FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

THIS IS THE BEGINNING OF MUR # 3723

DATE FILMED 10/29/93 CAMERA NO. 2

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National Republican Senatorial Committee

SENATOR PHIL GRAMM
CHAIRMAN

JEB HENSARLING
EXECUTIVE DIRECTOR

MUR 3723

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December 16, 1992

Mrs. Joan Aikens
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Dear Madame Chairman:

This letter constitutes a formal, sworn complaint pursuant to 2 U.S.C. 437g(a) of the Federal Election Campaign Act (the "Act") and provisions of the Federal Election Commission's (Commission) regulations, and sets forth reasons to believe that violations of the Act have been committed by Public Citizen, Inc. ("Public Citizen"), a non-profit corporation established under the laws of the District of Columbia, located at 2000 P Street, N.W., Washington, DC, 20036.

Public Citizen is illegally trying to influence a federal election by using its status as a tax-exempt 501(c)(4) corporation to expend corporate funds in order to support a federal lawsuit it has filed, which lawsuit is intended to affect adversely the election of a specific Republican candidate for federal office.

For the reasons set forth hereafter, the National Republican Senatorial Committee ("NRSC") alleges the following specific violations of federal election law:

1. Failing to register and report as a "political committee," 2 U.S.C. 431(4), 432, 433 and 434, with the result that the public cannot ascertain whether Public Citizen's sources of funds are corporations, labor unions, individuals giving above the limits allowed by the election laws or other forms of so-called "soft money."

2. Using illegal corporate money to influence a federal election, 2 U.S.C. 441b;

3. Failing to report its activities as a "contribution" to a Democrat candidate subject to the Act's limits, 2 U.S.C. 431(8)(A), 441(a);

4. Failing to report costs associated with its federal lawsuit as "expenditures" under the Act, 2 U.S.C. 431(9)(A) and 434; 11 C.F.R. 106.1(a);

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RONALD REAGAN REPUBLICAN CENTER
425 SECOND STREET, N.E. • WASHINGTON, D.C. 20002 • (202) 675-6000

PAID FOR AND AUTHORIZED BY THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE.

Basis For Complaint

1. Public Citizen's Federal Lawsuit - Under Georgia state law, a candidate for the U.S. Senate must receive a majority of the vote to be elected. Wyche Fowler, the incumbent Democrat, failed to receive the necessary majority on the November 3rd election. Consequently, a runoff election was held on November 24, 1992 as required under state law.

Paul Coverdell, the Republican candidate for the U.S. Senate seat in Georgia eventually defeated Wyche Fowler in the runoff.

On December 3, 1992, Public Citizen and several individuals filed a lawsuit in federal district court in Atlanta [Northern District of Georgia, Atlanta Division] charging that the Georgia senate runoff violated Article I of the Constitution and federal statutes based on the Constitution.

Public Citizen generally contends that the Constitution gives authority over Senate elections, and that Congress has specified that elections are to be held on the "Tuesday next after the first Monday in November." From this Public Citizen claims that the Georgia law violates the Constitution's dictate on "the times, places and manner of holding elections for Senators."

Public Citizen in its lawsuit seeks to have the Georgia runoff declared null and void and to have Mr. Fowler declared the winner.

The four individuals listed as plaintiffs with Public Citizen all voted for Wyche Fowler in the November 3rd general election as well as the November 24th runoff.

A copy of Public Citizen's federal lawsuit is attached as Exhibit A for your convenience.

2. Timing of the Federal Lawsuit - The federal lawsuit was not filed immediately after the November 3rd election and before the November 24th runoff. Rather, the suit was filed after the November 24th runoff when the election results arguably proved unsatisfactory to Public Citizen and the individual plaintiffs.

3. Activities of Public Citizen's SSF - Public Citizen established a separate segregated fund (SSF) called "Fund For A Clean Congress" which is registered and reports with the Commission.

Fund For A Clean Congress shows $59,220 in "independent expenditures" against Republican Newt Gingrich in its 1992 FEC reports.

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Discussion of Law

Pursuant to 2 U.S.C. 433, a political committee must file a statement of organization within ten days after becoming a political committee within the meaning of 2 U.S.C. 431(4). Under the Act, a "political committee" is defined to mean any committee, club, association, or other group of persons, including a corporation, which receives contributions aggregating in excess of $1000 or makes expenditures in excess of $1000 during a calendar year. 2 U.S.C. 431(4) and 431(11).

The term "contribution" is generally defined under the Act to include any gift, subscription, loan, advance or deposit of money or anything of value for the purpose of influencing any election for Federal office. 2 U.S.C. 431(8)(a)(i). Similarly, the term "expenditure" includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. 431(9)(A)(i).

Pursuant to 2 U.S.C. 441b(a), it is unlawful for a corporation to make a contribution or expenditure in connection with any election for Federal office. This prohibition against corporate contributions and expenditures extends to non-profit and tax exempt corporations. See e.g., Advisory Opinion 1982-26, Fed. Elec. Camp. Fin. Guide (CCH) para. 5672 (1982) and authority cited therein.

According to the foregoing provisions, Public Citizen, as enumerated previously, is in violation of federal election law because its federal lawsuit was filed for the "purpose of influencing [an] election for Federal office" and was made "in connection with [an] election for Federal office." Therefore, the costs associated with the lawsuit, including but not limited to cost of research and cost of filing the lawsuit, constitute expenditures under the Act.

It is beyond question that Public Citizen's activity with respect to the federal lawsuit was made in connection with and was done for the purpose of influencing a federal election.

