



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20461

THIS IS THE BEGINNING OF MUR # 3713

DATE FILMED 8-5-93 CAMERA NO. 4

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FEDERAL ELECTION COMMISSION

William D. White
-vs-
Pittsburgh Post-Gazette
League of Women Voters
respondents,

MUR 3713

COMPLAINT

The above named respondents produced and distributed a 16 page supplement to the Pittsburgh Post-Gazette newspaper purporting to be a comprehensive guide to the electorate prior to the primary elections held here in Pennsylvania in April 1992. The Pittsburgh Post-Gazette and the League of Women Voters refused to make any mention of the petitioner as a candidate in any publication for public dissemination, instead publicizing the Republican and Democrat party candidates. This and other publications failed to make any mention of the procedure to nominate an independent candidate. This and other publications are in-kind and prohibited contributions to the campaigns of Senator Arlen Specter and Lynn Yeakel.

2 U.S.C. 431(8) - §100.7(a)(1) defines a contribution as "...anything of value made by any person for the purpose of influencing any election for federal office..."

2 U.S.C. 431(8) - §100.7(a)(E)(iii)(A) defines anything of value as including "all in-kind contributions" and that "the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution." Examples cited in this regulation of goods and services include "facilities, equipment, supplies, personnel, advertising services, membership lists..."

In coordination with the Specter and Yeakel campaigns, photographs of their candidates and other information was provided to the Pittsburgh Post-Gazette and the League of Women Voters for publication. The Pittsburgh Post-Gazette refused to publish any of the information provided by the petitioner.

As a news event, there was no attempt made to provide the "reasonably equal coverage to all opposing candidates in the circulation or listening area" required under § 100.7(b)(2)(ii) to exempt the publication from contribution reporting requirements.

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Further, the Pittsburgh Post-Gazette frequently featured Mr. Specter and Ms. Yeakel in their news reporting of the U.S. Senate campaign while deliberately omitting all mention of the petitioner in editorials and features about the U.S. Senate campaign.

As a business organization not registered with the Federal Election Commission as a political organization, The Pittsburgh Post-Gazette is prohibited from making political contributions to specific candidates under these circumstances.

The League of Women Voters, while publicizing itself as a non-partisan political organization, is in fact a partisan organization which functions on behalf of the Republican and Democrat parties.

A copy of this complaint has been served, via First Class United States Mail, postage pre-paid, on November 19, 1992 to the following;

Pittsburgh Post-Gazette
34 Blvd. of the Allies
Pittsburgh, Pa. 15219

League of Women Voters of Pennsylvania
226 Forster Street
Harrisburg, Pa. 17102-3220

I, William D. White, swear that the foregoing is correct and true to the best of my knowledge.

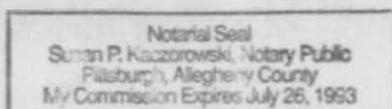
William D. White

William D. White, petitioner
16 East Manilla Avenue
Pittsburgh, Pa. 15220
412-922-3834

Subscribed and sworn to before me

on this 19th day of November, 1992

Susan P. Kaczorowski



Member, Pennsylvania Association of Notaries



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 30, 1992

William D. White
16 East Manilla Avenue
Pittsburgh, PA 15220

RE: MUR 3713

Dear Mr. White:

This letter acknowledges receipt on November 23, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Lynn Hardy Yeakel, Lynn Yeakel for U.S. Senate and Sidney Rosenblatt, as treasurer, the Honorable Arlen Specter, Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer, the League of Women Voters of Pennsylvania and the Pittsburgh Post-Gazette. 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 3713. 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,


Lisa E. Klein
Assistant General Counsel

Enclosure
Procedures

93040953108



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 30, 1992

Lynn Hardy Yeakel
257 S. Ithan Avenue
Rosemont, PA 19010

RE: MUR 3713

Dear Ms. Yeakel:

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 3713. 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.

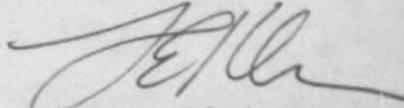
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed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

If you have any questions, please contact Craig D. Reffner, 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,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

93040953110



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 30, 1992

Sidney Rosenblatt, Treasurer
Lynn Yeakel for U.S. Senate
304 C Lombard Street
Philadelphia, PA 19147

RE: MUR 3713

Dear Mr. Rosenblatt:

The Federal Election Commission received a complaint which indicates that Lynn Yeakel for U.S. Senate ("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 3713. 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.

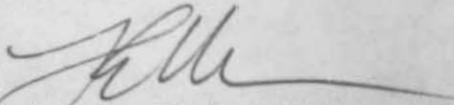
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Sidney Rosenblatt, Treasurer
Lynn Yeakel for U.S. Senate
Page 2

If you have any questions, please contact Craig D. Reffner, 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,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

93040953112



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 30, 1992

The Honorable Arlen Specter
United States Senate
303 Hart Senate Office Building
Washington, DC 20510

RE: MUR 3713

Dear Mr. Specter:

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 3713. 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.

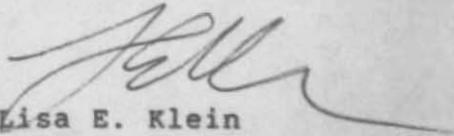
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93040953113

The Honorable Arlen Specter
Page 2

If you have any questions, please contact Craig D. Reffner, 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,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

93040953114



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 30, 1992

Stephen J. Harmelin, Treasurer
Citizens for Arlen Specter
6th & Walnut Streets
Suite 860
Curtis Center
Philadelphia, PA 19106

RE: MUR 3713

Dear Mr. Harmelin:

The Federal Election Commission received a complaint which indicates that Citizens for Arlen Specter ("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 3713. 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.

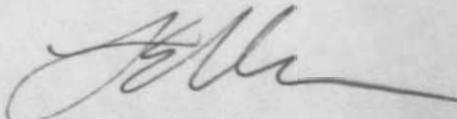
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed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

If you have any questions, please contact Craig D. Reffner, 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,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

cc: The Honorable Arlen Specter

93040953116



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 30, 1992

League of Women Voters of Pennsylvania
226 Forster Street
Harrisburgh, PA 17102-3220

RE: MUR 3713

Dear Sir or Madam:

The Federal Election Commission received a complaint which indicates that the League of Women Voters of Pennsylvania 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 3713. 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 League of Women Voters of Pennsylvania 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.

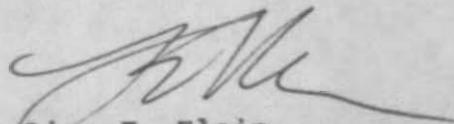
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed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

If you have any questions, please contact Craig D. Reffner, 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,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

93040953118



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 30, 1992

Pittsburgh Post-Gazette
50 Boulevard of the Allies
Pittsburgh, PA 15222

RE: MUR 3713

Dear Sir or Madam:

The Federal Election Commission received a complaint which indicates that the Pittsburgh Post-Gazette 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 3713. 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 Pittsburgh Post-Gazette 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.

