FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4013

DATE FILMED 6/27/95 CAMERA NO. 2

CAMERAMAN EES

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MUR 3516

RAD REFERRAL - FEBRUARY 27, 1992

9 5 0 4 3 6 5 3 1 8 3

REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: February 27, 1992

ANALYST: ROBERT DIMARDO

I. COMMITTEE: National Freedom Political Action Committee (C00238535)
Kendall McBriar, Treasurer
(August 29, 1991 to Present)
Kimberly Lingle, Treasurer
(December 10, 1990 to August 28, 1991)
P.O. Box 458
Mountlake Terrace, WA 98043

II. RELEVANT STATUTE: 2 U.S.C. §434(a)(4)(B)
11 CFR §104.5(c)(3)

III. BACKGROUND:

Failure to File the 1991 June Monthly Report in a Timely Manner

National Freedom Political Action Committee ("the Committee") failed to file the 1991 June Monthly Report in a timely manner. The Committee was sent prior notice of the report's due date on February 7, 1991 and was sent a Non-Filer Notice on July 10, 1991 (Attachments 2 and 3).

The Reports Analysis Division ("RAD") analyst attempted to contact the Committee on several occasions prior to September 10, 1991, but was unable to locate it (Attachment 4).

On September 9, 1991, the Commission received a response from the Committee. The letter notified the Commission of its change of treasurer and mentioned that several missing reports, including the June Monthly Report, were enclosed. However, no such reports were enclosed with the letter (Attachment 5).

On September 10, 1991, the RAD analyst called Kendall McBriar, the treasurer of the Committee. The RAD analyst

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told Ms. McBriar that no reports were enclosed with the Committee's letter. Ms. McBriar said the reports were mailed with the letter. The RAD analyst told Ms. McBriar he would check with the Commission's Office of General Counsel to see if the reports were in that office and call her the next day (Attachment 6).

On September 11, 1991, the Commission received the 1991 June Monthly Report (Attachment 7). The RAD analyst also called Ms. McBriar and told her that the Commission was in receipt of the report (Attachment 6).

IV. OTHER PENDING MATTERS INITIATED BY RAD:

None.

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FEDERAL ELECTION COMMISSION
1991-1992
COMMITTEE INDEX OF DISCLOSURE DOCUMENTS - (C)