First, a clear nexus exists between the costs associated with the federal lawsuit and the declaratory judgment sought of having Wyche Fowler declared the winner. This satisfies the Third Circuit Court of Appeals holding that in order for a contribution or expenditure to be considered as having been made in connection with a federal election, "a nexus must be established between the alleged contribution or expenditure and the federal election in question." Miller v. AT&T, 507 F.2d 759, 764 (3rd Cir. 1974).

Second, the totality of circumstances, which the Commission often looks to, indicates that the lawsuit was filed "for the purpose of influencing a federal election" as that phrase is used for determining whether violations of the Act's registration, reporting or prohibitions and limitations occurred.

In this respect, the declaratory relief sought by Public Citizen is important. The suit does not seek to have the Georgia statute simply invalidated so that further federal elections will not result in similar circumstances. Rather, it seeks to have the Democrat Wyche Fowler declared the winner and the Republican Paul Coverdell prevented from being certified.

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The timing of the lawsuit is also important. The credible time in which to file the lawsuit, if Public Citizen was sincerely interested in protecting constitutional rights, was immediately after the November 3rd election. Public Citizen, however, waited until after the November 24th runoff when the results of the election proved unsatisfactory.

The other individual plaintiffs lend further to the proposition that the lawsuit is partisan intent on affecting adversely the election of a specific Republican candidate for federal office. It is safe to assume that Public Citizen is the lead plaintiff on this lawsuit both in terms of covering costs and coordinating matters. In this respect, the individual plaintiffs are nominal.

However, even in a nominal sense, it seems reasonable that Public Citizen would have included individuals who voted for neither major party in the first election (i.e., independents) and/or individuals who voted for the Republican candidate in the first election and/or the runoff. If the true intent of the lawsuit is to propound constitutional principles, this is at least makes sense. However, it is not the case. The individual plaintiffs consist only of those who voted for Wyche Fowler the Democrat in both the initial election and the runoff.

Finally, adding to the totality of the circumstances, is the fact that Public Citizen is the "connected organization" for Fund For A Clean Congress. See 2 U.S.C. 431(7). The fact that Public Citizen established a PAC, as that term is commonly used, shows that it has a political agenda to promote. It is well established that the PAC is the vehicle for financially supporting (opposing) candidate(s) favorable (unfavorable) to one's political agenda.

As stated previously, Fund For A Clean Congress dumped $59,220 into a congressional race in Georgia in an effort to defeat Newt Gingrich. One can therefore reasonably assume that Newt Gingrich is not favorable to the political agenda of Fund For A Clean Congress.

The critical point is that the same people who run Public Citizen also run Fund For A Clean Congress. These same people would be intent once again on opposing the candidate likely to be unfavorable to their political agenda. From this it reasonably follows that Public Citizen is using its tax-exempt corporate status to carry out its political campaign objective of defeating Republican Paul Coverdell and reinstating Democrat Wyche Fowler.

In sum, by failing to report the costs associated with this partisan lawsuit as "expenditures," Public Citizen has kept from public view the sources of the funds used to pay for the lawsuit. Further, by preparing and paying for the federal lawsuit, Public Citizen has unilaterally determined that it does not have to follow the same statutory requirements as other groups or individuals who spend money in an attempt to influence federal elections. And finally, by treating the federal lawsuit as non-disclosed "soft money" expenditures, the fact is that Public Citizen has found a way to evade the prohibitions of federal election law so as to illegally inject corporate money into the political process.

The NRSC believes this attempt to evade federal election law must be condemned. Accordingly, I ask that the Commission's Office of General Counsel

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expeditiously review this complaint and take appropriate action with regard to these apparent violations of the Act.

The above is true and correct to the best of my knowledge, information and belief.

Respectfully,

Jay Velasquez

Jay Velasquez
on behalf of the NRSC

National Republican Senatorial Committee

Sworn to and subscribed
before me this 16 day of
December, 1992

Lana C. Guiler
Notary Public, District of Columbia
My Commission Expires July 14, 1997

Lana C. Guiler

Notary Public

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DEC 3 '92 12:41

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

PUBLIC CITIZEN, INC.; McCRACKEN POSTON; RALPH PAIGE; PETE McCOMMONS; and BETTY LEE SARGENT, Plaintiffs, v. ZELL MILLER, Governor of the State of Georgia; and MAX CLELAND, Secretary of State of the State of Georgia and Director, Georgia State Board of Elections, Defendants.	CIVIL ACTION NO.

VERIFIED COMPLAINT AND REQUEST FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT

INTRODUCTION

On November 3, 1992, the State of Georgia conducted its general election for the office of United States Senator. The incumbent, Wyche Fowler, received a plurality of the votes, but was not certified as the winner. Because of the majority vote requirement embodied in O.C.G.A. § 21-2-501, a runoff election was conducted on November 24, 1992 between Senator Fowler and Republican Paul Coverdell. While final results have not yet been officially tabulated, Mr. Coverdell reportedly won the runoff by a narrow majority, and the State of Georgia is preparing to certify him as the victor.

No other State in the Union requires as a condition of election that a United States Senator receive a majority of the

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votes cast in the general election or mandates that a runoff be held if no candidate receives a majority. Because of the procedures imposed by the State of Georgia, plaintiffs have effectively been deprived of their rights guaranteed under the United States Constitution and federal statutes.

As a result, in this action, plaintiffs seek a declaratory judgment that the runoff election was a nullity and that Wyche Fowler, not Mr. Coverdell, was the legitimate winner of the 1992 election for the office of United States Senator. Plaintiffs also seek injunctive relief precluding defendants from certifying Mr. Coverdell as the winner and ordering that instead Senator Fowler be so certified. Other relief is also sought.