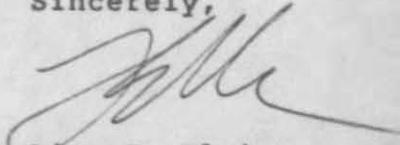
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Pittsburgh Post-Gazette
Page 2

If you have any questions, please contact Craig D. Reffner, 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,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

93040953120

MORGAN, LEWIS & BOCKIUS

COUNSELORS AT LAW
2000 ONE LOGAN SQUARE
PHILADELPHIA, PENNSYLVANIA 19103-6993

TELEPHONE (215) 963-5000

FAX (215) 963-9299

PHILADELPHIA
LOS ANGELES
MIAMI
LONDON
FRANKFURT

GREGORY M. HARVEY
DIAL DIRECT (215) 963-5427

December 11, 1992

VIA FEDERAL EXPRESS

Federal Election Commission
999 "E" Street, N.W.
Washington, DC 20463

Attention: Lisa E. Klein
Assistant General Counsel

Re: MUR 3713

Greetings:

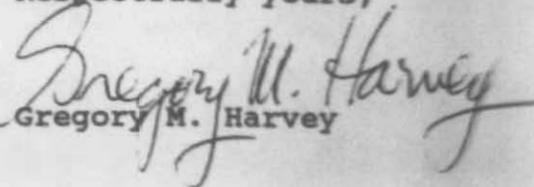
This letter responds to the Complaints of William D. White, pursuant to Ms. Klein's two letters dated November 30, 1992 addressed to our client Lynn Hardy Yeakel.

We incorporate by reference our earlier response to the Complaint of William D. White docketed at MUR 3706, especially the portion of that response dealing with whether William D. White was a bona fide candidate for election to the office of United States Senator.

The activities challenged by Mr. White in the Complaints docketed at MUR 3713 constitute appropriate public affairs programming or news coverage in which the participation of the League of Women Voters was appropriate and proper.

On behalf of Lynn Yeakel, we respectfully request that the additional Complaints of William D. White be dismissed.

Respectfully yours,


Gregory M. Harvey

GMH:pg
enclosure

93040953121

NEW YORK
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DALLAS
DENVER
HOUSTON
LOS ANGELES
MIAMI
PHILADELPHIA
WASHINGTON

MORGAN, LEWIS & BOCKIUS

COUNSELORS AT LAW
2000 ONE LOGAN SQUARE
PHILADELPHIA, PENNSYLVANIA 19103-6993
TELEPHONE: (215) 963-8000
FAX: (215) 963-6299

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LONDON
FRANKFURT

WASHINGTON
NEW YORK
HARRISBURG
SAN DIEGO
BRUSSELS
TOKYO

GREGORY M. HARVEY
DIAL DIRECT (215) 963-5427

December 4, 1992

VIA FEDERAL EXPRESS

Federal Election Commission
999 "E" Street, N.W.
Washington, DC 20463

Attention: Lisa E. Klein
Assistant General Counsel

Re: MUR 3706

Greetings:

This letter responds to the Complaint of William D. White, pursuant to Ms. Klein's letter dated November 20, 1992 addressed to our client Lynn Hardy Yeakel.

The Complaint purports to attribute a prohibited in-kind contribution to the campaign of Lynn Yeakel from a radio station described in the Complaint as WDUQ-FM 90.5 and Kevin Gavin, described in the Complaint as News Director of WDUQ.

The Complaint should be dismissed without further inquiry because the facts alleged in the Complaint constitute a description of conventional public affairs programming by a radio station.

To the extent that additional facts may be relevant concerning that public affairs programming, respondent Lynn Yeakel incorporates by reference the Affidavit of Judy Jankowski, General Manager of WDUQ-FM, a copy of which is attached hereto.

The complainant has either failed to understand or intentionally misquoted sub-section 100.7(b)(2)(ii) of the Commission's Regulations. The portion of the Regulation quoted by the complainant would be applicable only if the radio station were "owned or controlled by any political party, political committee or candidate." On information and belief, WDUQ-FM is licensed to Duquesne University, a degree-granting institution of higher education.

RECEIVED
FEDERAL ELECTION COMMISSION
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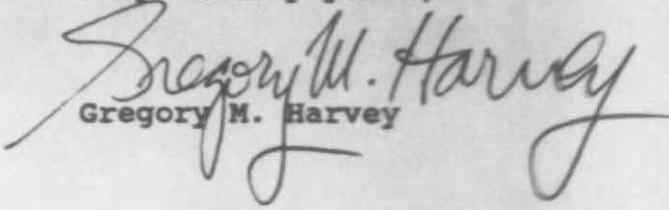
Federal Election Commission
December 4, 1992
Page 2

Moreover, the implication of the Complaint that William D. White ("White"), the complainant, was a bona fide candidate for election to the office of United States Senator is misleading. Although White, on information and belief, commenced litigation in a Federal District Court seeking an Order to compel the office of the Secretary of the Commonwealth of Pennsylvania and each County Board of Elections to circulate nomination papers for him, the relief sought was denied by the Court. Thereafter, White failed to present to the Secretary of the Commonwealth any nomination papers to cause his name to be printed on the ballot as a candidate and failed to conduct any substantial campaign as a write-in candidate. Having failed to take reasonable steps to establish himself as a bona fide candidate for the office, White should not be given any relief based on his complaining that the respondent radio station and the League of Women Voters treated him differently than they treated those candidates who had demonstrated substantial support by performing the procedures needed to place their names on the general election ballot.

This response is supported by the verification of the undersigned, who made the inquiries deemed necessary to him to establish the background concerning complainant White's failure to establish himself as a bona fide candidate.

On behalf of Lynn Yeakel, we respectfully request that the Complaint be dismissed.

Respectfully yours,


Gregory M. Harvey

GMH:pg
enclosure

bcc: Ms. Lynn Hardy Yeakel
Ernest Sanchez, Esquire

93040953123

Duquesne University
Pittsburgh, PA 15282
(412) 434-6030
FAX: (412) 434-6294

AFFIDAVIT

My name is Judy Jankowski. I am the General Manager of WDUQ-FM, licensed to Duquesne University. I am providing information concerning Bill White's letter and complaint received by the Federal Election Commission on November 16, 1992.

In September 1992, WDUQ offered free and essentially unrestricted time to qualified candidates for the offices of U.S. House Districts 14 & 18 and the U.S. Senate for Pennsylvania. This offer was made in the spirit of Section 312 (a)(7) of the Federal Communications Act of 1934, which requires that Federal candidates be given "reasonable access" to broadcast stations during the sixty days before the general election. We felt an effort to permit political candidates to speak on our station without restriction was a risky but worthy undertaking.

