been Throggs Neck residents since 1969. They just love the neighborhood. It reminds them of their town in Italy, where all the people know and care about each other.



Tremont Bakery
3551 East Tremont Avenue
863-2675

Tremont Bakery offers a mouth-watering selection of breads, rolls, cake, Italian pastries and luscious cakes. The popular bakery is always busy especially on Sunday morning when every one lines up to purchase a special breakfast treat. Owner Anthony Scala and his staff greet you with a smile as you enter the heaven-scented establishment. One of their rolls or a piece of pastry, along with a cup of coffee is sheer ambrosia. Their landmark bakery is ready to serve all of your bakery needs. Visit Anthony and taste a bit of Throggs Neck's history.

Vinnie's Pizza
3205 Philip Avenue
829-1710

One of Philip Avenue's special spots is Vinnie's Pizza which offers quality, fast service and consistency. Only at this location for nine months, owner Vincent Leo is already making a name for himself with his exotic pies and his new bacon pan pizza. Another specialty is Vinnie's mini pies which are favorites of the local populace. Stop by and enjoy a fresh slice of Italian heaven at Vinnie's and look for his summer specials.



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THROGGS NECK

350 Years Old and Still Strong!

Congratulations to the Throggs Neck Home Owners Association for four decades of work on behalf of the community.



It has been an honor and a privilege to serve as your representative.

Congressman Eliot L. Engel
19th Congressional District

A&A ALUMINUM AWNING INC.

Manufacturers of Aluminum Awnings

• Carports • Patios

Congratulations,
Throggs Neck
and
Happy 350th
Birthday!

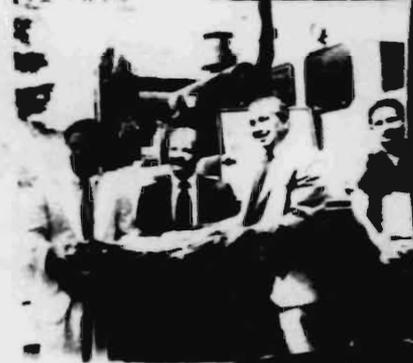
(212) 824-4800
(212) 824-7900

Alex Mandara

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350
YEARS AGO
Throggs Necks'
original settlers
realized this was a
special area. Now three
and a half centuries
later, we are still proving
them right.



Congratulations to the
Throggs Neck Home
Owners Association on
40 Years of Community
Service.



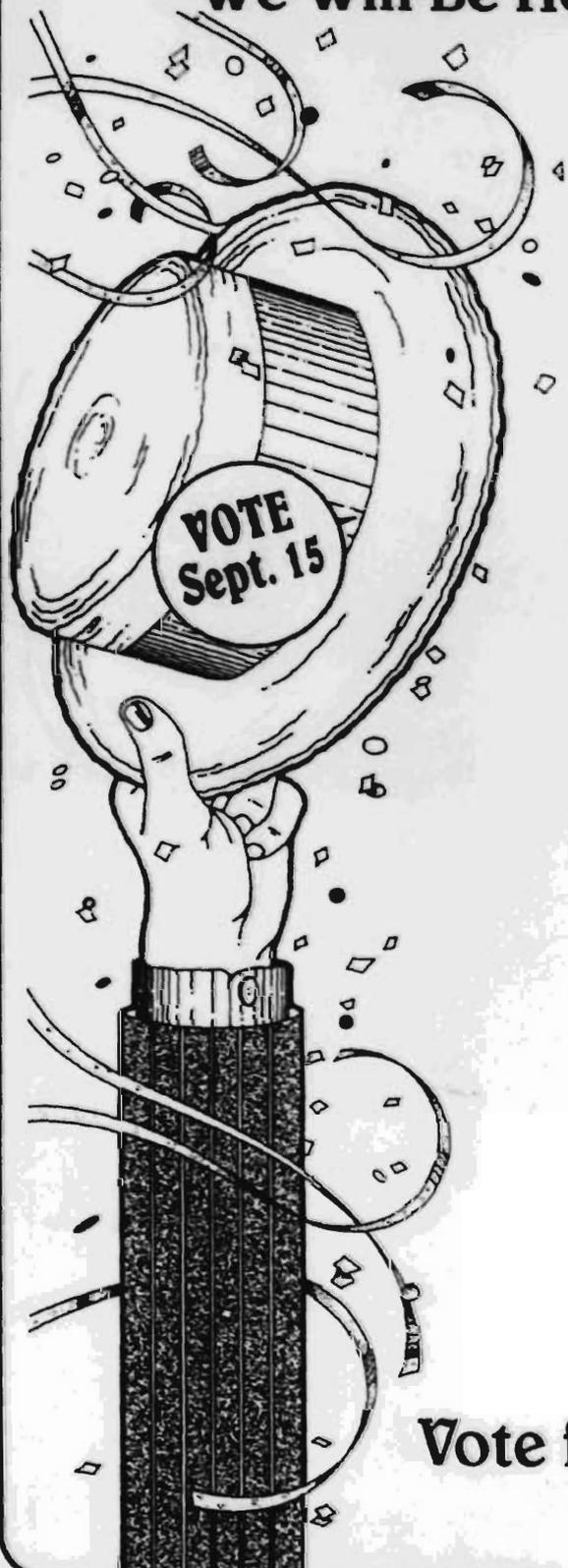
Your Councilman,
Michael DeMarco
80 Westchester Sq.
Bronx, NY 10461
(212) 931-6063



Chippewa Democratic Club

"We Will Be Heard" Campaign

SEPTEMBER 15th PRIMARY SLATE



Members of the State Committee:

**JOHN COLLAZZI
EILEEN FONTI**

Delegates to the Judicial Convention:

**Michael DeMarco
Michael J. Walsh
Mary E. Lana
James Cerasoli
Charles Carrocetto
Edward G. Killeen
Kathleen A. Teighe
Irene F. Sullivan
James Vacca
Patricia A. Nonnon
Peter A. Macchiaroli
Anthony Cacciopoli
Louis Tuzzio
Ann Reilly
Steven Montaldo
Deborah A. O'Gara**

Vote for Our Community! September 15

94043522768



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEBRUARY 22, 1994

B. Holly Schadler, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, DC 20005-2011

RE: MUR 3616
Nita Lowey for Congress and
Aaron Eidelman, as treasurer

Dear Ms. Schadler:

We are in receipt of your letter dated February 16, 1994, in which you challenge our second request for copies of certain candidate generated communications. It is in part because of the misunderstanding arising from the responses to the complaint concerning the source of the Bronx Times Reporter ad that the Commission found reason to believe the committee failed to report certain candidate disbursements.

In an effort to investigate the underlying basis for the Commission's finding, this Office has sought copies of all other similar candidate ads prior to resolution of the matter. When making the initial request regarding the candidate ads, this Office had no indication that the request would prove so expansive. Consequently, to address your concerns, we now request only copies of all ads paid for by the candidate containing her name or likeness and the campaign slogan "A NEW KIND OF LEADERSHIP" (with or without the tag line "The Commitment to Fight for Change... the Energy to get Results").

Please produce the requested information within five days of receipt of this letter. If you do not intend to produce the requested information, please inform me of this immediately upon receipt.

Sincerely,


Jose M. Rodriguez
Attorney

94043522769



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MARCH 1, 1994

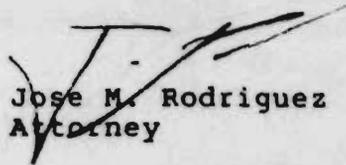
B. Holly Schadler, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 3616
Nita Lowey for Congress and
Aaron Eidelman, as treasurer

Dear Ms. Schadler:

This letter confirms that this Office has granted your client an extension until March 9, 1994 in which to respond to our request of February 22, 1994. Accordingly, your client's response is due by the close of business on March 9, 1994.

Sincerely,


Jose M. Rodriguez
Attorney

94043522770

OGC 450

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

FEDERAL ELECTION COMMISSION
RECEIVED
94-NMR-9 PH 4:44

March 9, 1994

Mr. Jose M. Rodriguez
Federal Election Commission
Office of General Counsel
999 E Street, NW, 6th Floor
Washington, DC 20463

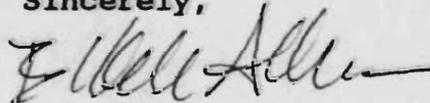
Re: MUR 3616

Dear Mr. Rodriguez:

This is a response to your letter dated February 22, 1994, requesting copies of all advertisements paid for by the candidate, Congresswoman Nita Lowey, containing her name or likeness and the campaign slogan "A NEW KIND OF LEADERSHIP" (with or without the tag line "The Commitment to Fight for Change ... the Energy to get Results").

In accordance with this request, Congresswoman Lowey conducted a thorough review to determine whether there were any ads paid for by her fitting this description. She went through her files and personal checkbook for the relevant period. She determined that there were approximately 16 instances where personal checks were given for purposes of purchasing ads in journals or newspapers. Because she did not maintain a file of ads paid for with personal funds, a request was made from each of the relevant organizations for a copy of the ad. Copies of the ads were received over the last two weeks. None of the ads received contain the campaign slogan.

Upon your instructions, I have not included copies of the ads with this letter. They are, however, available for your review. If you have any questions, please call me at (202) 434-1634.