The basis for this action is that the November 24 runoff election was null and void because it was held on a date other than that prescribed by Congress in violation of 2 U.S.C. §§ 1 and 7 and Article I, Section 4 of the United States Constitution. Further, the Georgia majority vote requirement impermissibly seeks to add a qualification for office -- i.e. election by a majority -- beyond those qualifications established by Article 1, Section 3, Clause 3 of the United States Constitution.

COMPLAINT

PARTIES AND JURISDICTION

1.

Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(3) and 1343(4). Plaintiffs further seek declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

2.

Plaintiff Public Citizen, Inc. is a consumer organization with approximately 140,000 members nationwide, including more than 1700 in Georgia. Public Citizen, Inc., which was established in 1971 under the District of Columbia NonProfit Corporation Act, brings this action on behalf of its Georgia members whose right to elect a United States Senator is adversely affected by the Georgia laws at issue in this action.

3.

Plaintiff McCracken Poston is a citizen and voter of Catoosa County, Georgia. Mr. Poston is a Representative in the Georgia General Assembly. He voted for Senator Fowler in both the general election on November 3, 1992 and the runoff election on November 24, 1992.

4.

Plaintiff Ralph Paige is a black citizen and voter of Troup County, Georgia. Mr. Page voted for Senator Fowler in both the general election on November 3, 1992 and the runoff election on November 24, 1992.

5.

Plaintiff Pete McCommons is a citizen and voter of Clarke County, Georgia. Mr. McCommons voted for Senator Fowler in both the general election on November 3, 1992 and the runoff election on November 24, 1992.

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6.

Plaintiff Betty Lee Sargent is a citizen and voter of Clarke County, Georgia. Ms. Sargent voted for Senator Fowler in both the general election on November 3, 1992 and the runoff election on November 24, 1992.

7.

Defendant Zell Miller, who is named as a defendant in his official capacity, is the duly-elected Governor of the State of Georgia. Pursuant to O.C.G.A. § 21-2-499 and § 21-2-502 (b) and 2 U.S.C. § 1a, Governor Miller is responsible for enumerating and ascertaining the votes cast in the Senate race, issuing a commission and certifying the winner to the President of the Senate of the United States.

8.

Defendant Max Cleland is the Secretary of State of the State of Georgia and Director of the Georgia State Board of Elections. He is sued in his official capacity. As Secretary of State, pursuant to O.C.G.A. § 21-2-499 and § 21-2-502, it is his duty to receive the returns of elections, compute the votes cast for candidates, certify the results and issue commissions to the Governor. Pursuant to 2 U.S.C. § 1b, he also must countersign the certificate of the winner of the Senate election to be signed by the Governor in accord with 2 U.S.C. § 1a.

9.

Venue is proper in this Court and the Court has personal jurisdiction of all defendants.

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FACTUAL ALLEGATIONS

10.

On November 3, 1992, the State of Georgia conducted a general election. Among the races on the ballot was one for the office of United States Senator currently held by Wyche Fowler, whose term expires on January 3, 1993.

11.

The general election conducted on November 3, 1992 was won by Senator Fowler.

12.

As certified by the Secretary of State, the results of the Senate race were as follows: Wyche Fowler received 1,108,416 votes (49.22%); Republican Paul Coverdell received 1,073,282 votes (47.66%); and Libertarian Jim Hudson received 69,878 votes (3.1%).

13.

Despite the fact that Senator Fowler finished first in the November 3, 1992 general election, Governor Miller and Secretary of State Cleland did not certify Senator Fowler as the winner to the President of the Senate of the United States pursuant to 2 U.S.C. §§ 1a and 1b.

14.

Instead, acting pursuant to O.C.G.A. § 21-2-501 (the majority vote statute), Secretary of State Cleland set a runoff election for November 24, 1992 to elect the United States Senator.

15.

O.C.G.A. § 21-2-501, in pertinent part, provides:

> no candidate shall be nominated for public office in any primary or elected to public office in any election unless such candidate shall have received a majority of the votes cast to fill such nomination or public office.

16.

The turnout at the runoff election was substantially less than the turnout at the general election on November 3, 1992. While the precise figures are not yet available, it is estimated that the number of votes cast at the runoff was approximately 1,300,000, almost 50 percent less than the number cast at the general election.

17.

The unofficial -- i.e. uncertified -- results of the runoff election are as follows: Paul Coverdell received approximately 655,000 votes and Wyche Fowler received approximately 640,000 votes.

18.

Secretary of State Cleland is in the process of receiving the official returns of the elections from counties around the State. Based upon the unofficial returns of the runoff election, it is expected that Secretary of State Cleland will attest Mr. Coverdell as the winner of the Senate race. It is further expected that Governor Miller and Secretary of State Cleland will issue a certificate of election and commission to Mr. Coverdell pursuant to O.C.G.A. § 21-2-502(b)(1) and certify his election to the President of the Senate of the United States pursuant to 2 U.S.C. § 1a and 1b.

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COUNT ONE

19.

The runoff election conducted by the State of Georgia on November 24, 1992 was a nullity.

20.

According to Article I, Section 4 of the United States Constitution, Congress has plenary power to establish the time and manner of holding elections for United States Senators if it chooses to exercise its power. States may prescribe the time and manner of such elections only in the absence of Congressional action. Article I, Section 4 provides:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such regulations, except as to the Places of chusing Senators.

21.

Congress has exercised its power to prescribe the time of the election of Senators through passage of 2 U.S.C. § 1, which states:

> At the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the 3d day of January next thereafter.

(emphasis added). Pursuant to this section, a Senator must be chosen at the regular election involving the regular election of a

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United States Representative closest in time to the expiration of the incumbent Senator's term.

22.

The time for election of United States Representatives is prescribed by 2 U.S.C. § 7, which states:

> The Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter.

(emphasis added)

23.