One person requesting such free political time was Bill White, a self-described independent candidate for U.S. Senate. After a careful analysis of the legitimacy of his campaign (including reservations about the status of his required "public announcement" of candidacy and his required "substantial showing" of campaign legitimacy), it was decided to extend the offer to Mr. White. Our good-faith response to his request for airtime has been answered with the complaint filed by Mr. White with the Federal Election Commission in November.

What follows is a paragraph-by-paragraph response (where response is warranted) to Mr. White's FEC complaint.

Mr. White's assertions in Paragraph 1 are inaccurate; there was no distribution of (nor was there any attempt to distribute) WDUQ's unedited interview with U.S. Senate candidate Lynn Yeakel. As with all uses, this use was limited to WDUQ's airwaves, and it was only one of sixty uses of free and unrestricted airtime of WDUQ by nine Federal candidates. In filing his complaint Mr. White chose to omit the fact that he too was scheduled to be interviewed by Mr. Gavin in a political use of WDUQ, scheduled for Monday, November 2, 1992 (to be broadcast in a fashion IDENTICAL to the use of Ms. Yeakel), and that he himself requested a change in that schedule.

92 DEC 14 PM 1:41

RECEIVED
FEDERAL ELECTION COMMISSION

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On Friday, October 30, he called WDUQ's Program Director, David Becker, to inform Mr. Becker that he did not wish to be interviewed by Mr. Gavin; his use ultimately took the form of a call-in program engineered by Mr. Becker, which aired as scheduled on November 2. The refusal of Mr. Gavin's time was entirely the decision and the responsibility of Mr. White, and thoroughly discredits his claim of an in-kind contribution to the Yeakel campaign.

Paragraphs 3 and 4 further attempt to establish the political use of Ms. Yeakel, broadcast on Friday, October 30, 1992, as an in-kind provision of goods and services to the Yeakel campaign--again, an inaccurate assessment in light of the events described above. A letter sent to all qualified candidates (including Mr. White) listed a series of five options describing possible formats for political uses on WDUQ. The broadcast in question featuring Ms. Yeakel followed the second of the five options, namely the broadcast of an unedited interview with a member of WDUQ's News Department as a political use. Mr. Gavin's voice and talent, as an element of the station's facilities, were made available to all candidates as requested for their uses on an equal basis. All candidates chose options suiting their needs (including four candidates besides Ms. Yeakel who requested unedited interviews with Mr. Gavin). Only Mr. White, as detailed in the preceding paragraph, specifically declined the opportunity to be interviewed by Mr. Gavin.

In paragraph 5, Mr. White cites Mr. Gavin's vehement opposition to the extension of an offer of free time to Mr. White as a Federal candidate, incorrectly implying a connection between this opposition and the political use by Ms. Yeakel. While Mr. Gavin's initial opinion (actively sought by Mr. Becker as a part of the process of evaluating candidacies) was that Mr. White was not a legally qualified candidate, Mr. Gavin was entirely cooperative in carrying out duties relating to all political uses of WDUQ by qualified candidates once Mr. White was determined to be qualified. Mr. White's use of the term "vehement" in describing Mr. Gavin's opposition is pejorative and a matter of opinion, and as Mr. Gavin was not the final arbiter in determining qualified candidates it is entirely irrelevant to the point at hand.

Additionally, Mr. White inaccurately paraphrases the political disclaimer broadcast by WDUQ before and following the political use by Ms. Yeakel. He erroneously claims we disavowed any responsibility for the program's content; it

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was in fact stated that the views expressed were those of Ms. Yeakel and that they did not necessarily represent those of anyone on the staff or management of WDUQ--the same standard disclaimer read before and after all political uses of WDUQ's airwaves by Mr. White and all other Federal candidates.

Mr. White's assertion of Mr. Gavin's refusal to make mention of him in news programming will be addressed shortly.

Paragraphs 6 & 7 refer to broadcasts of the Western Pennsylvania Citizens Jury, a project of the Jefferson Center of Minneapolis sponsored by the Pennsylvania League of Women Voters. Mr. White inaccurately describes as "a purely partisan activity" this project of a well-known nonpartisan organization. Mr. White was not invited to participate in these hearings; as a means of making the project manageable in scope and size, the Citizens Jury set as a minimum standard for candidates a 10% standing in any of numerous political polls--a level of which Mr. White fell well short. WDUQ's coverage did not alter these proceedings in any way, shape or form, and WDUQ had no say in determining how these proceedings were devised or carried out.

Mr. White acknowledges our position on these broadcasts--that we consider these hearings to have been spot news in the form of debate coverage, aired with the good faith intention of informing the public (and hence by Federal law exempt from equal time requirements). It is worth adding that two other Pittsburgh broadcast facilities, WTAE-TV and WTAE-AM, broadcast highlights of these hearings as spot news as well.

Paragraph 8 inaccurately cites what Mr. White describes as Mr. Gavin's "refusal" to make mention of the White campaign. Beyond a self-described public declaration of his write-in candidacy, the self-professed establishment of a campaign office at his home, and his forty-nine political broadcasts on WDUQ, Mr. White exhibited no traditional elements of newsworthiness in his campaign, such as scheduled campaign stops and tours, speeches, or press releases. Rather than reflecting Mr. Gavin's "refusal" of news coverage, Mr. White's lack of campaign coverage on WDUQ (and every other media outlet in Pennsylvania, for that matter) reflects his lack of effort, skill, and experience in this aspect of campaigning.

Mr. White, in this complaint, appears to demand personal coverage of an all-but-nonexistent campaign. Were such coverage to be enacted, it could easily be construed as favoritism. Mr. White's misunderstanding of the role news broadcasts play in keeping the public informed appears to lead him to assert that news coverage should somehow be subject to Federal law governing political broadcasts--an ill-reasoned and potentially dangerous notion.

During this offer of free access to Federal candidates, WDUQ broadcast sixty political uses totalling ten hours and thirty-nine minutes of air time during the 1992 campaign. Forty-nine of those uses and three hours and thirty-one minutes of this time were taken by Bill White--time offered on the same terms to all other Federal candidates, including Mr. White's opponents. Mr. White clearly had the lion's share of political uses and air time during WDUQ's political broadcast offer. The lion's share of distortions and inaccuracies and the wasting of valuable time, energy, and taxpayer dollars are his also. In filing this complaint against WDUQ, Mr. White bites the one hand that fed him fairly, equally, and in good faith.