Sincerely,

B. Holly Schadler
Counsel to Respondents

BHS:dma

[11874-0001:DA940400.012]

94043522771

092 711

PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

March 30, 1994

Mr. Jose Rodriguez
Federal Election Commission
Office of General Counsel
999 E Street, NW, 6th Floor
Washington, DC 20463

94 MAR 30 AM 10:34
FEDERAL ELECTION COMMISSION

Re: MUR 3616

Dear Mr. Rodriguez:

Pursuant to our telephone conversation, I am enclosing copies of the following advertisements, paid for by Representative Nita M. Lowey:

- Jr. Miss Rosebud Cotillion
- YM-YWHA of Southern Westchester Program Guide
- Midchester Jewish Center
- Legal Awareness of Westchester, Inc. - A United Way Agency
- Fleetwood Synagogue
- Queens Tribune
- The Jewish Chronicle
- 23rd Annual Dinner Dance for The Renaissance Project
- Westchester Choral Society/Gala 50th Anniversary Concert
- The New Orchestra of Westchester
- Westchester Association of Retarded Citizens
- Construction News
- The Jewish Chronicle

As you can see, none of the advertisements contain the campaign motto. Representative Lowey's staff has repeatedly requested but not yet received copies of three other advertisements paid for with personal funds. These are:

- Westchester Irish Committee
- Calabria Society
- Antonia Meucci Lodge

[11:874-0001/DA940820.057]

94043522772

Mr. Jose Rodriguez
March 30, 1994
Page 2

We have no reason to believe that these advertisements contain the campaign motto, and indeed, believe they do not.

We are submitting the enclosed advertisements to the Commission for its review solely for purposes of addressing the issues raised in this matter.

If you have any questions, please call me at (202) 434-1634.

Sincerely,

B. Holly Schadler/dma

B. Holly Schadler
Counsel to Respondents

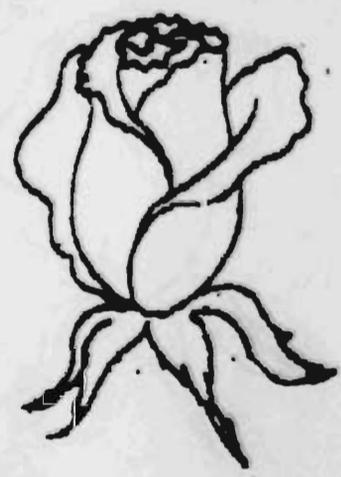
BHS:dma

Attachments

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CK #265
100 = 8600 table
1100 ad

Jr. Miss Rosebud Cotillion



at

Fountainhead
55 Quaker Ridge Road
New Rochelle, N.Y.

Friday
May 29, 1992

Benefit
Mount Vernon Neighborhood Health Center

9404352277.4

94 MAY 29 1992

Congratulations and Best Wishes to
The
Junior Rosebud Debutants



Nita Lowey

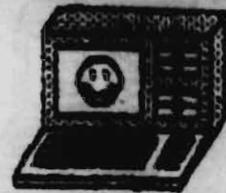
"Under the outstanding leadership of Carol Morris, Chief Executive Officer and David Ford, Board Chairman, the Mount Vernon Neighborhood Health Center has become a symbol of excellence in community health. Serving the health care needs of thousands of Southern Westchester residents, I am proud to be associated with this fine facility."

94043522775



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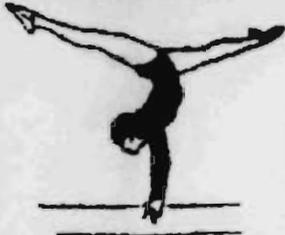
CK # 276
July 21, 1992



COMPUTER CLASSES

YM-YWHA of
Southern
Westchester

Program Guide 1992-93



GYMNASTICS

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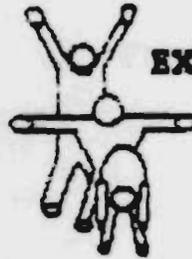
SECOND
HOME



KARATE



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EXERCISE

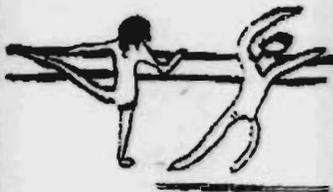
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DISCUSSION GROUPS DISCUSS
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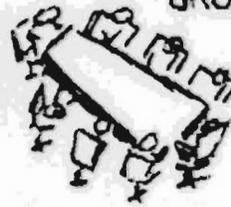
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BALLET



DISCUSSION
GROUPS



YIDDISH CLUB



ART CLASSES

Best Wishes

Judge & Mrs. Sam Eisenberg

Our Deep Appreciation
of the Outstanding Support
of the Jewish Community

Many thanks.

Marilyn & Dan Perlman

24043529
777



Congratulations and Best Wishes
to the
Southern Westchester YM/YWHA
on your
83rd Anniversary

"Southern Westchester YM/YWHA's outstanding programs continue to enhance the lives of many citizens in our community. Through the commitment, service and dedication of dozens of volunteers and staff the "Y" is a 'home away from home,' a special place where the community is able to come together to help one another. I am proud to be associated with them and all who participate in its programs."

NITA M. LOWEY
Member of Congress

CK #292 9/21/92

To My Dear Friends at
The Midchester Jewish Center

Best Wishes On This Joyous Occasion

U.S. Representative

Nita M. Lowey

18th Congressional District

*Best Wishes for A Happy New Year to
All Our Midchester Friends*

**MONT
PARNASSE**



824 Central Avenue
Scarsdale, NY 10583
914-723-1899

Carefully Prepared Food
Very Affordable Prices

Open Everyday
Party Catering

24043522778

LAW meeting

DEC 21, 1988

THE NEW YORK TIMES, SUNDAY, JULY 16, 1989

Legal Guidance For Facing Divorce

THE SCARSDALE INQUIRER/FRIDAY, JANUARY 12, 1990/PAGE 21

LAW slates

Ira Garr, a lawyer, will speak on "The Divorce Revolution: Winners and Losers" at the Women's Legal Clinic of Westchester, sponsored by LAW - Legal Awareness of Westchester, on Tuesday, Jan. 16, at 7:30 p.m. at the YWCA, 515 North St., White Plains (the snow date is Jan. 30).

Gannett Westchester

LAW seminar will separate fact from fantasy

Attorney Albert J. Emanuel will discuss "Separating Fact from Fantasy in Divorce" at the Women's Legal Clinic of Westchester, sponsored by Legal Awareness of Westchester, on Tuesday, Jan. 20, at 7:30 p.m. at the YWCA, 515 North St., White Plains.

Gannett Westchester Newspapers/Monday, Apr 2, 1990

LAW seminar to focus on people over 55

Legal Awareness of Westchester will sponsor two divorce clinics and an ELDERLAW seminar focusing on the concerns of persons over age 55. Attorney Howard Boldrick will discuss "Who Decides a Divorce" - Judge, Lawyer or Client at the Women's Legal Clinic of Westchester on Tuesday, April 18 at 7:30 p.m. at the YWCA, 515 North St., White Plains.

DLB

LAW

LEGAL AWARENESS OF WESTCHESTER, INC.

1992

A UNITED WAY AGENCY

Distribution of marital assets focus of June 9 LAW seminar

May Eve Epstein will discuss "Distribution of Marital Assets" at a seminar at Lunchtime, a mini-workshop sponsored by Legal Awareness of Westchester County Office for Women and the County Office for Women's News. The seminar will be held from 12:30 p.m. to 1:30 p.m. at the County Office for Women, 100 West Broadway, White Plains, N.Y. 10604. The seminar is free of charge. For more information, call (914) 941-1111.

L.A.W. Changes Its Name but Not Its Mission

Legal Awareness for Westchester (L.A.W.) has officially changed its name to Legal Awareness of Westchester. The change reflects the fact that L.A.W. offers services to both men and women, explains H. Carnie Lawson, new president of the organization. He adds that the change does not affect any of the programs or services of the non-profit agency, which disseminates information on NYS Domestic Relations Law, child custody, child support and other issues related to family law. The change was recently begun.

LAW schedules January events

Legal Awareness of Westchester (LAW) will sponsor three public events this month. LAW's Women's Legal Clinic will be held on Tuesday, January 9, at 7:30 p.m. at the YWCA, 515 North St., White Plains. The seminar will be held on Thursday, January 11, 1990, at 7:30 p.m. at the YWCA, 515 North St., White Plains.

and tax laws

Two discussions of marital and tax laws will be conducted by the Women's Legal Clinic of Westchester, sponsored by Legal Awareness of Westchester, on Tuesday, January 23, at 7:30 p.m. at the YWCA, 515 North St., White Plains. The first discussion will be on "Divorce and Tax" and the second will be on "Marital and Tax Laws".

LAW unit to discuss state's divorce law

Attorney Minna J. Edelman will discuss "How to Make the NYS Divorce Law Work For You" during a seminar at Lunchtime, sponsored by Legal Awareness of Westchester County Office for Women and the County Office for Women's News. The seminar will be held from 12:30 p.m. to 1:30 p.m. at the County Office for Women, 100 West Broadway, White Plains, N.Y. 10604. The seminar is free of charge. For more information, call (914) 941-1111.

Gannett Westchester Newspapers/Saturday, May 30, 1987

The New York Times available every day at 2 p.m. at the County Office for Women, 100 West Broadway, White Plains, N.Y. 10604.

domestic violence a crime after a husband's death in

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FAMES

may Eve Epstein will discuss "Distribution of Marital Assets" at a seminar at Lunchtime, a mini-workshop sponsored by Legal Awareness of Westchester County Office for Women and the County Office for Women's News. The seminar will be held from 12:30 p.m. to 1:30 p.m. at the County Office for Women, 100 West Broadway, White Plains, N.Y. 10604. The seminar is free of charge. For more information, call (914) 941-1111.