Taken together, 2 U.S.C. §§ 1 and 7 require that Senators be elected on the first Tuesday following the first Monday in the November preceding the expiration of the incumbent Senator's term.

24.

Because the term of Wyche Fowler expires on January 3, 1993, federal law thus required that the election to chose his successor be held on November 3, 1992.

25.

The obvious intent of Congress was that United States Senators would be chosen at a single election held on a single date and that such date be the same as the one on which members of the House of Representatives are chosen. Federal law, as embodied in 2 U.S.C. §§ 1 and 7, does not provide for and thus does not countenance a general election to be held on more than one date. Similarly, federal law does not countenance the holding of an election for the

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office of United States Senator in 1992 on any day other than November 3, 1992.

26.

As the person who obtained the most votes for the office of United States Senator at the election held on November 3, 1992, Senator Fowler is entitled to be certified as the person duly-elected by the citizens of the State of Georgia to fill the Senate term beginning January 3, 1993.

27.

Since the runoff election held on November 24, 1992, was not held at the time prescribed by Congress, and since a proper general election was held at the time prescribed by Congress, the runoff election is of no force and effect.

28.

Unless the Court orders defendants not to certify the winner of the November 24 runoff election and orders them to certify the winner of the November 3 general election, the certificate for United States Senator will be unlawful thereby injuring the members of plaintiffs Public Citizen, Inc., who are citizens of Georgia, the individual plaintiffs in this action, and all other citizens of Georgia who are entitled to have their United States Senator elected in accordance with the Constitution and applicable federal statutes.

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COUNT TWO

29.

The qualifications of those eligible to serve as United States Senators are set forth in Article I, Section 3, Clause 3 of the United States Constitution, which states:

> No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

30.

Nothing in the United States Constitution nor federal statutory law provides for or requires that a United States Senator receive a majority of the votes cast as a condition to election.

31.

No State other than the State of Georgia requires as a condition of election that a United States Senator receive a majority of the votes cast in the general election or mandates that a runoff be held if no candidate receives a majority of the votes cast at the general election.

32.

O.C.G.A. § 21-3-501 and § 21-2-502(b)(1), to the extent they require that United States Senators be elected by a majority of those voting in an election, impermissibly adds a qualification not contained in the United States Constitution and otherwise exceeds the powers of a State with regard to the holding of federal elections.

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33.

O.C.G.A. § 21-2-501 and § 21-2-502(b)(1) also frustrate the result of valid general elections and require legitimate -- i.e. plurality -- winners to compete in unlawful runoff elections.

34.

The effect of the majority vote requirement, furthermore, is to serve as a screening mechanism to prevent black candidates and candidates supported by blacks voting in a block from winning elections as United States Senators.

35.

The State of Georgia has a long history of private and official discrimination against blacks, including specifically discrimination against blacks attempting to exercise their right to vote and participate equally with whites in the political process.

36.

Georgia's statewide majority vote law was enacted by the General Assembly in 1964 following abolition of the county unit system of government in an effort to perpetuate this long history of official discrimination against blacks in Georgia. Indeed, the publicly-avowed purpose of the law was to discriminate against blacks and dilute their voting strength.

37.

O.C.G.A. § 21-2-501, as applied to elections for United States Senators, thus is unconstitutional.

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38.

Since Wyche Fowler was the winner of the general election on November 3, 1992 and otherwise met the Constitutional qualifications for the office of United States Senator, he is entitled to be declared the winner.

39.

Similarly, since the runoff election was held solely because of Georgia's majority vote requirement, the runoff is null and void. Mr. Coverdell, as a result, has no right to certification as the winner of the 1992 Senate race.

40.

Unless the court orders defendants not to certify the winner of the November 24 runoff election and orders them to certify the winner of the November 3 general election, the certificate for United States Senator will be unlawful thereby injuring the members of plaintiffs Public Citizen, Inc., who are citizens of Georgia, the individual plaintiffs in this action, and all other citizens of Georgia who are entitled to have their United States Senator elected in accordance with the Constitution and applicable federal statutes.

WHEREFORE, plaintiffs request the following relief:

(a) entry of a declaratory judgment that the runoff election for the office of United States Senate conducted on November 24, 1992 was and is null and void; that the general election conducted

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on November 3, 1992 was the one and only valid election; and that Wyche Fowler, as the recipient of the plurality of votes cast in the general election, was the winner of the election;

(b) entry of a declaratory judgment that O.C.G.A. § 21-2-501 and § 21-2-502(b)(1), to the extent they seek to impose a majority vote requirement on candidates for the office of United States Senator, are unconstitutional;

(c) entry of an injunction temporarily, preliminarily and permanently precluding Governor Miller and Secretary of State Cleland from certifying Paul Coverdell as the winner of the 1992 Georgia election for the office of United States Senator;

(d) entry of a preliminary and permanent injunction requiring Governor Miller and Secretary of State Cleland to certify Wyche Fowler as the winner of the 1992 Georgia election for the office of United States Senator and to issue to him a commission of said office;

(e) award plaintiffs their costs and attorneys fees; and

(f) award such further relief as deemed proper by the Court.

KENNETH S. CANFIELD
Ga. Bar No. 107744
RALPH I. KNOWLES
Ga. Bar No. 426721
JANE LONG
Ga. Bar No. 063820

DOFFERMYRE, SHIELDS, CANFIELD
& KNOWLES
1355 Peachtree Street
Suite 1600
Atlanta, Georgia 30309
404/881-6900

ATTORNEYS FOR PLAINTIFFS

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OF COUNSEL:

Alan B. Morrison, Esq.
Cornish F. Hitchcock, Esq.
Public Citizen Litigation Group
2000 P Street, N.W.
Suite 700
Washington, D.C. 20036
202/833-3000

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

PUBLIC CITIZEN, INC.; McCRACKEN POSTON; RALPH PAIGE; PETE McCOMMONS; and BETTY LEE SARGENT,

Plaintiffs,

v.