Signed Judy D. Jankowski

Judy D. Jankowski
General Manager, WDUQ-FM

Date December 1., 1992

Subscribed and sworn to before me on this 1st day of
December, 1992

Sharon A. Crawford
Notary Public

Notarial Seal
Sharon A. Crawford, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Aug. 14, 1995
Member, Pennsylvania Association of Notaries

(SEAL)

93040953128

STATEMENT OF DESIGNATION OF COUNSEL

3706
3713

MUR

NAME OF COUNSEL: GREGORY M. HARVEY

ADDRESS: 2000 ONE LOGAN SQUARE

PHILADELPHIA, PA 19103-6993

TELEPHONE: (215) 963-5427

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.

12/1/92
Date

Lynn Hardy Yeakel
Signature

RESPONDENT'S NAME: LYNN HARDY YEAKEL

ADDRESS: 1735 MARKET STREET, 35TH FLOOR

PHILADELPHIA, PA 19103

TELEPHONE: HOME(215) 525-3143

BUSINESS(215) 994-1330

93040953129

CLERK OF COURT

OBERMAYER, REBMANN, MAXWELL & HIPPEL

PACKARD BUILDING - 14TH FLOOR
S.E. CORNER 15TH AND CHESTNUT STREETS
PHILADELPHIA, PA. 19102-2688

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THORLEY C. MILLS, JR.**
WARREN W. AYRES
CHARLES M. GOLDEN
THOMAS A. LEONARD
LOUIS B. RUPPERMAN
JOSEPH P. DOUGHER
PAUL S. DIAMOND
ANN G. VERBER***
JEFFREY S. BATOFF*
SCOTT E. DENMAN
VICTOR ALAN YOUNG
CATHLEEN C. MYERS
CHARLES S. K. SCUDDER
MICHAEL C. RICHMAN
RUTH RUOBARG WESSEL
DANIEL P. FINEGAN*
RICHARD P. LIMBURG
WILLIAM J. LEONARD
J. ROBERT STOLTZFUS
J. ERIC RATHBURN
BETH GOLDEN FRIEDER
JAMES R. THOMPSON*
JONATHAN H. NEWMAN***
ELIZABETH A. LLOYD
ROGER P. CAMERON*
JOHN V. O'HARA*
D. MADELAINE MILLER*
JOHN D. BENSON*
KIRSTEN WELTGE*
KATHERINE V. WYANT*

PAUL C. HEINTZ
HUGH C. SUTHERLAND
ROBERT A. MACDONNELL
JEFFREY B. ROTWITT
GREGORY D. SAPUTELLI*
KENNETH L. OLIVER, JR.
JOHN J. EHLINGER, JR.
MARK A. LUBLIN
JAMES W. BAUMBACH
STEPHEN D. SCHRIER*
JOSEPH J. MCGOVERN***
JULIUS M. STEINER
LAWRENCE J. TABAS
DOUGLAS A. CROCKETT
W. ATLEE DAVIS, III***
PAUL H. ALLEN
ANASTASIUS EFSTRATIADIS*
JERALD S. BATOFF
ALLEN WEINBERG
LARRY BESNOFF
MICHAEL P. WEINSTEIN**
JOHN E. RYAN
MARJORIE H. GORDON
RONNIE L. BLOOM
JACQUELINE T. SHULMAN*
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ELIZABETH D. SHEVLIN*
NICHOLAS PODUSLENKO*
THOMAS P. WILD*
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OF COUNSEL
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50 TRENTON ROAD
PARLISSE HILLS, PA. 19030
(215) 948-4888

DIRECT DIAL: 665-

December 15, 1992

- * ALSO MEMBER OF NEW JERSEY BAR
- ** ALSO MEMBER OF OHIO BAR
- *** ALSO MEMBER OF D.C. BAR
- + ALSO MEMBER OF N.J. BAR AND D.C. BAR
- ++ ALSO MEMBER OF N.J. & FLORIDA BAR
- +++ ALSO MEMBER D.C. AND MASSACHUSETTS BAR

VIA FEDERAL EXPRESS

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

Re: Matters Under Review 3706, 3713

Dear Mr. Reffner:

As we have discussed, on behalf of Citizens for Arlen Specter ("CAS"), I am submitting this letter response to the "complaints" filed in the above-captioned Matters Under Review. I have also included designation of counsel forms for each matter.

CAS believes that these complaints are frivolous and, indeed, abusive. In all matters, William White -- apparently an unsuccessful senatorial candidate -- raises the same legal "issue": whether the coverage and participation of the media, the press, and citizens groups respecting Pennsylvania's 1992 Senatorial Election somehow constituted prohibited "in-kind" contributions under the

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TO: Craig D. Reffner, Esquire
December 1, 1992
Page 2

Federal Election Code. The Federal Election Commission ("the Commission") must reject this plainly frivolous contention, as it would grossly impair constitutionally protected activity. To the extent that CAS is obligated to respond further to each MUR, it incorporates its response in MUR 3710, a copy of which I have included for your convenience. In sum, the Commission should dismiss each matter as to CAS for the following reasons:

MUR 3706. White directs this complaint against Lynn Yeakel, radio station WDUQ, and News Director Kevin Gavin, not CAS. Nonetheless, White gratuitously complains that WDUQ's coverage of Senator Specter's presentations to the League of Women Voters' Citizens Jury constituted a "prohibited" contribution. This is, of course, nonsense. The Commission's regulations explicitly provide that the costs incurred in such news coverage are neither "contributions" nor "expenditures" within the meaning of the Federal Election Campaign Act. 11 CFR §§100.7(b)(2), 100.8(b)(2). See U.S.C. §431(9)(B).

MUR 3713. Once again, White directs this complaint not against CAS, but against the Pittsburgh Post-Gazette and the League of Women Voters. Nonetheless, White gratuitously suggests that an election guide provided by both respondents and the Post-Gazette's coverage of the senatorial campaign constituted prohibited "in-kind" contributions to CAS. Once again, the law explicitly provides exactly the opposite. 11 CFR §§100.7(b)(2), 100.8(b)(2). See U.S.C. §431(a)(B).

In sum, CAS reiterates that these "complaints," insofar as they are directed against CAS, are frivolous and abusive. It is manifest that the actions complained of are constitutionally protected discussion and debate respecting the Senatorial Election. See generally Bemis Pentecostal Church v. State of Tennessee, 731 S.W.2d 897, 905 (Tenn. 1987). Accordingly, the Commission should dismiss all the complaints as to CAS.

Respectfully,

Paul S. Diamond

Paul S. Diamond

PSD:mem

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3713

NAME OF COUNSEL: Paul S. Diamond, Esquire

ADDRESS: Obermayer, Rebmann, Maxwell & Hippel
14th Floor, Packard Building
Philadelphia, PA 19102-2688

TELEPHONE: (215) 665-3000

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.