Women's News

March 1989

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The LAW At Lunchtime clinic will not be held because of the Dia-



*"Legal Awareness of Westchester:
Advocate for the Rights of the People of Westchester
and Stalwart Defender of American Liberties"*

*Congratulations
and Deepest Appreciation
For Your Service and Dedication*

CONGRESSWOMAN NITA M. LOWEY

MAR 03 1992

CK #271 7/21/92

FLEETWOOD SYNAGOGUE



י"ג

Testimonial Dinner Dance

Guests of Honor

Dr. and Mrs. Richard Rosen

With a Special Tribute to

Rabbi and Mrs. Joseph Chait

JUNE 14, 1992

15 SIVAN 5752

94043522781

In loving memory of AL FELDMAN
our Beloved Husband, Father & Grandfather

Our best wishes to
Rabbi and Toby
who were always there when we needed them.
We will always cherish your friendship.

To Edith & Stanley Levine
for their loyal and devoted friendship

Ruth Feldman
Susan, Len, David, and Richard Muniak
Gerald, Madeline, Amy and Jill Feldman

Congratulations and Best Wishes to
Rabbi and Mrs. Chait
and
Dr. Richard and Phyllis Rosen

*"The commitment, service, and dedication that you
have provided are a shining symbol of what makes
Fleetwood Synagogue a very special place. Mount
Vernon has been fortunate to be associated with
Rabbi and Mrs. Chait, you will be truly missed."*

Nita M. Lowey
Member of Congress

94043522782

9-3-92 ad
Queens Tribune
CK #444

*"I salute the working men
and women of America"*

Best Wishes

U.S. Representative Nita M. Lowey

Labor Day 1992

APR 25 1992

THE JEWISH CHRONICLE
(Serving Southern Westchester)
504 North Broadway
Yonkers, New York 10701
(914) 423-6008

7, Check made 4/12

Edo. Hov. Nita Lowey
235 Mamaroneck Ave.
Suite 105
White Plains, N.Y. 10625

THE JEWISH CHRONICLE
BILL IS DUB UPON RECEIPT

Passover 1992	\$	65.00
	\$	
	\$	
	\$	
TOTAL	\$	65.00

Please make checks payable to:
THE JEWISH CHRONICLE

A Kosher and Joyful Pesach

Dr. and Mrs. Rubin Silvern

Dr. and Mrs. Jeffrey Lasser
Michael, Jonathan, and Daniel

Sari Silvern
Aaron and Corie

Mr. and Mrs. David Silvern
Dov Silvern

Mr. and Mrs. Robert Siper
Adam and Mathew

A Very Happy and Healthy Passover

From

Congresswoman

Nita M. Lowey

And

Family

9 4 0 4 3 5 2 2 7 8 4

Kat 221 March 9, 1992
\$100

23rd ANNUAL DINNER DANCE

sponsored by the
Friends and Parents Association of



94043522785

THE RENAISSANCE PROJECT

NEW ROCHELLE, NY

FRIDAY, APRIL 10, 1992

Congratulations and Best Wishes

to

The Renaissance Project

for Twenty-four Years of
Service, Dedication, and Commitment
to Bringing Hope and Opportunity
Through Effective Drug Treatment Services
Throughout Westchester



"Only by working together can we respond to the compelling need for effective drug treatment. Westchester County is very fortunate to have the Renaissance Project helping meet that need. I look forward to continuing to work together to achieve a drug free society."

Nita M. Lowey

MEMBER OF CONGRESS
20th CONGRESSIONAL DISTRICT

9 4 0 4 3 5 2 2 7 8 6

WESTCHESTER
CHORAL
SOCIETY

Lyndon Woodside
Musical Director

VIVA Verdi

Lyndon Woodside, Conductor

with

The New Orchestra of Westchester

DEBORAH VOIGT, Soprano

VAHAN KHANZADIAN, Tenor

DIANE CURRY, Mezzo-soprano

TERRY COOK, Bass-baritone

PAUL LUSTIG DUNKEL, Flutist

GEORGE JELLINEK, Honorary Host

—PROGRAM—

"Anvil Chorus"from *Il Trovatore*
Featuring Karl Fischer, Westchester Blacksmith

"Va Pensiero"from *Nabucco*

"Introduction, Theme, Variations and Grand Wrap-Up on
Verdi's 'Caro Nome' "(world premier)Dunkel
Paul Lustig Dunkel, soloist

"Gloria all'Egitto"from *Aida*

—INTERMISSION—

"MESSA DI REQUIEM"

- | | |
|---------------------|-----------------|
| I. REQUIEM ET KYRIE | IV. SANCTUS |
| II. DIES IRAE | V. AGNUS DEI |
| III. DOMINE JESU | VI. LUX AETERNA |
| VII. LIBERAME | |

9 4 0 4 3 5 2 2 7 8 7

G A L L A

50th

ANNIVERSARY

CONCERT

Saturday
May 16, 1992
at 8:00 pm

Theater A
The Performing Arts Center
at SUNY Purchase

*This concert is made possible in part with assistance from the New York State Council on the Arts and the Westchester Arts Fund of the Council for the Arts in Westchester, Inc., supported by corporate contributions and the County of Westchester.

TEL: 840-6440
FAX: (800) 881-7200

LIPSEY, GOODKIN & Co., P.C.
CERTIFIED PUBLIC ACCOUNTANTS

180 WEST 45TH STREET
NEW YORK, N.Y. 10006

CONGRATULATIONS ON 50 YEARS OF
SERVICE TO THE COMMUNITY

CONGRATULATIONS AND BEST WISHES
TO THE
WESTCHESTER CHORAL SOCIETY
FOR
50 YEARS OF BEAUTIFUL MUSIC

NITA M. LOWEY
Member of Congress
20th Congressional District

9 4 0 4 3 5 2 2 7 8 8



Investment & Financial Planning Services

**GARY GOLDBERG
& COMPANY, INC.**

75 Montebello Road
Suffern, NY 10901

- Individual Retirement Accounts
- Tax Preparation/Planning
- Retirement Planning
- Insurance & Estate Planning
- Educational Planning
- Mutual Funds/Government Securities
- Full Brokerage Services

For a free investment consultation please call: 1-800-433-0323

Member NASD & SIPC

CR-261 6/12/42 510c

The New Orchestra of Westchester
Welcomes You To
The Ninth Season Anniversary Gala.

Cafe Society
on the town with
Cab Calloway



Honoring

Cab Calloway
Legendary Entertainer

and

Andrew P. O'Rourke
Westchester County Executive

Recipients of the 1992 Angel Award

Paul Lustig Dunkel
Conductor

Cris Annes, Barbara Dunkel
Benefit Co-Chairs

Monday, June 15, 1992

6:30 pm

Performing Arts Center, SUNY Purchase

9 4 0 4 3 5 2 2 7 8 9

Original design by John Nordland

24043522790



*Congratulations and Best Wishes to the
New Orchestra of Westchester
and its
1992 Angel Award Recipients
Cab Calloway
and
Honorable Andrew P. O'Rourke*

"The New Orchestra of Westchester continues to provide Westchester with outstanding cultural opportunities featuring legendary talents such as Cab Calloway. I am proud to be associated with this tremendous organization whose performances have brought exciting and enriching programs to thousands throughout Westchester."

Nita M. Lowey
Member of Congress
20th Congressional District

Congratulations and best wishes to
Westchester Association of Retarded Citizens
and
Kay and Ed Nadel
CK #283 9/20/92
#1050

Westchester ARC continues to provide the developmentally disabled of Westchester, both young and old, with the opportunity to achieve their goals and fulfill their dreams. I am very proud to be associated with this wonderful organization and to join you in recognizing the special dedication, commitment and service of Ed and Kay Nadel.

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NITA LOWEY
MEMBER OF CONGRESS

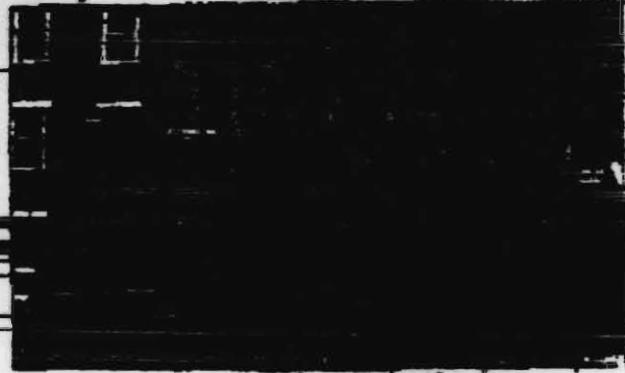


Brothers and Sisters:
 I salute you as we
 celebrate Labor Day 1992.
 Together we are building
 a better Westchester.



Representative
Nita M. Lowey

Hey Southern New York!



We will deliver diesel
 fuel, gasoline, kerosene,
 and all lubricants right
 to your job site or yard!



122 N. Broad St.
 Rockville, NY 10844
 914-737-2000
 914-736-1868 Fax



1 N. Sandford Blvd.
 Mt. Vernon, NY 10560
 914-736-4000
 Fax 914-736-6078

PEOPLE

**Signorelli & Team Sweep
 Elections at Engineers L.U. 187**

SARASOTT MANOR, NY— Nicholas Signorelli was overwhelmingly re-elected as business manager of the International Union of Operating Engineers Local 187 A.S. C & R. The Local Union, which held elections on Aug. 27, has jurisdiction over the counties of Westchester, Putnam and Dutchess. The vote was 800 to 0.

In addition to Mr. Signorelli's re-election, the unionists also re-elected the present administration to a three-year term. The administration includes Louis Varticovski as president and business representative, Nicholas Russo as vice president, Daniel Polidano as recording corresponding secretary and business representative, Thomas Pizzarello as treasurer, Michael Brown as financial secretary and business representative and Ed Szymanski as Pension Fund administrator and executive board member.