BILL MILLER, Governor of the State of Georgia; MAX CLELAND, Secretary of State of the State of Georgia and Director, Georgia State Board of Elections,

Defendants.

CIVIL ACTION NO.

VERIFICATION

I, McCracken Poston, hereby verify that the facts contained in the Complaint and Request for Temporary Restraining Order, Preliminary and Permanent Injunctive Relief and Declaratory Judgment are true and correct to the best of my knowledge and belief.

McCracken Poston

Sworn to and subscribed before me this 3rd day of Dec., 1992.

NOTARY PUBLIC

My Commission Expires Oct. 5, 1996

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VERIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby declare that I am President of Public Citizen, Inc. and that the facts contained in this complaint are true and correct to the best of my knowledge.

Executed at Washington, D.C. this 3rd day of December, 1992.

Joan B. Claybrook

Joan Claybrook

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 21, 1992

National Republican Senatorial Committee
Jay Velasquez
Ronald Reagan Republican Center
425 Second Street, NE
Washington, DC 20002

RE: MUR 3723

Dear Mr. Velasquez:

This letter acknowledges receipt on December 16, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Public Citizen, Inc. and Public Citizen Inc.'s Fund for a Clean Congress and Craig L. McDonald, 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 3723. 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,

LEK (by cmr)

Lisa E. Klein
Assistant General Counsel

Enclosure
Procedures

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 21, 1992

Craig L. McDonald, Treasurer
Public Citizen Inc.'s Fund
For A Clean Congress
215 Pennsylvania Avenue, SW
Washington, DC 20003

RE: MUR 3723

Dear Mr. McDonald:

The Federal Election Commission received a complaint which indicates that the Public Citizens Inc.'s Fund For A Clean 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 3723. 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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If you have any questions, please contact Xavier McDonnell, 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,

LEK (by CAR)

Lisa E. Klein
Assistant General Counsel

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 21, 1992

Joan B. Claybrook, President
Public Citizen, Inc.
2000 P Street, NW
6th Floor
Washington, DC 20036

RE: MUR 3723

Dear Ms. Claybrook:

The Federal Election Commission received a complaint which indicates that Public Citizen, Inc. 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 3723. 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 Public Citizen, Inc. in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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If you have any questions, please contact Xavier McDonnell, 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,

LEK (by cmm)

Lisa E. Klein
Assistant General Counsel

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

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OGC 8138

PUBLIC CITIZEN LITIGATION GROUP
SUITE 700
2000 P STREET N.W.
WASHINGTON, D.C. 20036
(202) 833-3000

January 6, 1993

By Hand Delivery

Lisa E. Klein, Esq.
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3723

Dear Ms. Klein:

Enclosed are the declarations of Joan B. Claybrook, Esquire, the President of Public Citizen, Inc., and Craig McDonald, the Treasurer of Public Citizen, Inc.'s Fund for a Clean Congress. These declarations respond in full to the charges against Public Citizen and Public Citizen's Fund that have been filed by the National Republican Senatorial Committee ("NRSC").

In our view, the reasons provided in the declarations submitted by Ms. Claybrook and Mr. McDonald establish that the NRSC's complaint is without merit and was brought solely to harass Public Citizen, Inc. In addition, the complaint appears to be little more than a public relations ploy to divert public attention from a pending complaint (not brought by Public Citizen) which charges the NRSC with violating the Federal Election Campaign Act based on its illegal contributions of money to the Coverdell runoff campaign in excess of the statutorily prescribed limit.

In the event that the Commission needs any additional information or material relating to MUR 3723, please let us know, and we will be glad to furnish it.

Sincerely,

David C. Vladeck
Attorney for Public Citizen Inc.

Enclosure

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BEFORE THE FEDERAL ELECTION COMMISSION

MUR NO. 3723

Declaration of Craig McDonald, Treasurer,
Public Citizen Inc.'s Fund For A Clean Congress

1. My name is Craig McDonald, and I have served as Treasurer of Public Citizen Inc.'s Fund For A Clean Congress since it was established as a separate segregated fund by Public Citizen, Inc., in April, 1992. I make this declaration in response to the complaint filed with the Commission by the National Republican Senatorial Committee ("NRSC"). That complaint alleges that the Fund For A Clean Congress has violated the Federal Election Campaign Act by participating in litigation challenging the validity of a Georgia election law that forces a candidate for federal office who wins the general election, but fails to obtain an absolute majority, into a run-off election.

2. The NRSC's charge that the Fund For A Clean Congress has played a role in the Georgia litigation is utterly baseless. The Fund's reports to the Commission clearly demonstrate that the Fund has not spent one cent on the election contest between Democratic Senator Wyche Fowler and Republican Paul Coverdell, or on the post-election litigation, and it is reckless and irresponsible for the NRSC to suggest otherwise.

3. As explained fully in the accompanying declaration of Joan B. Claybrook, the President of Public Citizen, Inc., Public Citizen, Inc., is participating as a plaintiff in the Georgia litigation. However, as I stated above, the Fund For A Clean Congress, has not participated in that litigation in any way, let

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alone made an expenditure or contribution on behalf of either of the two candidates.

4. For these reasons, the NRSC's complaint should be rejected out of hand.

* * *

Pursuant to 28 U.S.C. § 1746, I hereby declare under the penalty of perjury that the foregoing is true and correct.

Craig McDonald, Treasurer
Public Citizen, Inc.'s Fund For
A Clean Congress

Dated: January 4, 1993
Washington, D.C.