12/1/92
Date

Patrick Meehan
Signature

RESPONDENT'S NAME: Citizens for Arlen Specter
By: Patrick L. Meehan, Esquire
Campaign Manager

ADDRESS: _____
8th Floor, Curtis Center
Philadelphia, PA 19107

TELEPHONE: HOME(----) -----
BUSINESS(215) 574-1992

93040953132

REED SMITH SHAW & McCLAY

MAILING ADDRESS:
P.O. BOX 2009
PITTSBURGH, PA 15230-2009
TELEX 277871 (RCA)
FAX 412-288-3063

MELLON SQUARE
435 SIXTH AVENUE
PITTSBURGH, PA 15219-1886
412-288-3131

WASHINGTON, DC
PHILADELPHIA, PA
HARRISBURG, PA
McLEAN, VA

WRITER'S DIRECT DIAL NUMBER

(412) 288-4292

December 16, 1992

VIA UPS OVERNIGHT

Craig D. Reffner, Esquire
General Counsel's Office
Federal Election Commission
999 East Street, N.W.
Washington, DC 20463

Re: MUR 3713

Dear Mr. Reffner:

I have enclosed the Pittsburgh Post-Gazette's response to the above-referenced complaint filed by Mr. William White on November 14, 1992 and a copy of the response for you per the certificate of service. Please return a copy of the date-stamped response to me in the enclosed self-addressed envelope.

Please do not hesitate to contact me at the above address and telephone number if you have any questions regarding this matter.

Very truly yours,

REED SMITH SHAW & McCLAY

By
Marketa Sims

MS:tah
Enclosure

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producing new stories are not expenditures or contributions under the Act.

Section 431(9)(B)(i) provides that:

"The term expenditure does not include any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication unless such facilities are owned or controlled by any political party, political committee or candidate."

2 U.S.C. § 431(9)(B)(i).

Similarly 11 CFR § 100.7(b)(2) provides:

"Any cost incurred in covering or carrying a news story, commentary or editorial by any broadcasting station, newspaper, magazine or other periodical publication is not a contribution unless the facility is owned or controlled by any political party, political committee or candidate in which case the cost for a news story (i) which represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcast facility and (ii) which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not a contribution."

11 CFR § 100.7(b)(2).

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The Pittsburgh Post-Gazette is not a facility "owned or controlled by any political party, political committee, or political candidate." See Declaration of William Deibler, Managing Editor, Pittsburgh Post-Gazette, attached as Exhibit A. Thus, the articles and election supplement cited in the Complaint are neither expenditures nor contributions within the meaning of the Act.

Additionally, the Complainant's claim that the 11 *CFR* § 100.7(B)(2)(ii) "requires reasonably equal coverage to all opposing candidates in the circulation or listening area" is patently incorrect. The regulation imposes this requirement *only* "when the facility is owned or controlled by any political party, political committee or candidate." There is no such requirement for an independent newspaper of general circulation such as the Post-Gazette.

Such a requirement of enforced equal access would violate the First Amendment guarantee of freedom of the press. See Miami Herald Publishing Company v. Tornillo, 418 U.S. 241 (1974). In Miami Herald the United States Supreme Court held that a statute imposing a right of "equal access" on a newspaper violated the newspaper's rights under the First Amendment. The

court expressly rejected the argument for equal access implicit in the Complaint in this matter, stating that:

"A newspaper is more than a passive receptacle or conduit for news, comment and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper and treatment of public issues and public officials - whether fair or unfair - constitutes the exercise of editorial control and judgment."

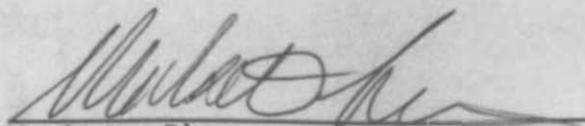
Miami Herald Publishing Co. v. Tornillo, 418 U.S. at 258.

Moreover, even if a right of equal access existed, Mr. White would not be entitled to exercise this right because the Post-Gazette is informed and believes that Mr. White was not a candidate in the April, 1992 primary election. To the extent Mr. White planned to wage a "write-in" campaign, he stood in a position no different from that of any of a potentially infinite number of such candidates and the Post-Gazette was under no obligation to print a news story concerning his activities. See Miami Herald, 418 U.S. at 256-257 (noting the economic burden that would be imposed by a requirement that a newspaper afford all interested parties a "right to reply" to stories in the newspaper).

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For the reasons set forth above and in the attached Declaration of William Deibler, the Post-Gazette urges the Commission to dismiss MUR 3713.

December 14, 1992



Marketa Sims

Reed Smith Shaw & McClay
435 Sixth Avenue
Pittsburgh, PA 15219
(412) 288-4292

Counsel for the Pittsburgh
Post-Gazette

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 15, 1992 at Pittsburgh, Pennsylvania.

William Deibler
William Deibler

93040953140

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3713

NAME OF COUNSEL: Marketa Sims, Esquire

ADDRESS: Reed Smith Shaw & McClay

435 Sixth Avenue

Pittsburgh, PA 15219

TELEPHONE: (412) 288-4292

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.

12-15-92
Date

William Deibler
Signature

RESPONDENT'S NAME: William Deibler

ADDRESS: PG Publishing Company

50 Boulevard of the Allies

Pittsburgh, PA 15222

TELEPHONE: HOME()

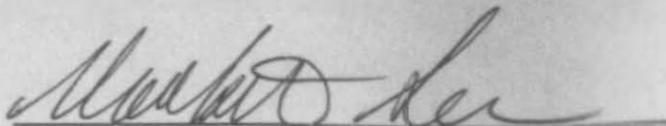
BUSINESS(412) 263-1668

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CERTIFICATE OF SERVICE

I, the undersigned, certify that I served or caused to be served a true and correct copy of the foregoing **RESPONSE TO COMPLAINT** by UPS Overnight Mail on the 16 day of December, 1992, upon the following:

Craig D. Reffner, Esquire
General Counsel's Office
Federal Election Commission
999 East Street, N.W.
Washington, DC 20463


Marketa Sims

93040953142



THE LEAGUE
OF WOMEN VOTERS
OF PENNSYLVANIA
CITIZEN EDUCATION FUND

65 13 13 13 13

December 14, 1992

Ms. Lisa E. Klein
Assistant General Council
Federal Election Commission
Washington D.C. 20463

Re: MUR 3713

Dear Ms. Klein:

I am writing in regard to the complaint (MUR 3713) about the 1992 primary election Voters Guide filed against the Pittsburgh Post-Gazette and the League of Women Voters of Pennsylvania by William D. White. It is our contention that there is no basis for the complaint filed by Mr. White.

The main purpose of a League of Women Voters Voters Guide is to help voters make informed choices. All candidates who are certified to appear on the ballot are invited to respond to Voters Guide questionnaires. All candidates for an office are treated alike, major and minor party candidates as well as independents.