Mr. Signorelli served as business manager for the past 11 months, succeeding Charles Mann. He has previously held the same position when elected last September. Mr. Signorelli joined the Local Union in 1955.

Among the planks of the campaign were extended health care benefits, extended unemployment benefits, a plan to allow members to tap early access to their quarterly funds and the Union's campaign to collect welfare and pension monies owed the Pension Fund by employers.

AT YOUR SERVICE

Our Pavement Products
 and
 13 Years Experience.

We Feature
 OASPA-403
 2-1/2" Mix
 OAS 500
 Porosity Factor

Fast
 Installation
 Reduced
 O&M Costs

FAST
 CLEAN
 ECONOMICAL

We are ready to serve you.
 Call for information on Request or visit please



70, Sun Hill
 170 Route 204
 Randolph, N.Y. 10964

Contact Don Rodolici Phone: 914-823-2922

**GRANITE
 PRODUCTS**

Including Curbing, Cobble
 Stones, Pavers, Steps,
 Kitchen Counters, Granite
 Building Stones. Available
 From

THUNDER GRANITE COMPANY

Box 144
 Barra, VT 05641

Telephone 1-800-447-8823
 FAX 1-802-476-8888

94043522792

CK #449 (State Nita)
9/20/92

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from
CONGRESSWOMAN

Nita M. Lowey

And
Family

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BEFORE THE FEDERAL ELECTION COMMISSION ~~with~~ 9 02 AM '94

In the Matter of)
)
Nita Lowey for Congress and) MUR 3616
Aaron Eidelman, as treasurer)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was generated from a complaint filed with the Federal Election Commission ("Commission") by Sandra M. Monterio alleging, inter alia, that Representative Nita M. Lowey and her principal campaign committee Nita Lowey for Congress and Aaron Eidelman, as treasurer, ("Committee") violated 2 U.S.C. § 441d by failing to include disclaimers on separate communications disseminated by each. The complaint alleged in part that the candidate failed to provide disclaimers for two ads the candidate paid for in local newspapers and one ad the candidate paid for in a club newsletter.

Because none of these ads was found to have expressly advocated Representative Lowey's election or to have solicited contributions for her campaign, the Commission did not find reason to believe that the candidate violated 2 U.S.C. § 441d, and subsequently closed the file as to her.¹ The Commission did determine, however, that because one of the ads (appearing

1. The Commission specifically found no reason to believe the candidate violated 2 U.S.C. § 441d as concerned two of the ads at issue (the Whitestone Times and the Italian City Club Journal ads). However, the Commission was unable to decide whether the remaining ad (the Bronx Times Reporter ad) required a disclaimer. Statements of Reasons are required for this vote.

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in the Bronx Times Reporter) contained what appeared to be the campaign slogan, and thus may have been for the purpose of influencing federal elections, the costs associated with the ad were a reportable in-kind contribution by the candidate. This finding was premised on counsel's representation in response to the complaint that the ad had been paid for by the candidate. Thus, on October 19, 1993, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434(b)(2)(B).

The complaint also alleged that the Committee failed to provide for an appropriate disclaimer on mailed invitations to Representative Lowey's candidacy announcement events. On the same date the Commission also found reason to believe that the Committee violated 2 U.S.C. § 441d(a) in connection with the mailed invitations.²

Through initial discovery requests and follow-up requests, this Office sought from the candidate, inter alia, information concerning the dissemination of, and the costs associated with, the Bronx Times Reporter ad, and copies of any other similar ads placed in publications by the candidate. See Attachment 1, at 5-8. This Office also sought information from the Committee concerning the dissemination of, and the costs associated with, the Committee's candidacy announcement invitations, and other instances of similar mailings. See Id. at 1-4. Last, this

2. On December 7, 1993, the newly constituted Commission revoked the findings concerning reason to believe in this matter.

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Office sought clarification of the slogan or slogans used by Representative Lowey in her 1992 bid for office.

II. ANALYSIS

A. Candidate Ad

As noted, in response to the complaint in this matter, counsel represented that the candidate had paid for the Bronx Times Reporter ad. The discovery responses, however, clarify that although the Bronx Times Reporter ad did include the campaign slogan, the costs for the ad were not paid for by the candidate as originally represented, but rather by the Committee. See Attachment 2, at 1 and 3. Therefore, the candidate did not make a contribution in connection with this ad, and consequently the Committee did not have to report the associated costs as a contribution. The Committee was only required to report the expenditures for the ad as disbursements, which the Committee did in its disclosure reports. See Id. at 5.

The responses also establish that no other similar ads (containing the candidate's name or likeness and the campaign slogan) were placed in any publications by the candidate personally. Although Representative Lowey did on numerous occasions pay for ads in publications, none of these ads contained the campaign slogan. See Attachment 4. This Office does not recommend pursuing these ads.

Additionally, despite the changed circumstances concerning who paid for the Bronx Times Reporter ad, because the Commission could not agree at the reason to believe stage that the

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combination of the ad's inclusion of the campaign slogan and dissemination in close proximity to the election sufficed to "expressly advocate" Representative Lowey's election, this Office does not make any recommendations concerning this disclaimer issue.

B. Committee Communication

As noted, the Commission found reason to believe the Committee violated Section 441d(a) by failing to include a disclaimer on certain mailed candidacy announcement day invitations paid for and distributed by the Committee. In response to the complaint, the Committee argued that because the communication neither solicited funds for the campaign nor expressly advocated the candidate's election, a disclaimer was not required. The Committee now tacitly concedes that the communication required a disclaimer, and explains that the disclaimer was left off the communication due to printer error. See Attachment 2, at 1-2 and 6-9. The Committee further explains that during the mailing process the omission was discovered and corrected. All invitations mailed subsequent to discovery of the omission were hand-stamped with the required disclaimer; consequently, only a portion of the total 6,000 invitations distributed failed to include the disclaimer. See Id. at 2. The response also establishes that the total cost associated with the production and mailing of this invitation

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is \$1,942,³ and that no other candidacy announcement day invitations were disseminated. See Id. at 16 and 18-20. Where the Committee was able to review the communication prior to mailing, the fact that the omission resulted from printer error does not excuse the violation. On the other hand, the de minimis nature of this violation and the remedial action taken strongly points for the Commission's exercise of its prosecutorial discretion.

As discussed, this Office's recommendations, and the Commission's findings, were in large part based on representations and arguments in Respondents' November 3, 1992 response to the complaint, a submission apparently made in haste during the last days of the election campaign. Now that counsel has clarified the underlying circumstances, and in light of the remedial action taken, this Office does not believe that this matter merits further expenditure of Commission resources. Consequently, the General Counsel's Office recommends that the Commission take no further action in this matter, close the file and send an admonishment letter to the Committee concerning the the failure to provide a disclaimer on all mailed candidacy announcement day invitations.

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3. Although the Committee's written response states that the production costs for the invitation totaled \$685, the invoices from the printer establish that the total costs for all 6,000 pieces totaled \$1,217. Added to the \$725 postage cost, the total cost for the piece is \$1,924.

III. RECOMMENDATIONS

- 1. Take no further action against Nita Lowey for Congress and Aaron Eidelman, as treasurer.
- 2. Close the file.
- 3. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

5/11/94
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachments

- 1. Interrogatories and Requests for Production of Documents.
- 2. Response dated February 1, 1994.
- 3. Response dated February 16, 1994.
- 4. Response dated March 30, 1994.

Staff assigned: Jose M. Rodriguez

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Nita Lowey for Congress and) MUR 3616
Aaron Eidelman, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 13, 1994, the Commission decided by a vote of 5-0 to take the following actions in MUR 3616:

1. Take no further action against Nita Lowey for Congress and Aaron Eidelman, as treasurer.
2. Close the file.
3. Approve the appropriate letter, as recommended in the General Counsel's Report dated May 11, 1994.

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

Attest:

5-13-94
Date

Delores Hardy
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thurs., May 12, 1994 9:02 a.m.
Circulated to the Commission: Thurs., May 12, 1994 11:00 a.m.
Deadline for vote: Fri., May 13, 1994 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 16, 1994

B. Holly Schadler, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

RE: MUR 3616
Representative Nita M. Lowey
Nita Lowey for Congress and
Aaron Eidelman, as treasurer

Dear Ms. Schadler:

On December 27, 1993, you were notified that the Federal Election Commission ("Commission") found reason to believe that your clients Nita Lowey for Congress and Aaron Eidelman as treasurer, violated 2 U.S.C. §§ 434(b)(2)(B), 441d(a), and 434(a), and that the Commission decided to take no further action concerning the Section 434(a) violation. On the same date you were also notified that the Commission found no reason to believe your client Representative Nita M. Lowey violated 2 U.S.C. § 441d(a). Beginning on February 1, 1994, your clients submitted several responses to the Commission's reason to believe findings. After considering the circumstances of the matter, the Commission determined on May 13, 1994, to also take no further action against Nita Lowey for Congress and Aaron Eidelman, as treasurer, and closed the 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.

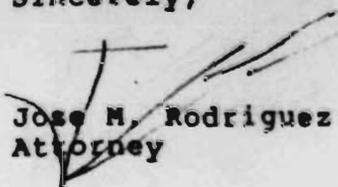
The Commission reminds your clients Nita Lowey for Congress and Aaron Eidelman, as treasurer, that failure to provide a disclaimer on communications exhorting election-related activity on behalf of a clearly identified candidate, such as the candidacy announcement event invitations in this matter, is a violation of 2 U.S.C. § 441d. Your clients should take steps to ensure that this activity does not occur in the future.

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MUR 3616
B. Holly Schadler, Esq.
Page 2

If you have any questions, please contact me at (202)
219-3690.