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BEFORE THE FEDERAL ELECTION COMMISSION

MUR NO. 3723

Declaration of Joan B. Claybrook, President
Public Citizen Inc.

1. My name is Joan B. Claybrook, and I am President of Public Citizen, Inc. I make this declaration in response to the charges filed by the National Republican Senatorial Committee ("NRSC"), which has alleged that Public Citizen violated the Federal Election Campaign Act ("FECA") by participating as a plaintiff in a lawsuit. The suit in question, now pending in the federal district court in Atlanta, challenges the validity of a Georgia election law which is unique in the nation. Under that law, a candidate for federal office who wins the general election, but who fails to obtain an absolute majority of all votes cast, is forced into a runoff election held three weeks later. The suit challenges that law as violating federal statutes which mandate a uniform national election day (2 U.S.C. §§ 1 & 7), the Constitutional provision setting the qualifications for holding office as a Senator (Article I, section 3, cl. 3), and the federal Voting Rights Act.

2. The NRSC's charge is absolutely baseless and has been levelled solely for political purposes. There are at least three fundamental defects with the charge, each of which, standing alone, compels the rejection of the NRSC's complaint.

3. First, the NRSC states "[i]t is safe to assume that Public Citizen is the lead plaintiff on this lawsuit both in terms of covering costs and coordinating matters." This factual assumption is the predicate for the NRSC's claim that Public Citizen is

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engaged in an improper expenditure on behalf of Democratic incumbent Senator Wyche Fowler and in opposition to Republican Paul Coverdell. However, this assumption is utterly false. Public Citizen has not made **any** expenditure in connection with this lawsuit, apart from the minimal time spent by its in-house legal staff reviewing pleadings and discussing strategy with lawyers at the Atlanta firm of Doffermyre, Shields, Canfield and Knowles -- the firm that is handling the case on behalf of all plaintiffs, including Public Citizen, and is representing Public Citizen without charge. Public Citizen has not paid a penny for costs or attorneys' fees in connection with this litigation, let alone played the "lead" role in "covering costs," as the NRSC recklessly and irresponsibly alleges. Thus, the assumption which underlies the complaint -- namely, that Public Citizen is funding the litigation -- has no basis in fact.

3. The next flaw in the NRSC's charge is the notion that participating in a lawsuit which challenges the validity of a state election law after the election is over constitutes an "expenditure" or "contribution" made to "influence" an "election to federal office" within the meaning of FECA. Even assuming that Public Citizen made such an expenditure or contribution -- which it did not -- the NRSC cites no case or FEC Advisory Opinion that embraces such a broad and sweeping interpretation of FECA, nor would such an interpretation be likely to withstand scrutiny under the First Amendment. As its text makes perfectly clear, FECA applies only to efforts to influence elections by influencing

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voters. See 2 U.S.C. §§ 431(8)(A)(i)(definition of "contribution" limited to "the purpose of influencing any election for federal office"); 438(9)(A)(i)(same limitation with respect to "expenditure"). The Act's definition of "election" drives this point home, since it is limited solely to electoral contests, and nothing else. 2 U.S.C. § 431(1). In fact, there is nothing in FECA or its legislative history to suggest that the Act's restrictions on contributions or expenditures apply to post-election litigation such as we have here. Thus, even if Public Citizen had made such an expenditure or contribution in support of the litigation, that would not violate FECA.

An analogy might help to illustrate the absurdity of the NRSC's theory that the Georgia lawsuit is an effort to "influence" the runoff election. The Internal Revenue Code limits the ability of certain non-profit organizations to "influence legislation" by lobbying legislators. 26 U.S.C. § 501(c)(3). Under the NRSC's twisted reasoning, such a non-profit organization which challenges the validity of a law in court is actually seeking to "influence legislation" because the statute may be struck down and a replacement law enacted in its stead. The IRS has never suggested that the exercise of one's constitutionally protected right to challenge the validity of a law once it has been enacted can be equated with "lobbying," but has made it quite clear that "lobbying" activities are those that relate to the passage or defeat of legislation in the Legislature. Yet here the NRSC is asking the Commission to interpret FECA in a way that equates post-

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election litigation over the validity of a state law with pre-election campaign activities. There is no basis in law or logic for the Commission to do so.

3. The final and perhaps most irresponsible charge made by the NRSC is that, by participating as a plaintiff in the litigation challenging the validity of the Georgia election law, Public Citizen is engaged in partisan political activity aimed at benefitting Senator Fowler at the expense of Republican Paul Coverdell. We do not deny that an inevitable consequence of any success in that litigation would be that Senator Fowler would be certified as the winner of the 1992 Georgia election for the office of United States Senator. But our aim is not partisan, and our participation in the lawsuit did not arise because a Democrat lost and a Republican won. Rather, as we publicly stated at a press conference held on the day the lawsuit was commenced, we would have brought suit even had Mr. Coverdell received the most votes on November 3 only to lose the runoff. See Exhibit A, Article on the lawsuit in The Atlanta Constitution, December 4, 1992.

4. Our reason for participating in the pending suit was not partisanship, but a desire to eliminate the anti-democratic feature of the Georgia system, which hampers the goal in maximizing voter participation. This goal is embodied in 2 U.S.C. §§ 1 and 7, which require that all federal House and Senate elections be held on a single day, in order that the message sent by the voters to their elected representatives is not garbled, distorted or diluted, as

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inevitably happens if each state may set its own timetable for electing Senators and Representatives. The recent Georgia experience proves our point. In the November 3 general election, over 2.2 million Georgians voted for a Senatorial candidate, with Senator Fowler drawing 49.22 percent of the total votes case, and 35,000 votes more than Mr. Coverdell. However, at the run-off election held on November 24, 1992, only 1.3 million voters participated -- nearly a million voters fewer than in the general election -- and Mr. Coverdell's margin of victory was approximately 15,000 votes. This system, which effectively disenfranchised nearly one million voters, not only violates federal law, but it inhibits citizen participation in federal elections, which is one reason why Public Citizen believes it should be declared invalid.