In Pennsylvania, political party candidates are nominated at primaries. A candidate's name is printed on the primary ballot upon the filing of a candidate's affidavit, filing fee, and nomination petitions signed by party electors in the district.

Minor political parties do not conduct primaries but circulate and file minor political party nomination papers in order to nominate candidates directly to the November ballot.

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As with minor political party candidates, the nomination of independent candidates must be made by nomination papers instead of primary elections.

It is my understanding from conversations with the Pennsylvania Department of State that Mr. White filed a suit against the state prior to the 1992 primary election seeking to require the state to distribute his nomination petitions to all primary election polling places in the state. He also requested that the state be compelled to pay the notary fees and postage for the filing of these petitions with the state. He lost this suit.

At any rate, in accordance with the Pennsylvania electoral process, Mr. White's name would not have appeared on the primary election ballot. The League of Women Voters obtains a copy of the official ballot after the last day to file nomination petitions has passed. This list of certified ballot candidates is then used to solicit Voters Guide information from candidates. Since Mr. White's name did not appear on the certified ballot list he was not sent a request for Voters Guide information.

Mr. White did not contact me regarding the Voters Guide. To my knowledge, he did not contact the office of the League of Women Voters of Pennsylvania or the office of the League of Women Voters of Allegheny County, which is the League in the area of the Pittsburgh Post-Gazette, regarding the Voters Guide.

It is not clear to me from Mr. White's complaint if he intended to be a write-in candidate. In Pennsylvania there is no provision for a write-in candidate to declare candidacy. Write-in candidates cannot be officially identified. Since it is League of Women Voters of Pennsylvania policy to include only certified ballot candidates in the Voters Guide, write in candidates are never included.

We trust that you will agree with our contention that Mr. White's complaint against the League is without merit. He was not a qualified candidate in the 1992 primary election in Pennsylvania. A "mention of the procedure to nominate an independent candidate" in the Voters Guide is not an appropriate use for the Voters Guide since the purpose of the Voters Guide is to give the voters ballot information to enable them to make informed choices on election day.

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For further information on this matter, contact:

Lynda Trowbridge
Voter Service Director
328 Tower Lane
Narberth, PA 19072
215-664-7796

Sincerely,

Diane Edmundson

Diane Edmundson, Chair

cc: Lynda Trowbridge

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RECEIVED
F.E.C.
SECRETARIAT

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

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR # 3713
DATE COMPLAINT RECEIVED
BY OGC 11/23/92
DATE OF NOTIFICATION TO
RESPONDENTS 11/30/92
STAFF MEMBER Craig D. Reffner

COMPLAINANT:

William D. White

RESPONDENTS:

League of Women Voters
of Pennsylvania
Pittsburgh Post-Gazette
Lynn Hardy Yeakel
Lynn Yeakel for U.S. Senate and
Sidney Rosenblatt, as treasurer
The Honorable Arlen Specter
Citizens for Arlen Specter and
Stephen J. Harmelin, as treasurer

RELEVANT STATUTES:

2 U.S.C. § 441b(a)

INTERNAL REPORTS CHECKED:

Disclosure materials

FEDERAL AGENCIES CHECKED:

None

I. GENERATION OF MATTER

This matter arose from a complaint by William White challenging certain expenditures made by the League of Women Voters of Pennsylvania (the "League") and the Pittsburgh Post-Gazette (the "Post-Gazette"). Responses have been received. Attachments A-D.

II. FACTUAL AND LEGAL ANALYSIS

In this complaint, William White alleges that the League prepared and distributed a "16 page supplement to the Pittsburgh Post-Gazette newspaper purporting to be a comprehensive guide"

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to Pennsylvania's 1992 primary elections. Complaint at 1.¹ In addition, complainant alleges that the Post-Gazette also printed numerous articles concerning that year's Senate election. According to the complainant, these expenditures are actually contributions to Lynn Hardy Yeakel and Arlen Specter, two 1992 Senate candidates. In support of this allegation, Complainant maintains that he was an independent senatorial candidate in that election, yet Respondents failed to include him in the supplement and the news articles in question or "make any mention of the procedure to nominate an independent candidate" for that seat. Id. He alleges that they instead featured *only*

1. Mr. White has filed numerous other complainants challenging the activities of various persons in connection with Pennsylvania's 1991 and 1992 Senate elections. These include, MURs 3706, 3709 and 3710, all of which the Commission closed with no reason-to-believe findings on May 25, 1993.

In addition, Mr. White has filed several related civil actions in U.S. District Court. First, he filed suit challenging the constitutionality of the Act. His suit, in which this agency was a party, was dismissed for lack of jurisdiction. White v. United States, No. 92-1202, (W.D. Pa. Jan. 7, 1992). Second,

Third, Mr. White filed several suits challenging Pennsylvania's method of conducting special and general elections. These suits were similarly dismissed, for lack of standing or failure to state a claim for which relief could be granted. White v. Commonwealth of Pennsylvania, No. 91-1059 (W.D. Pa. December 10, 1991); White v. Commonwealth of Pennsylvania, No. 91-1060 (W.D. Pa. Oct. 18, 1991) aff'd, 968 F.2d 15 (3d Cir. 1992); White v. Commonwealth of Pennsylvania, No. 92-0710 (W.D. Pa.) aff'd, 983 F.2d 1054 (3d Cir. 1992). Last and most recent, Mr. White has filed suit pursuant to 2 U.S.C. § 437g(a)(8)(A)

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the Democratic and Republican party candidates.²

With regard to the League's supplement, complainant further alleges that Respondents prepared the supplement "in coordination" with the Yeakel and Specter campaigns, which purportedly furnished photographs of the candidates as well as other information in connection with the preparation of the supplement. Complainant characterizes the supplement as "a news event" and states that "there was no attempt . . . to provide the 'reasonably equal coverage to all opposing candidates in the circulation or listening area' required under § 100.7(b)(2)(ii) to exempt the publication from contribution reporting requirements." Id. at 1.³

Although neither the complainant nor the Respondents provided copies of either the League's publication or the Post-Gazette's news articles, Respondents acknowledge making the expenditures at issue in the complaint. In her response on behalf of the League, Diane Edmundson, the Chair of the League,

2. Ms. Yeakel and Mr. Specter were, respectively, the Democratic and Republican party candidates in the 1992 general election. The earlier primary election included a total of seven Democratic and Republican party candidates. The Democratic party candidates included: Robert Colville; Freddy Mann Friedman; Mark Stephen Single; Philip Valenti and Lynn Hardy Yeakel. The Republican party candidates included: Stephen F. Freind and Arlen Specter.