Sincerely,


Jose M. Rodriguez
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3616

DATE FILMED 6-2-94 CAMERA NO. 2

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

Microfilm
 Public Rcds
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THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3616.

6/17/94

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FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

CLOS

MAY 24, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sandra M. Monteiro
133 Crystal Street
Harrison, NY 10528

RE: MUR 3616

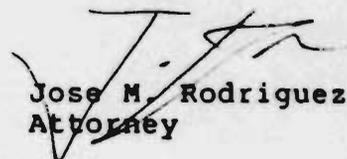
Dear Ms. Monteiro:

This is in reference to the complaint you filed with the Federal Election Commission on September 22, 1992, concerning Representative Nita M. Lowey and Nita Lowey for Congress and Aaron Eidelman, as treasurer ("Committee").

Based on that complaint, on December 7, 1993, the Commission found that there was reason to believe the Committee violated 2 U.S.C. §§ 434(b)(2)(B), 441d(a) and 434(a), and no reason to believe Representative Lowey violated 2 U.S.C. § 441d(a), provisions of the Federal Election Campaign Act of 1971, as amended. The Commission also decided to take no further action on the Section 434(b)(2)(B) violation and instituted an investigation into the other violations of this matter. However, after considering the circumstances of this matter, the Commission determined to take no further action against the Committee, and closed the file in this matter on May 13, 1994. 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,


Jose M. Rodriguez
Attorney

Enclosure
General Counsel's Report

94043544611



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

Microfilm
 Public Records
 Press

THE FOLLOWING DOCUMENTATION IS ADDED TO
THE PUBLIC RECORD IN CLOSED MUR 3616.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

MEMORANDUM

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

FROM: *YMC* MARJORIE W. EMMONS/MICHAEL C. KENNEY *Mc*
SECRETARY OF THE COMMISSION

DATE: August 3, 1994

SUBJECT: STATEMENT OF REASONS FOR MUR 3616

Attached is a copy of the Statement of Reasons in MUR 3616 signed by Commissioners McGarry and Thomas. This was received in the Commission Secretary's Office on August 2, 1994 at 4:54 p.m.

Attachment

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

In the Matter of)
)
Nita Lowey for Congress and) MUR 3616
Aaron Eidelman, as treasurer)

STATEMENT OF REASONS

COMMISSIONER SCOTT E. THOMAS
COMMISSIONER JOHN WARREN MCGARRY

One of the most important issues facing the Commission today is what constitutes "express advocacy." Matter Under Review ("MUR") 3616 presented the question of whether a paid newspaper advertisement featuring the candidate's photograph and a self-laudatory slogan being used in the candidate's campaign constituted express advocacy. Commissioners Potter, Aikens, and Elliott concluded that such an advertisement does not constitute express advocacy, and, accordingly, does not require a public disclaimer stating who paid for and authorized it. This plainly undermines the disclosure purposes of the Federal Election Campaign Act of 1971, as amended ("the Act").

Even more serious, however, is the threat which our colleagues' approach poses to the prohibitions and independent expenditure reporting requirements of the statute. Under the Act, corporations and labor organizations may not make expenditures in connection with federal campaigns. 2 U.S.C. §441b. In Federal Election Commission v. Massachusetts Citizens for Life, 479 U.S. 238 (1986) ("FEC v. MCFL"), however, the Supreme Court interpreted §441b to mean that expenditures for communications not coordinated with a candidate's campaign must constitute "express advocacy" in order to be subject to the §441b prohibition. As a result of FEC v. MCFL, independent corporate or labor union communications that do not contain express advocacy are allowed under the Act. By finding that even advertisements containing candidate campaign slogans do not meet their definition of express advocacy, Commissioners Potter, Aikens, and Elliott are opening a large loophole which will permit corporations and labor organizations to spend unlimited sums of soft money on federal candidates outside of the corporate prohibitions or reporting requirements of the law.

1. Persons making express advocacy communications independent of a candidate's campaign must disclose the costs of such activity. 2 U.S.C. §434(b)(5)(B)(iii) and (c).

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I.

The Act provides that whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through any type of general public advertising, such communication must contain a disclaimer explaining who was responsible for it. 2 U.S.C. §441d(a); 11 C.F.R. §110.11(a)(1). On September 22, 1992, Sandra M. Monterio ("the complainant") filed a complaint with the Federal Election Commission against Representative Nita M. Lowey and Nita Lowey for Congress and Aaron Eidelman, as treasurer, ("the Committee"). The complainant alleged, inter alia, that the "[candidate] or her committee bought newspaper advertising, but failed to state who paid for the ads, as required by law" in violation of §441d. Complaint at 1.

One of the ads referred to in the complaint involved an advertisement placed in the August, 1992 Bronx Times Reporter. The advertisement contained a large photograph of Representative Lowey. Above the photograph were the words "Representative Nita M. Lowey Joins the People of Throggs Neck in Celebrating 350 Years of Progress." Below the photograph in bold letters, was the caption, "A New Kind of Leadership." Below that was the Lowey Campaign slogan in italics:

"The Commitment to Fight for Change...the Energy to get Results."

See Attached advertisement. The advertisement was run the month before the September 15, 1992 primary election and a little more than 2 months before the November 3, 1992 general election.

The Office of General Counsel prepared a report for Commission consideration that contained a factual and legal analysis of the allegation presented in the complaint as well as a

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

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

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

(emphasis added).

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response to the complaint received from Representative Lowey and the Committee. The General Counsel's Report reached the legal conclusion that the Bronx Times Reporter advertisement constituted express advocacy. The Report found that "[t]he ad not only clearly promotes Ms. Lowey by including what appears to be the campaign's slogan, but does so concurrently with the beginning of the campaign and election season." General Counsel's Report at 9 (October 6, 1993). Accordingly, the General Counsel recommended that the Commission find reason to believe that Representative Lowey violated 2 U.S.C. §441d for failing to include the appropriate disclaimer.³

A motion to adopt the General Counsel's legal recommendation failed to secure the four affirmative votes necessary to make a reason to believe determination. 2 U.S.C. §437g(a)(2). Commissioners Thomas and McGarry supported the General Counsel's recommendation, and Commissioners Potter, Aikens⁴, and Elliott opposed the General Counsel's legal conclusion.

II.

The central issue in this matter is whether the advertisement in the Bronx Times Reporter expressly advocated the election of a federal candidate. If the advertisement contained express advocacy, the Act required the Committee to include a statement on the ad indicating whether the candidate's committee paid for and authorized the ad. After reviewing the applicable case law, the text of the advertisement, and the circumstances surrounding their

3. The response to the complaint indicated that the candidate had paid for the Bronx Times Reporter advertisement. Discovery responses made regarding other Commission findings (see n.4, infra), however, indicated conclusively that the costs for the advertisement were not paid for by the candidate as originally represented by counsel but by the candidate's committee. See General Counsel's Report at 3 (April 26, 1994).

4. By a vote of 5-0, the Commission agreed with the rest of the General Counsel's recommendations to (1) find reason to believe that Nita Lowey for Congress violated 2 U.S.C. §434(a), but take no further action; (2) find no reason to believe that Representative Lowey violated 2 U.S.C. §441d(a) in connection with the Whitestone Times and Italian City Club Journal ads; and (3) find reason to believe that Nita Lowey for Congress violated 2 U.S.C. §434(b)(2)(B) for failing to report an in-kind contribution from the candidate and §441(d)(a).

On May 13, 1994, the Commission approved the General Counsel's recommendation to take no further action and close the file in this matter.

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publication, we believe that the advertisement asks the general public to support and vote for a specific federal candidate. Accordingly, we voted to find reason to believe that the Committee violated 2 U.S.C. §441d for failing to include the appropriate public disclaimer in the advertisement.

A.

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

In creating the express advocacy standard, the Buckley Court sought to draw a distinction between issue advocacy and partisan advocacy focused on a clearly-identified candidate. Thus, the Court explained that the purpose of the express advocacy standard was to limit the application of the pertinent reporting provision to "spending that is unambiguously related to the campaign of a particular federal candidate." 424 U.S. at 80 (emphasis added). See also 424 U.S. at 81. (Under an express advocacy standard, the reporting requirements would "shed the light of publicity on spending that is unambiguously campaign related....") (emphasis added). The Court, however, provided no definition of what constituted "spending that is unambiguously related to the campaign of a particular federal candidate" or "unambiguously campaign related." The Court only indicated that express advocacy would include communications containing such obvious campaign related words or phrases as "'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" 424 U.S. at 44 n.52 and at 80 n.108.

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

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Similarly, in FEC v. Furgatch, 807 F.2d 857, 863 (9th Cir.), cert. denied, 484 U.S. 850 (1987), the Ninth Circuit concluded that a communication could constitute express advocacy even though it did not contain any of the catch phrases listed in Buckley, 424 U.S. at 44 n.52. The court held that the list in Buckley "does not exhaust the capacity of the English language to expressly advocate the election or defeat of a candidate." 807 F.2d at 863. The court found that "speech need not include any of the words listed in Buckley to be express advocacy under the Act." 807 F.2d at 864. The court further found that "'express advocacy' is not strictly limited to communications using certain key phrases." 807 F.2d at 862. The court pointed out that such a wooden and mechanical construction would invite and allow for the easy circumvention of the Act. 807 F.2d at 862.

Rather than rely on the inclusion or exclusion of certain "magic words" for determining whether a particular communication contained express advocacy, the Furgatch court concluded that for a communication "to be express advocacy under the Act...it must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate." 807 F.2d at 864. (emphasis added). In defining "express advocacy" under this standard, the court considered the following factors:

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

Furgatch, 807 F.2d at 864.

B.