5. To put this issue in context, Georgia's majority-vote statute was enacted one year after the Supreme Court in Gray v. Sanders, 372 U.S. 368 (1963) struck down Georgia's "county unit" method of selecting state representatives, which strengthened voters in rural counties at the expense of black urban voters. The majority-vote law was first introduced in the Georgia House of Representatives in 1963 by Rep. Denmark Groover, an avowed segregationist who testified in a subsequent Voting Rights Act suit that his bill was intended "to thwart election control by Negroes and other minorities" and to "prevent the election by plurality vote of a candidate supported only by a . . . bloc vote group," i.e., black voters. The majority-vote requirement was enacted in 1964 as part of an omnibus election "reform" package which also

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required all new voters to pass an examination which asked them to identify, inter alia, the Clerk of the local Superior Court, the County School Superintendent, the Chief Justices of the Georgia and United States Supreme Court, and the Solicitor General of the judicial circuit in which the applicant lived.

6. It bears noting too that Public Citizen is not the only entity that has filed suit to challenge the validity of this law. In 1990, the Bush Justice Department, under the direction of Attorney General Dick Thornburgh, sued the State of Georgia in order to have this run-off law invalidated under the Voting Rights Act on the ground that it unlawfully dilutes the participation of black voters in the electoral process. That case is still pending.

7. One final point is worthy of mention. The NRSC charges that Public Citizen, through its "Fund for a Clean Congress," is a "long recognized Democrat oriented special interest group[]." This statement is false, as the NRSC well knows. As the submissions previously made to the FEC by Public Citizen's Fund for a Clean Congress make clear, the Fund did not target only Republicans, as the NRSC suggests. In fact, the Fund targeted Democrats as well, including Representative Bob Carr, an influential Democrat from Michigan; the Fund made nearly $40,000 in independent expenditures in an unsuccessful effort to defeat Rep. Carr. Considering that the NRSC is fully aware of these expenditures against incumbent Democrats, it is remarkable that the Committee has the temerity to make the sort of sworn charges that are levelled in the complaint.

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* * *

Pursuant to 28 U.S.C. § 1746, I hereby declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Joan B. Claybrook

Joan B. Claybrook, President
Public Citizen Inc.

Executed on January 5th, 1993
Washington, D.C.

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EXHIBIT A

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Friday, Dec. 4, 1992

E

The Atlanta Journal
The Atlanta Constitution

LOCAL NEWS

Judge refuses to interfere in Senate vote

Suit challenges Georgia's law requiring a runoff

By Mark Sherman
STAFF WRITER

A federal judge refused Thursday to block state officials from certifying Paul Coverdell's Senate runoff victory, despite a lawsuit that contends the runoff was illegal.

Public Citizen, a political activist group founded by consumer advocate Ralph Nader, filed suit Thursday in U.S. District Court in Atlanta to have the results of last week's runoff nullified and Sen. Wyche Fowler Jr. declared the winner of the hotly fought election.

The group, joined by state Rep. Ken Poston (D-Ringgold) and three other Georgians who voted for Mr. Fowler in the general election and the runoff, argues in its lawsuit that Georgia's 1964 majority-vote law, which forced the runoff, is unconstitutional as it applies to federal elections.

"It is our contention that the U.S. Constitution and federal law specify that he or she who wins the election on Nov. 3 is the winner," said Frank Jackalone, Public Citizen's Southeast regional coordinator.

After a brief hearing, U.S. District Judge Robert Hall refused to halt the certification of the runoff votes, but ordered lawyers for both sides to submit more detailed arguments later this month.

State elections director Jeff Lanier said Mr. Coverdell could be declared the official winner as early as today. The Republican is scheduled to take his seat in the Senate when the new Congress convenes on Jan. 3.

Please see SUIT, E7 ▶

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The Atlanta Journal / The Atlanta Constitution ★★★★★ Friday, December 4, 1992 E7

Suit: After Senate vote, runoff law is challenged

▶ Continued from E1

The judge also encouraged a lawyer for the state to ask that the lawsuit be dismissed, but would not say how he would rule. "I'm just saying it might speed things up," Judge Hall said.

Mr. Fowler received about 35,000 more votes than Mr. Coverdell on Nov. 3, but lacked a majority because of the presence of a third candidate, Libertarian Jim Hudson.

Mr. Coverdell won the runoff by 15,000 votes, according to unofficial results.

Public Citizen, a non-partisan group, earlier this year allied itself with former state Rep. Herman Clark in his attempt to defeat U.S. Rep. Newt Gingrich in the GOP primary. The group then worked with Mr. Gingrich's Democratic opponent, Tony Center.

Mr. Jackalone said the group also would have filed suit had Mr. Coverdell received the most votes on Nov. 3 only to lose the runoff.

Public Citizen lawyers decided their chances of winning in court would be better if they awaited the outcome of the runoff, which cost taxpayers an estimated $500,000, rather than sue to block it, Mr. Jackalone said.

Coverdell spokesman Bill Crane defended Public Citizen's right to sue, but added that "nearly 1.3 million Georgia citizens voted and selected their next United States senator on Nov. 24."

Fowler spokesman Norm Kurz would not comment on the lawsuit. Mr. Fowler, while critical of the runoff last week, indicated he would abide by the results, saying he would not seek a recount.