3. The complainant also alleges that the League is "a partisan organization which functions on behalf of the Republican and Democrat parties." Complaint at 2. Apparently, the complainant is challenging the League's status under Section 501(c)(3) of the Internal Revenue Code, which requires organizations qualifying for tax-exempt status to meet certain nonpartisan criteria. The determination of whether an organization like the League qualifies for Section 501(c)(3) status, however, is not within the Commission's jurisdiction.

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describes the supplement in question as a "Voters Guide" and explains that the complainant was not included because he was not a candidate on the primary election ballot. Attachment A. Ms. Edmundson asserts that the League's policy with respect to the publication of its voters guide is to include "[a]ll candidates who are certified to appear on the ballot" and, as a purported independent candidate, Mr. White was not certified to appear on the primary ballot. Id. She explains that in Pennsylvania, "political party candidates are nominated at primaries [while]. . . . [m]inor political parties do not conduct primaries but circulate and file minor political party nomination papers in order to nominate candidates directly to the November ballot." Id. at 1 (emphasis in original). She notes that "[a]s with minor political party candidates, the nomination of independent candidates must be made by nomination papers instead of primary elections." Id. at 2.

Counsel for the Post-Gazette similarly acknowledges that her client "printed newspaper articles and an election supplement regarding the primary election in Pennsylvania." Attachment B at 1. She maintains, however, that the Post-Gazette's "conduct is specifically exempt" under Section 431(9)(B)(i) of the Act, which exempts from the definition of expenditure the costs of any news articles.

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Id. at 1-3.⁴ Counsel further notes that she "is informed and believes that Mr. White was not a candidate in the April, 1992 primary election [and]. . . . [t]o the extent Mr. White planned to wage a 'write-in' campaign, he stood in a position no different from that of any of a potentially infinite number of such candidates [whom] the Post-Gazette was under no obligation to print a news story [about]." Id. at 4.

The Act broadly prohibits corporations from making contributions or expenditures in connection with Federal elections. 2 U.S.C. § 441b(a).⁵ Broadcasting stations, newspapers, magazines or other periodical publications may, however, make expenditures toward news stories, commentaries, or editorials in connection with Federal elections. 2 U.S.C. § 431(9)(B); 11 C.F.R. 100.7(b)(2) and 100.8(b)(2). In addition, corporations may also make certain nonpartisan communications to the general public. Federal Election Comm'n. v. Massachusetts Citizens for Life, 479 U.S. 238 (1986). These permissible corporate communications include registration and get-out-the-vote efforts and the preparation and distribution of voting records of Members of Congress. 11 C.F.R. §§ 114.4(b).

4. Counsel for the Yeakel and Specter campaigns also raise the Act's press exemption in their respective responses. See Attachments C at 1 (Yeakel)(activities in question are "appropriate public affairs programming or news coverage") and D at 2 (Specter)(law explicitly provides that the expenditures in question are not contributions).

5. According to the Pennsylvania Secretary of States Office, the Pennsylvania League is a non-profit corporation. Similarly, the Post-Gazette is published by the PG Publishing Company, a Pennsylvania corporation.

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Corporations may also prepare and distribute voter guides to the general public.⁶ Such communications may, however, result in prohibited in-kind contributions if they are made in coordination with a candidate's campaign.

As an initial matter, Respondents' assertions concerning Mr. White's failure to qualify as a candidate on the primary and general election ballots appear accurate. Indeed, Mr. White has acknowledged that he was an independent candidate and under Pennsylvania law candidates in the primary election must be nominated by a political party to have their names placed on that election ballot. 25 P.S. § 2862 (1964). Although Pennsylvania law provides for independent candidates to have their names placed on the general election ballot, Mr. White, who challenged Pennsylvania's general election candidate nomination process, was unsuccessful in having his name placed on that election ballot. White v. Commonwealth of Pennsylvania, No. 92-0710 (W.D. Penn.), aff'd, 983 F.2d 1054 (3d Cir. 1992). Furthermore, Mr. White did not file a statement of candidacy with the Commission in connection with the 1992 Senate election

6. In Faucher v. Federal Election Comm'n., 928 F.2d 466 (1st Cir. 1991), cert. denied, 495 U.S. ____ (October 7, 1991), the court held that the Commission's regulations governing the preparation and distribution of voter guides by corporations exceeded the statutory authority of the Act. However, such communications may constitute prohibited expenditures if they expressly advocate the election or defeat of a candidate. Federal Election Comm'n. v. Massachusetts Citizens for Life, 479 U.S. 238 (1986). In the matter at hand, however, the complainant is challenging the expenditures in question as in-kind contributions and not as prohibited expenditures which contain express advocacy.

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at issue here.⁷ In this regard, there appears to be no factual basis supporting Mr. White's assertion that he was a candidate in the 1992 Senate election, let alone a candidate who should have been included in the League's publication or the Post-Gazette's news articles.

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With regard to the allegation of coordination, the Chair of the League explains that in preparing its "Voters Guide," the League obtained a list of the certified ballot candidates in the primary election and then used that list to solicit photographs and other information from the various candidates. Although the League was apparently in contact with various candidates, the contacts at issue here, in the context of preparing a publication featuring the candidates in the election, would not appear to rise to the level of coordination. Indeed, the Act permits corporations to make certain nonpartisan communications to the general public and in the case of voter guides, the Commission has recognized the need for such contact, noting that there is a distinction "between the limited contact with candidates that is necessary to produce voter guides . . . and the more extensive discussions resulting in arrangement, coordination or direction of [the] . . . activities by the candidate. See 57 Fed. Reg. 33548 at 33554 July 29, 1992 (notice of proposed rulemaking for "MCFL" regulations). Here,

7. Disclosure materials show that Mr. White filed a statement of candidacy in connection with an earlier Senate election in Pennsylvania. That election was a special election held in 1991 for the purpose of filling the vacancy that arose when the Honorable John Heinz died in a helicopter crash.

the information shows that the League's contact with the various candidates did not extend beyond a request for information and photographs to include in the publication.

Likewise, the allegation that Respondents' expenditures were "news stories" which should have provided equal coverage of all candidates to qualify for the media exemption is misplaced here. Under the Commission's regulations, the requirement of equal coverage is only imposed when the media entity in question is owned or controlled by a political party, political committee or candidate. 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2). In the case of the League, it does not appear that that organization was operating as a media entity, much less one that was owned or controlled by a political party or a candidate. In the case of the Post-Gazette, counsel submitted the affidavit of William Deibler, the managing editor of the newspaper, who states that the Post-Gazette is "a newspaper of general circulation serving the greater Pittsburgh area. . . . [and that it is not] "owned or controlled by any political party, political committee or candidate." Attachment B at 6-7. In this regard, it does not appear that the Post-Gazette would have been required to report on Mr. White's election efforts, even if Mr. White actually had been a candidate in the 1992 Senate election. In short, it appears that the news stories in question would clearly fall within the legitimate press function for the Post-Gazette and thus within the Act's media exemption. See Reader's Digest Ass'n. v. Federal Election Comm'n., 509 F. Supp. 1210 (S.D.N.Y. 1981).