We believe that the use of a candidate's campaign slogan in an advertisement under the circumstances at hand is clearly an appeal to voters to support and vote for that candidate and, as such, constitutes express advocacy. Campaign slogans contain a brief message which is meant to exhort and inspire the public to vote for or, in some cases, against a particular candidate. Indeed, campaign slogans can be among the most useful tools in a candidate's campaign. The candidate's campaign organization, for example, uses a campaign slogan to symbolize and illustrate their campaign to win voter support: "The function of a slogan is to sum up the [campaign's] theme in an appealing phrase that the

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voters will recognize and remember. Through repetition the slogan reinforces the theme and reminds voters what the candidate stands for and the campaign is about." Young, The American Dictionary of Campaigns and Elections, 131 (1987) (emphasis added). As such, slogans are greatly relied upon by candidates in their "everlasting quest for name recognition and voter approval." Sabato, The Rise of Political Consultants, 154 (1981) (emphasis added).

We have no doubt that the Bronx Times Reporter advertisement, featuring the candidate's name, picture, and campaign slogan and paid for by the candidate's campaign committee, is "unambiguously related to the campaign of a particular federal candidate." Buckley, 424 U.S. at 80. The use of the candidate's campaign slogan in an advertisement is a clear plea for voter support of the candidate. Indeed, the Supreme Court explicitly recognized this in Buckley when it found that express advocacy included communications containing such obvious campaign related words as the campaign slogan, "Smith for Congress." 424 U.S. at 44 n.52.

Moreover, we can see no other purpose for the Lowey campaign to pay for the advertisement than to encourage people to vote for Representative Lowey in the next election. There is none of the issue discussion present in this advertisement which so concerned the Court in Buckley and led to the development of the express advocacy standard. This advertisement was not tied, for example, to any legislation or lobbying effort. Nor was the ad taken out by some small, issue-advocacy organization which may have unwittingly crossed the line of express advocacy. Rather, the ad was taken out by the candidate's campaign committee in order to

5. Professor Sabato observes that the importance of campaign slogans in urging voters to support candidates is such that:

Occasionally entire campaigns have been built around slogans. John C. Danforth, in becoming the first Republican attorney general of Missouri in forty years in 1968, used the title of a well-remembered book his grandfather (the Chairman of Ralston-Purina Company) had written in the 1920's to challenge the youth of his day, "I Dare You!" The candidate started his speech and headed his literature with those three words, striking a consistent and positive note that drew attention to him -- no small feat in a presidential year for a contender for lesser statewide office.

Id. at 155 (emphasis added).

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urge people to re-elect Representative Lowey because she has, in the words of her campaign slogan, "The Commitment to Fight for Change. . .the Energy to get Results."⁶

As in Furgatch, "our conclusion is reinforced by consideration of the timing" of the advertisement. 807 F.2d at 865. The campaign's advertisement was published in the Bronx Times Reporter approximately one month before the September 15 primary and approximately two and a half months before the November general election. We believe that here, as in Furgatch, the timing of the campaign's advertisement leaves "no doubt of the action proposed." Id. (emphasis added).

In our opinion, the campaign's advertisement in the Bronx Times Reporter conveyed a message to the voting public that unmistakably urged the election of a clearly identified candidate for federal office and should have contained a §441d public disclaimer. Accordingly, we voted to find reason to believe that the candidate violated 2 U.S.C. §441d.

III.

The position taken by Commissioners Potter, Aikens and Elliott in this matter has far reaching ramifications. Our colleagues' narrow interpretation of "express advocacy" not only limits application of the §441d disclosure provision, supra, but strikes deeply at the core of the Act itself--the proscription against corporate and labor spending and the reporting requirements.

6. In addition to containing the candidate's picture and campaign slogan, the ad also extends congratulations to the "People of Throggs Neck" on "350 Years of Progress." We do not believe, however, that the inclusion of this congratulatory message somehow negates the express advocacy found in the candidate advertisement. It would be a strange rule of law to find that the inclusion of such a brief message on candidate material or literature would take a candidate advocacy piece outside the realm of express advocacy. Under such an approach, a candidate's Fourth of July advertisement which reads: "Vote for Smith for Congress! Happy Birthday America" would not be express advocacy. Clearly, Congress did not intend that §441d could be so easily circumvented.

7. The definition of express advocacy may also have a significant impact on the coordinated party expenditure limitation found at 2 U.S.C. §441a(d). In FEC v. Colorado Republican Federal Campaign Committee, 839 F.Supp. 1448 (D. Colo. 1993), notice of appeal filed by FEC, October 28, 1993), a district court found that in order for a coordinated expenditure to be considered "in connection with" the campaign of a candidate

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In FEC v. MCFL, supra, the Supreme Court interpreted the section 441b prohibitions to mean that expenditures for communications must constitute express advocacy to be subject to that section's prohibitions. Conversely, if a communication does not constitute express advocacy and is thus outside the Commission's jurisdiction, a corporation or labor organization may spend unlimited amounts of its treasury money to distribute the communication, and the costs of the communication would not be disclosed under the Act's reporting requirements.

As a result of FEC v. MCFL, independent corporate or labor union communications that do not contain express advocacy are allowed under the Act. Thus, how narrowly or broadly express advocacy is defined has a direct impact on how narrowly or broadly the prohibition on corporate or labor spending is defined. By defining express advocacy so narrowly as to exclude even communications containing candidate campaign slogans, Commissioners Potter, Aikens, and Elliott narrow the reach of the Act's prohibitions and broaden the ability of corporations and labor organizations to spend treasury monies directly on the federal election process.

Our colleagues reach this result by arguing that a communication does not constitute express advocacy unless it contains certain specific words or phrases of exhortation such as "support" or "vote for." In their opinion, the advertisement must explicitly request some action of the reader. See, e.g., Statement of Reasons, MUR 3678 at 3 (Commissioner Potter) ("Each of the three advertisements for which I was unable to find reason to believe fails to meet the requisite Furgatch requirement of an unmistakable and unambiguous plea for specific action.") (emphasis added). Perhaps our colleagues would have found express advocacy if the Bronx Times Reporter had added "Remember!" or "Think about it!" at the end of the campaign slogan.

We believe that our colleagues' approach fundamentally misreads and misunderstands the Furgatch decision. The Furgatch court did not rely exclusively on the presence or absence of specific words of exhortation to determine whether the communication at issue there constituted express advocacy. Rather, the court held that the test for express advocacy under the Act is that a communication "must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate." 807 F.2d at 864 (emphasis added). Courts are "not forced under this standard to ignore the

(Footnote 7 continued from previous page)
for federal office so as to be subject to the limitations of §441a(d), "express advocacy" by the state party committee must be demonstrated. The case is now on appeal with the United States Court of Appeals for the Tenth Circuit. (Nos. 93-1433 and 1434).

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plain meaning of campaign-related speech in a search for certain fixed indicators of 'express advocacy.'" Id. (emphasis added). Thus, the Furgatch court rejected appellee's argument that a communication contains express advocacy only if the communication contains certain words or phrases listed in Buckley -- an argument remarkably similar to the explicit exhortation test now urged by Commissioners Potter, Aikens, and Elliott.

Not only do our three colleagues misinterpret the Furgatch decision, but their definition of express advocacy squarely conflicts with the definition set forth in Buckley. Indeed, language which the Buckley Court specifically found to be express advocacy would not be considered as express advocacy under our colleagues' narrow definition. In Buckley, the Supreme Court specifically concluded that the slogan "Smith for Congress" constituted express advocacy and even listed the phrase as an example of express advocacy in its decision. See Buckley, 424 U.S. at 44 n.52. Applying our colleagues' definition, however, the phrase "Smith for Congress" would not constitute express advocacy since it does not contain an explicit plea for specific action; rather, the message would have to read something like "Vote for Smith for Congress" or "Support Smith for Congress" for our colleagues to find express advocacy. In finding that the simple slogan "Smith for Congress" was an example of express advocacy, the Supreme Court recognized that explicit words of exhortation or specific pleas for action contained in the text of the communication are not necessary in order to find express advocacy. For whatever reason, our colleagues steadfastly refuse to accept what the Buckley Supreme Court plainly recognized nearly two decades ago.

By unnecessarily requiring that specific words of exhortation be present in order to find express advocacy, the position taken by our colleagues has created a gaping loophole in the Act. As the Furgatch court warned:

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

807 F.2d at 863 (emphasis added). This is particularly true of campaign slogans where "certain key words" of exhortation may not be present, but the campaign slogan clearly "convey[s] a message that is unmistakably directed to the election or defeat of a named candidate." Id.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 9/28/94

 Microfilm
 Public Records
 Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED HUR 3616

24043585116



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 23, 1994

Sandra M. Monteiro
133 Crystal Street
Harrison, NY 10528

RE: MUR 3616

Dear Ms. Monteiro:

By letter dated May 24, 1994, the Office of the General Counsel informed you of determinations made with respect to the complaint filed by you against Representative Nita M. Lowey, and Nita Lowey for Congress and Aaron Eidelman, as treasurer. Enclosed with that letter was a General Counsel's Report.

Enclosed please find a Statement of Reasons adopted by two Commissioners explaining their vote. This document will be placed on the public record as part of the file of MUR 3616.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Rodriguez", written over a horizontal line.

Jose M. Rodriguez
Attorney

Enclosure
Statement of Reasons

24043585117



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

September 23, 1994

B. Holly Schadler, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, DC 20005-2011

RE: MUR 3616
Representative Nita M. Lowey
Nita Lowey for Congress and
Aaron Eidelman, as treasurer

Dear Ms. Schadler:

Enclosed please find a Statement of Reasons adopted by
two Commissioners explaining their vote. This document will
be placed on the public record as part of the file of MUR 3616.

If you have any questions, please contact me at (202)
219-3690.