Majority vote law

A number of states, primarily in the South, require an absolute majority for victory in primary elections, but Georgia may be the only state to require a runoff if no candidate wins a majority in the general election.

A suit filed Thursday by the activist group Public Citizen contends that Georgia's runoff law violates the U.S. Constitution and other federal law in the following ways:

▶ Article I of the constitution gives state legislatures the power to decide how and when senators are elected, but only in the absence of federal law. And federal law sets Election Day as the first Tuesday after the first Monday in November. There is no provision in federal law for a runoff.

▶ The constitution also sets out the qualifications to be senator — 30 years of age, nine years a U.S. citizen and an inhabitant of the state one seeks to represent. The majority-vote rule is an additional and thus unconstitutional qualification, Public Citizen contends.

Georgia's runoff law already is the subject of a federal suit, although a settlement agreement is pending. The plaintiffs in that case, led by state Rep. Tyrone Brooks, would study the results of statewide elections in 1992 and 1994 before deciding in 1995 whether to ask for a trial or dismiss the lawsuit, under the terms of the proposed agreement.

Mr. Brooks said he is not taking sides in the Public Citizen lawsuit.

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MUR # 3723

ADDITIONAL DOCUMENTS WILL BE ADDED TO THIS FILE AS THEY BECOME AVAILABLE. PLEASE CHECK FOR ADDITIONAL MICROFILM LOCATIONS.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE End of MUR# 3723

DATE FILMED 10/29/93 CAMERA NO. 2

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

✓ Microfilm

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THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3723.

12/10/93

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 8, 1993

Craig L. McDonald, Treasurer
Public Citizen Inc.'s Fund for
a Clean Congress
215 Pennsylvania Ave. SW
Washington, DC 20003

RE: MUR 3723

Dear Mr. McDonald:

On April 21, 1993, you requested that the Federal Election Commission permit the Public Citizen Inc.'s Fund for a Clean Congress ("Committee") to terminate pursuant to 2 U.S.C. § 433(d) and Section 102.3 of the Commission's Regulations. Because of the ongoing enforcement matter involving your Committee, this request has been denied. Therefore, you are reminded that the Committee must continue to file all the required reports with the Commission until such time as the enforcement matter has been closed as to the Committee.

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

Sincerely,

Karen White

Karen White
Paralegal

cc: Reports Analysis Division

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THE READER IS REFERRED TO ADDITIONAL MICROFILM LOCATIONS

FOR THE FOLLOWING DOCUMENTS PERTINENT TO THIS CASE

1. Memo, General Counsel to the Commission, dated September 22, 1992, Subject: Priority System Report. See Reel 354, pages 1590-94.

2. Memo, General Counsel to the Commission, dated April 14, 1993, Subject: Enforcement Priority System. See Reel 354, pages 1595-1620.

3. Certification of Commission vote, dated April 28, 1993. See Reel 354, pages 1621-22.

4. General Counsel's Report, In the Matter of Enforcement Priority, dated December 3, 1993. See Reel 354, pages 1623-1740.

5. Certification of Commission vote, dated December 9, 1993. See Reel 354, pages 1741-1746.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 1 0 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jay Velasquez
National Republican Senatorial Committee
425 Second Street, N.E.
Washington, DC 20002

RE: MUR 3723

Dear Mr. Velasquez:

On December 16, 1992, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against Public Citizen, Inc. and Public Citizen, Inc.'s Fund for a Clean Congress and Craig L. McDonald, as treasurer. See attached narrative. Accordingly, the Commission closed its file in this matter. This matter will become part of the public record within 30 days.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Xavier K. McDonnell

Xavier K. McDonnell
Attorney

Attachment
Narrative

Date the Commission voted to close the file: 0 9 1993

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MUR 3723
PUBLIC CITIZEN, INC.

Complainant alleges that Public Citizen, Inc. violated 2 U.S.C. §§ 433, 434 and 441b by making contributions and expenditures in connection with a federal election through the filing of a complaint in U.S. District Court seeking to overturn the November 24, 1992 runoff election for the U.S. Senate seat in Georgia.

The issue raised in this matter is not significant relative to the other issues pending before the Commission. The Federal Election Campaign Act of 1971, as amended ("Act") does not appear to regulate the right to petition the government through the filing of a civil action. See Eastern Railroad President's Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1960).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 10 1993

David C. Vladeck, Esquire
Public Citizen Litigation Group
2000 P Street, N.W. Suite 700
Washington, DC 20036

RE: MUR 3723
Public Citizen, Inc.
Public Citizen, Inc.'s Fund for a Clean Congress and
Craig L. McDonald, as treasurer

Dear Mr. Vladeck:

On December 21, 1992, the Federal Election Commission notified your clients of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against Public Citizen, Inc. and Public Citizen, Inc.'s Fund for a Clean Congress and Craig L. McDonald, as treasurer. See attached narrative. Accordingly, the Commission closed its file in this matter.

The confidentiality provisions of 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 prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

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

Sincerely,

Xavier K. McDonnell

Xavier K. McDonnell
Attorney

Attachment
Narrative

Date the Commission voted to close the file: _____

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MUR 3723
PUBLIC CITIZEN, INC.

Complainant alleges that Public Citizen, Inc. violated 2 U.S.C. §§ 433, 434 and 441b by making contributions and expenditures in connection with a federal election through the filing of a complaint in U.S. District Court seeking to overturn the November 24, 1992 runoff election for the U.S. Senate seat in Georgia.

The issue raised in this matter is not significant relative to the other issues pending before the Commission. The Federal Election Campaign Act of 1971, as amended ("Act") does not appear to regulate the right to petition the government through the filing of a civil action. See Eastern Railroad President's Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1960).

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