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Based upon the above considerations, this Office recommends that the Commission find no reason to believe that any of the Respondents in this matter violated any provision of the Act based upon the complaint filed in MUR 3713.

III. RECOMMENDATIONS

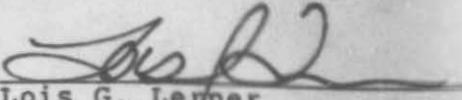
1. Find no reason to believe that the League of Women Voters of Pennsylvania, the Pittsburgh Post-Gazette, Lynn Hardy Yeakel, Lynn Yeakel for U.S. Senate and Sidney Rosenblatt, as treasurer, The Honorable Arlen Specter, and Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer, violated any provision of the Act based upon the complaint filed in MUR 3713.
2. Approve the appropriate letters.
3. Close the file.

Lawrence M. Noble
General Counsel

Date

7/1/93

BY:


Lois G. Lerner
Associate General Counsel

Attachments

- A. Response of the League of Women Voters
- B. Response of the Pittsburgh Post-Gazette
- C. Response of the Honorable Arlen Specter and Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer
- D. Response of Lynn Hardy Yeakel and Lynn Yeakel for U.S. Senate and Sidney Rosenblatt, as treasurer

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
League of Women Voters of) MUR 3713
Pennsylvania;)
Pittsburgh Post-Gazette;)
Lynn Hardy Yeakel;)
Lynn Yeakel for U.S. Senate and)
Sidney Rosenblatt, as treasurer;)
The Honorable Arlen Specter;)
Citizens for Arlen Specter and)
Stephen J. Harmelin, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 8, 1993, the Commission decided by a vote of 6-0 to take the following actions in MUR 3713:

1. Find no reason to believe that the League of Women Voters of Pennsylvania, the Pittsburgh Post-Gazette, Lynn Hardy Yeakel, Lynn Yeakel for U.S. Senate and Sidney Rosenblatt, as treasurer, The Honorable Arlen Specter, and Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer, violated any provision of the Act based upon the complaint filed in MUR 3713.

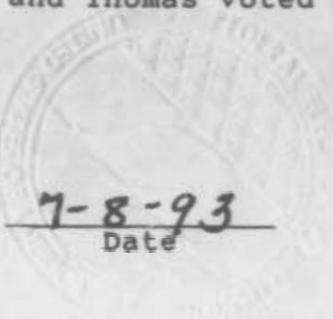
(continued)

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2. Approve the appropriate letters, as recommended in the General Counsel's Report dated July 1, 1993.
3. Close the file.

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

Attest:



7-8-93
Date

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

Received in the Secretariat:	Fri.,	July 2, 1993	9:46 a.m.
Circulated to the Commission:	Fri.,	July 2, 1993	12:00 p.m.
Deadline for vote:	Thurs.,	July 8, 1993	4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JULY 15, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William D. White
16 East Manilla Avenue
Pittsburgh, PA 15220

RE: MUR 3713

Dear Mr. White:

On July 8, 1993, the Federal Election Commission reviewed the allegations of your complaint dated November 23, 1992, and found that on the basis of the information provided in your complaint, and information provided by the Respondents, there is no reason to believe the League of Women Voters of Pennsylvania, the Pittsburgh Post-Gazette, Lynn Hardy Yeakel, Lynn Yeakel for U.S. Senate and Sidney Rosenblatt, as treasurer, The Honorable Arlen Specter, and Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer, violated any provision of the Act with respect to MUR 3713. Accordingly, on July 8, 1993, the Commission closed the file in this matter.

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).

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JULY 15, 1993

Paul S. Diamond, Esq.
Obermayer, Rebmann, Maxwell & Hippel
14th Floor, Packard Building
Philadelphia, PA 19102-2688

RE: MUR 3713
The Honorable Arlen Specter
United States Senate
Citizens for Arlen Specter and
Stephen J. Harmelin, as treasurer

Dear Mr. Diamond:

On November 30, 1992, the Federal Election Commission notified your clients, the Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer, and The Honorable Arlen Specter, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On July 8, 1993, the Commission found, on the basis of the information in the complaint, and information provided by you that there is no reason to believe the Citizens for Arlen Specter and Stephen J. Harmelin, as treasurer, and The Honorable Arlen Specter violated any provision of the Act with respect to MUR 3713. Accordingly, the Commission closed its file in this matter.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JULY 15, 1993

Gregory M. Harvey, Esq.
Morgan, Lewis & Boskios
2000 One Logan Square
Philadelphia, PA 19103-6993

RE: MUR 3713
Lynn Hardy Yeakel
Lynn Yeakel for U.S. Senate and
Sidney Rosenblatt, as treasurer

Dear Mr. Harvey:

On November 30, 1992, the Federal Election Commission notified your clients, Lynn Hardy Yeakel and Lynn Yeakel for U.S. Senate and Sidney Rosenblatt, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On July 8, 1993, the Commission found, on the basis of the information in the complaint, and information provided by you that there is no reason to believe Lynn Hardy Yeakel and Lynn Yeakel for U.S. Senate and Sidney Rosenblatt, as treasurer, violated any provision of the Act with respect to MUR 3713. Accordingly, the Commission closed its file in this matter.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JULY 15, 1993

Diane Edmundson, Chair
The League of Women Voters
of Pennsylvania
226 Forster Street
Harrisburgh, PA 17102-3220

RE: MUR 3713
League of Women Voters of Pennsylvania

Dear Ms. Edmundson:

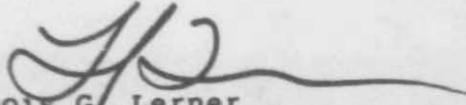
On November 30, 1992, the Federal Election Commission notified the League of Women Voters of Pennsylvania of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On July 8, 1993, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe the League of Women Voters of Pennsylvania violated any provision of the Act with respect to MUR 3713. Accordingly, the Commission closed its file in this matter.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JULY 15, 1993

Marketa Sims, Esq.
Reed Smith Shaw & McClay
Mellon Square
435 Sixth Avenue
Pittsburgh, Pennsylvania 15219

RE: MUR 3713
Pittsburgh Post-Gazette

Dear Ms. Sims:

On November 30, 1992, the Federal Election Commission notified your client, the Pittsburgh Post-Gazette, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On July 8, 1993, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe the Pittsburgh Post-Gazette violated any provision of the Act with respect to MUR 3713. Accordingly, the Commission closed its file in this matter.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3713

DATE FILMED 8-5-93 CAMERA NO. 4

CAMERAMAN Jm H

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