Sincerely,

Jose M. Rodriguez
Attorney

Enclosure
Statement of Reasons

24043585118



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

In the Matter of)
Mita Lowey for Congress and)
Aaron Edelman, as treasurer)
MUR 3616

STATEMENT OF REASONS

COMMISSIONER SCOTT E. THOMAS
COMMISSIONER JOHN WARREN MCGARRY

One of the most important issues facing the Commission today is what constitutes "express advocacy." Matter Under Review ("MUR") 3616 presented the question of whether a paid newspaper advertisement featuring the candidate's photograph and a self-laudatory slogan being used in the candidate's campaign constituted express advocacy. Commissioners Potter, Aikens, and Elliott concluded that such an advertisement does not constitute express advocacy, and, accordingly, does not require a public disclaimer stating who paid for and authorized it. This plainly undermines the disclosure purposes of the Federal Election Campaign Act of 1971, as amended ("the Act").

Even more serious, however, is the threat which our colleagues' approach poses to the prohibitions and independent expenditure reporting requirements of the statute. Under the Act, corporations and labor organizations may not make expenditures in connection with federal campaigns. 2 U.S.C. §441b. In Federal Election Commission v. Massachusetts Citizens for Life, 479 U.S. 238 (1986) ("FEC v. MCFL"), however, the Supreme Court interpreted §441b to mean that expenditures for communications not coordinated with a candidate's campaign must constitute "express advocacy" in order to be subject to the §441b prohibition. As a result of FEC v. MCFL, independent corporate or labor union communications that do not contain express advocacy are allowed under the Act. By finding that even advertisements containing candidate campaign slogans do not meet their definition of express advocacy, Commissioners Potter, Aikens, and Elliott are opening a large loophole which will permit corporations and labor organizations to spend unlimited sums of soft money on federal candidates outside of the corporate prohibitions or reporting requirements of the law.

1. Persons making express advocacy communications independent of a candidate's campaign must disclose the costs of such activity. 2 U.S.C. §434(b)(5)(B)(iii) and (c).

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I.

The Act provides that whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through any type of general public advertising, such communication must contain a disclaimer explaining who was responsible for it. 2 U.S.C. §441d(a); 11 C.F.R. §110.11(a)(1). On September 22, 1992, Sandra M. Monterio ("the complainant") filed a complaint with the Federal Election Commission against Representative Nita M. Lowey and Nita Lowey for Congress and Aaron Eidelman, as treasurer, ("the Committee"). The complainant alleged, inter alia, that the "[candidate] or her committee bought newspaper advertising, but failed to state who paid for the ads, as required by law" in violation of §441d. Complaint at 1.

One of the ads referred to in the complaint involved an advertisement placed in the August, 1992 Bronx Times Reporter. The advertisement contained a large photograph of Representative Lowey. Above the photograph were the words "Representative Nita M. Lowey Joins the People of Throggs Neck in Celebrating 350 Years of Progress." Below the photograph in bold letters, was the caption, "A New Kind of Leadership." Below that was the Lowey Campaign slogan in italics:

"The Commitment to Fight for Change...the Energy to get Results."

See Attached advertisement. The advertisement was run the month before the September 15, 1992 primary election and a little more than 2 months before the November 3, 1992 general election.

The Office of General Counsel prepared a report for Commission consideration that contained a factual and legal analysis of the allegation presented in the complaint as well as a

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

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

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

(emphasis added).

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response to the complaint received from Representative Lowey and the Committee. The General Counsel's Report reached the legal conclusion that the Bronx Times Reporter advertisement constituted express advocacy. The Report found that "[t]he ad not only clearly promotes Ms. Lowey by including what appears to be the campaign's slogan, but does so concurrently with the beginning of the campaign and election season." General Counsel's Report at 9 (October 6, 1993). Accordingly, the General Counsel recommended that the Commission find reason to believe that Representative Lowey violated 2 U.S.C. §441d for failing to include the appropriate disclaimer.

A motion to adopt the General Counsel's legal recommendation failed to secure the four affirmative votes necessary to make a reason to believe determination. 2 U.S.C. §437g(a)(2). Commissioners Thomas and McGarry supported the General Counsel's recommendation, and Commissioners Potter, Aikens, and Elliott opposed the General Counsel's legal conclusion.

II.

The central issue in this matter is whether the advertisement in the Bronx Times Reporter expressly advocated the election of a federal candidate. If the advertisement contained express advocacy, the Act required the Committee to include a statement on the ad indicating whether the candidate's committee paid for and authorized the ad. After reviewing the applicable case law, the text of the advertisement, and the circumstances surrounding their

3. The response to the complaint indicated that the candidate had paid for the Bronx Times Reporter advertisement. Discovery responses made regarding other Commission findings (see n.4, infra), however, indicated conclusively that the costs for the advertisement were not paid for by the candidate as originally represented by counsel but by the candidate's committee. See General Counsel's Report at 3 (April 26, 1994).

4. By a vote of 5-0, the Commission agreed with the rest of the General Counsel's recommendations to (1) find reason to believe that Nita Lowey for Congress violated 2 U.S.C. §434(a), but take no further action; (2) find no reason to believe that Representative Lowey violated 2 U.S.C. §441d(a) in connection with the Whitestone Times and Italian City Club Journal ads; and (3) find reason to believe that Nita Lowey for Congress violated 2 U.S.C. §434(b)(2)(B) for failing to report an in-kind contribution from the candidate and §441(d)(a).

On May 13, 1994, the Commission approved the General Counsel's recommendation to take no further action and close the file in this matter.

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publication, we believe that the advertisement asks the general public to support and vote for a specific federal candidate. Accordingly, we voted to find reason to believe that the Committee violated 2 U.S.C. §441d for failing to include the appropriate public disclaimer in the advertisement.

A.

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

In creating the express advocacy standard, the Buckley Court sought to draw a distinction between issue advocacy and partisan advocacy focused on a clearly-identified candidate. Thus, the Court explained that the purpose of the express advocacy standard was to limit the application of the pertinent reporting provision to "spending that is unambiguously related to the campaign of a particular federal candidate." 424 U.S. at 80 (emphasis added). See also 424 U.S. at 81. (Under an express advocacy standard, the reporting requirements would "shed the light of publicity on spending that is unambiguously campaign related....") (emphasis added). The Court, however, provided no definition of what constituted "spending that is unambiguously related to the campaign of a particular federal candidate" or "unambiguously campaign related." The Court only indicated that express advocacy would include communications containing such obvious campaign related words or phrases as "'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" 424 U.S. at 44 n.52 and at 80 n.108.

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

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Similarly, in PEC v. Furgatch, 807 F.2d 857, 863 (9th Cir.), cert. denied, 484 U.S. 850 (1987), the Ninth Circuit concluded that a communication could constitute express advocacy even though it did not contain any of the catch phrases listed in Buckley, 424 U.S. at 44 n.52. The court held that the list in Buckley "does not exhaust the capacity of the English language to expressly advocate the election or defeat of a candidate." 807 F.2d at 863. The court found that "speech need not include any of the words listed in Buckley to be express advocacy under the Act." 807 F.2d at 864. The court further found that "'express advocacy' is not strictly limited to communications using certain key phrases." 807 F.2d at 862. The court pointed out that such a wooden and mechanical construction would invite and allow for the easy circumvention of the Act. 807 F.2d at 862.

Rather than rely on the inclusion or exclusion of certain "magic words" for determining whether a particular communication contained express advocacy, the Furgatch court concluded that for a communication "to be express advocacy under the Act...it must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate." 807 F.2d at 864. (emphasis added). In defining "express advocacy" under this standard, the court considered the following factors:

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

Furgatch, 807 F.2d at 864.

B.

We believe that the use of a candidate's campaign slogan in an advertisement under the circumstances at hand is clearly an appeal to voters to support and vote for that candidate and, as such, constitutes express advocacy. Campaign slogans contain a brief message which is meant to exhort and inspire the public to vote for or, in some cases, against a particular candidate. Indeed, campaign slogans can be among the most useful tools in a candidate's campaign. The candidate's campaign organization, for example, uses a campaign slogan to symbolize and illustrate their campaign to win voter support: "The function of a slogan is to sum up the [campaign's] theme in an appealing phrase that the

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voters will recognize and remember. Through repetition the slogan reinforces the theme and reminds voters what the candidate stands for and the campaign is about." Young, The American Dictionary of Campaigns and Elections, 131 (1987) (emphasis added). As such, slogans are greatly relied upon by candidates in their "everlasting quest for name recognition and voter approval." Sabato, The Rise of Political Consultants, 154 (1981) (emphasis added).

We have no doubt that the Bronx Times Reporter advertisement, featuring the candidate's name, picture, and campaign slogan and paid for by the candidate's campaign committee, is "unambiguously related to the campaign of a particular federal candidate." Buckley, 424 U.S. at 80. The use of the candidate's campaign slogan in an advertisement is a clear plea for voter support of the candidate. Indeed, the Supreme Court explicitly recognized this in Buckley when it found that express advocacy included communications containing such obvious campaign related words as the campaign slogan, "Smith for Congress." 424 U.S. at 44 n.52.

Moreover, we can see no other purpose for the Lowey campaign to pay for the advertisement than to encourage people to vote for Representative Lowey in the next election. There is none of the issue discussion present in this advertisement which so concerned the Court in Buckley and led to the development of the express advocacy standard. This advertisement was not tied, for example, to any legislation or lobbying effort. Nor was the ad taken out by some small, issue-advocacy organization which may have unwittingly crossed the line of express advocacy. Rather, the ad was taken out by the candidate's campaign committee in order to

5. Professor Sabato observes that the importance of campaign slogans in urging voters to support candidates is such that:

Occasionally entire campaigns have been built around slogans. John C. Danforth, in becoming the first Republican attorney general of Missouri in forty years in 1968, used the title of a well-remembered book his grandfather (the Chairman of Ralston-Purina Company) had written in the 1920's to challenge the youth of his day, "I Dare You!" The candidate started his speech and headed his literature with those three words, striking a consistent and positive note that drew attention to him -- no small feat in a presidential year for a contender for lesser statewide office.

Id. at 155 (emphasis added).

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urge people to re-elect Representative Lowey because she has, in the words of her campaign slogan, "The Commitment to Fight for Change. . .the Energy to get Results."⁶

As in Furgatch, "our conclusion is reinforced by consideration of the timing" of the advertisement. 807 F.2d at 865. The campaign's advertisement was published in the Bronx Times Reporter approximately one month before the September 15 primary and approximately two and a half months before the November general election. We believe that here, as in Furgatch, the timing of the campaign's advertisement leaves "no doubt of the action proposed." Id. (emphasis added).

In our opinion, the campaign's advertisement in the Bronx Times Reporter conveyed a message to the voting public that unmistakably urged the election of a clearly identified candidate for federal office and should have contained a §441d public disclaimer. Accordingly, we voted to find reason to believe that the candidate violated 2 U.S.C. §441d.

III.

The position taken by Commissioners Potter, Aikens and Elliott in this matter has far reaching ramifications. Our colleagues' narrow interpretation of "express advocacy" not only limits application of the §441d disclosure provision, supra, but strikes deeply at the core of the Act itself--the proscription against corporate and labor spending and the reporting requirements.

6. In addition to containing the candidate's picture and campaign slogan, the ad also extends congratulations to the "People of Throggs Neck" on "350 Years of Progress." We do not believe, however, that the inclusion of this congratulatory message somehow negates the express advocacy found in the candidate advertisement. It would be a strange rule of law to find that the inclusion of such a brief message on candidate material or literature would take a candidate advocacy piece outside the realm of express advocacy. Under such an approach, a candidate's Fourth of July advertisement which reads: "Vote for Smith for Congress! Happy Birthday America" would not be express advocacy. Clearly, Congress did not intend that §441d could be so easily circumvented.

7. The definition of express advocacy may also have a significant impact on the coordinated party expenditure limitation found at 2 U.S.C. §441a(d). In FEC v. Colorado Republican Federal Campaign Committee, 839 F.Supp. 1448 (D. Colo. 1993), notice of appeal filed by FEC, October 28, 1993), a district court found that in order for a coordinated expenditure to be considered "in connection with" the campaign of a candidate

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In FEC v. MCFL, supra, the Supreme Court interpreted the section 441b prohibitions to mean that expenditures for communications must constitute express advocacy to be subject to that section's prohibitions. Conversely, if a communication does not constitute express advocacy and is thus outside the Commission's jurisdiction, a corporation or labor organization may spend unlimited amounts of its treasury money to distribute the communication, and the costs of the communication would not be disclosed under the Act's reporting requirements.

As a result of FEC v. MCFL, independent corporate or labor union communications that do not contain express advocacy are allowed under the Act. Thus, how narrowly or broadly express advocacy is defined has a direct impact on how narrowly or broadly the prohibition on corporate or labor spending is defined. By defining express advocacy so narrowly as to exclude even communications containing candidate campaign slogans, Commissioners Potter, Aikens, and Elliott narrow the reach of the Act's prohibitions and broaden the ability of corporations and labor organizations to spend treasury monies directly on the federal election process.

Our colleagues reach this result by arguing that a communication does not constitute express advocacy unless it contains certain specific words or phrases of exhortation such as "support" or "vote for." In their opinion, the advertisement must explicitly request some action of the reader. See, e.g., Statement of Reasons, MUR 3678 at 3 (Commissioner Potter) ("Each of the three advertisements for which I was unable to find reason to believe fails to meet the requisite Furgatch requirement of an unmistakable and unambiguous plea for specific action.") (emphasis added). Perhaps our colleagues would have found express advocacy if the Bronx Times Reporter had added "Remember!" or "Think about it!" at the end of the campaign slogan.

We believe that our colleagues' approach fundamentally misreads and misunderstands the Furgatch decision. The Furgatch court did not rely exclusively on the presence or absence of specific words of exhortation to determine whether the communication at issue there constituted express advocacy. Rather, the court held that the test for express advocacy under the Act is that a communication "must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate." 807 F.2d at 864 (emphasis added). Courts are "not forced under this standard to ignore the

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for federal office so as to be subject to the limitations of §441a(d), "express advocacy" by the state party committee must be demonstrated. The case is now on appeal with the United States Court of Appeals for the Tenth Circuit. (Nos. 93-1433 and 1434).

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plain meaning of campaign-related speech in a search for certain fixed indicators of 'express advocacy.'" Id. (emphasis added). Thus, the Furgatch court rejected appellee's argument that a communication contains express advocacy only if the communication contains certain words or phrases listed in Buckley -- an argument remarkably similar to the explicit exhortation test now urged by Commissioners Potter, Aikens, and Elliott.

Not only do our three colleagues misinterpret the Furgatch decision, but their definition of express advocacy squarely conflicts with the definition set forth in Buckley. Indeed, language which the Buckley Court specifically found to be express advocacy would not be considered as express advocacy under our colleagues' narrow definition. In Buckley, the Supreme Court specifically concluded that the slogan "Smith for Congress" constituted express advocacy and even listed the phrase as an example of express advocacy in its decision. See Buckley, 424 U.S. at 44 n.52. Applying our colleagues' definition, however, the phrase "Smith for Congress" would not constitute express advocacy since it does not contain an explicit plea for specific action; rather, the message would have to read something like "Vote for Smith for Congress" or "Support Smith for Congress" for our colleagues to find express advocacy. In finding that the simple slogan "Smith for Congress" was an example of express advocacy, the Supreme Court recognized that explicit words of exhortation or specific pleas for action contained in the text of the communication are not necessary in order to find express advocacy. For whatever reason, our colleagues steadfastly refuse to accept what the Buckley Supreme Court plainly recognized nearly two decades ago.

By unnecessarily requiring that specific words of exhortation be present in order to find express advocacy, the position taken by our colleagues has created a gaping loophole in the Act. As the Furgatch court warned:

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

807 F.2d at 863 (emphasis added). This is particularly true of campaign slogans where "certain key words" of exhortation may not be present, but the campaign slogan clearly "convey[s] a message that is unmistakably directed to the election or defeat of a named candidate." Id.

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There are many campaign slogans which have been used in our nation's history which do not include the specific words of exhortation required by our colleagues to find express advocacy. A sampling of these slogans include: "Tippecanoe and Tyler Too"; "Rum, Romanism, and Rebellion"; "I Like Ike"; "Prosperity For All With Kennedy"; "LBJ for the USA"; "In Your Heart, You Know He's Right"; "Nixon's The One"; "Nixon - Now More Than Ever"; "Why Not The Best"; "Bush/Quayle '92"; and "Bush/Quayle '92 -- It's A Mistake". In our opinion, these campaign slogans are "susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate." Furgatch, 807 F.2d at 864.

Under our colleagues' theory of law, however, there is no express advocacy in the above campaign slogans since there is no specific plea for action contained in the explicit text of the campaign slogan. As a result, Corporation A could pay for a full page ad in the New York Times, for example, the month before the election with a flattering photograph of the candidate and the candidate's campaign slogan, "In your heart you know he's right." Similarly, Corporation B could pay for an advertisement with an unflattering photograph of the candidate and the revised campaign slogan, "In your heart you know he's right--far right." Although, both ads clearly advocate the election or defeat of a clearly identified candidate, absent the "magic words" of exhortation, our three colleagues would find these corporate-financed ads to be outside the FEC's jurisdiction and not subject to the prohibitions and disclosure requirements of the Act.

IV.

That an advertisement featuring the candidate's name, picture and campaign slogan, and paid for by the candidate's committee and published the month before an election, advocates the candidate's election should be obvious to members of the Federal Election Commission. The Commission need not leave common sense at the doorstep when it considers matters such as these. There is nothing in the express advocacy standard that requires members of the Federal Election Commission to be "blind" to what "all others can see and understand." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 486 (1985) (quoting United States v. Rumely, 345 U.S. 41, 44 (1953)).

The consequences⁸ of our three colleagues' approach to express advocacy are serious. The flow of soft money which presently

8. MUR 3616 is not unique. In MUR 3376, our colleagues found no express advocacy with respect to an advertisement, paid for with campaign committee funds and featuring a picture of the candidate speaking before a crowd with the candidate's name below in large letters and the words "CARING - FIGHTING - WINNING." See also MUR 3678.

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concerns lawmakers and public interest groups alike will inevitably increase (perhaps dramatically) under the narrow definition of express advocacy subscribed to by Commissioners Potter, Aikens, and Elliott. In addition, none of this financial activity will be disclosed under the reporting requirements of the Act. Nor will these advertisements, financed with soft money, even contain a disclaimer which informs the voting public who paid for the ad and whether it was authorized by the candidate.

The Federal Election Commission is charged with the administration and enforcement of the Federal Election Campaign Act. An interpretation of the law which so quickly and so easily turns the statute into more loophole than substance ignores that mandate.

8/2/94
Date



Scott E. Thomas
Commissioner

8/2/94
Date



John Warren McGarry
Commissioner

Attachment

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Representative
Nita M. Lowey
Joins the People of
Throggs Neck in
Celebrating 350 Years
of Progress



A NEW KIND OF LEADERSHIP
*"The Commitment to Fight for
Change...the Energy to get Results"*

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