DATE 13FEB92

COMMITTEE DOCUMENT	RECEIPTS	DISBURSEMENTS	COVERAGE DATES	# OF PAGES	MICROFILM LOCATION
			TYPE OF FILER		
NATIONAL FREEDOM POLITICAL ACTION COMMITTEE			ID C00238535 NON-PARTY NON-QUALIFIED		
CONNECTED ORGANIZATION:					
1991 STATEMENT OF ORGANIZATION - AMENDMENT			5DEC91	2	91FEC/711/0673
MISCELLANEOUS NOTICE FROM FEC			27DEC91	2	91FEC/712/4465
FEBRUARY MONTHLY	2,515	2,493	1JAN91 -31JAN91	9	91FEC/711/1313
NOTICE OF FAILURE TO FILE			1JAN91 -31JAN91	1	91FEC/690/2341
REQUEST FOR ADDITIONAL INFORMATION			1JAN91 -31JAN91	3	92FEC/734/4084
MARCH MONTHLY	1,585	1,590	1FEB91 -28FEB91	6	91FEC/711/1323
MARCH MONTHLY - AMENDMENT	1,585	1,590	1FEB91 -28FEB91	2	92FEC/734/4160
NOTICE OF FAILURE TO FILE			1FEB91 -28FEB91	1	91FEC/692/2882
1'ST LETTER INFORMATIONAL NOTICE			1FEB91 -28FEB91	2	92FEC/726/1133
APRIL MONTHLY	2,040	2,077	1MAR91 -31MAR91	9	91FEC/711/1330
APRIL MONTHLY - AMENDMENT	2,040	2,077	1MAR91 -31MAR91	2	92FEC/734/4162
NOTICE OF FAILURE TO FILE			1MAR91 -31MAR91	1	91FEC/697/4656
1'ST LETTER INFORMATIONAL NOTICE			1MAR91 -31MAR91	2	92FEC/726/1131
MAY MONTHLY	3,070	3,084	1APR91 -30APR91	9	91FEC/711/1340
MAY MONTHLY - AMENDMENT	3,080	3,084	1APR91 -30APR91	2	92FEC/734/4164
NOTICE OF FAILURE TO FILE			1APR91 -30APR91	1	91FEC/697/4657
1'ST LETTER INFORMATIONAL NOTICE			1APR91 -30APR91	2	92FEC/726/1129
JUNE MONTHLY	2,835	2,875	1MAY91 -31MAY91	9	91FEC/711/1350
JUNE MONTHLY - AMENDMENT	2,820	2,875	1MAY91 -31MAY91	2	92FEC/734/4166
NOTICE OF FAILURE TO FILE			1MAY91 -31MAY91	1	91FEC/700/2882
1'ST LETTER INFORMATIONAL NOTICE			1MAY91 -31MAY91	2	92FEC/726/1127
JULY MONTHLY	4,581	4,519	1JUN91 -30JUN91	10	91FEC/711/1360
NOTICE OF FAILURE TO FILE			1JUN91 -30JUN91	1	91FEC/700/5095
REQUEST FOR ADDITIONAL INFORMATION			1JUN91 -30JUN91	2	92FEC/730/1361
AUGUST MONTHLY	4,547	4,532	1JUL91 -31JUL91	10	91FEC/711/1371
NOTICE OF FAILURE TO FILE			1JUL91 -31JUL91	1	91FEC/711/1574
REQUEST FOR ADDITIONAL INFORMATION			1JUL91 -31JUL91	2	92FEC/730/1359
SEPTEMBER MONTHLY	4,368	3,586	1AUG91 -31AUG91	9	91FEC/711/1382
SEPTEMBER MONTHLY - AMENDMENT	4,368	3,646	1AUG91 -31AUG91	10	91FEC/713/1368
REQUEST FOR ADDITIONAL INFORMATION			1AUG91 -31AUG91	1	92FEC/734/4882
OCTOBER MONTHLY	2,941	3,474	1SEP91 -30SEP91	10	91FEC/713/1378
OCTOBER MONTHLY - AMENDMENT	2,941	3,474	1SEP91 -30SEP91	4	91FEC/720/3522
REQUEST FOR ADDITIONAL INFORMATION			1SEP91 -30SEP91	1	92FEC/734/4880
NOVEMBER MONTHLY	2,783	2,948	1OCT91 -31OCT91	9	91FEC/720/3526
NOVEMBER MONTHLY - AMENDMENT	2,783	2,958	1OCT91 -31OCT91	4	92FEC/734/4139
NOVEMBER MONTHLY - AMENDMENT	4,300	3,624	1NOV91 -30NOV91	3	92FEC/734/4143
DECEMBER MONTHLY	4,300	3,624	1NOV91 -30NOV91	11	91FEC/724/5198
YEAR-END	3,961	4,575	1DEC91 -31DEC91	11	92FEC/734/4146
1992 FILING FREQUENCY CHANGE NOTICE			31JAN92	3	92FEC/734/4157
TOTAL	40,937 0	40,133 0		172	TOTAL PAGES

All reports except the amended 1991 March, April, May, June, and November Reports have been reviewed.

Cash-on-hand as of 12/31/91: $ 69.80

Debts owed to the Committee: $ 0.00

Debts owed by the Committee: $298.60

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REPORT NOTICE

FEDERAL ELECTION COMMISSION

PARTIES AND PACS

February 7, 1991

WHO MUST FILE
Party Committees and PACs (Nonconnected Committees and Separate Segregated Funds) filing on a monthly basis must file Monthly Reports in 1991.

REPORTING DATES

REPORT	PERIOD COVERED	REG./CERT. MAILING DATE*	FILING DATE
February	01/01/91-01/31/91	02/20/91	02/20/91
March	02/01/91-02/28/91	03/20/91	03/20/91
April	03/01/91-03/31/91	04/20/91	04/20/91
May	04/01/91-04/30/91	05/20/91	05/20/91
June	05/01/91-05/31/91	06/20/91	06/20/91
July	06/01/91-06/30/91	07/20/91	07/20/91
August	07/01/91-07/31/91	08/20/91	08/20/91
September	08/01/91-08/31/91	09/20/91	09/20/91
October	09/01/91-09/30/91	10/20/91	10/20/91
November	10/01/91-10/31/91	11/20/91	11/20/91
December	11/01/91-11/30/91	12/20/91	12/20/91
Year-End	12/01/91-12/31/91	01/31/92	01/31/92

WHAT MUST BE REPORTED
Each report must include all financial activity that occurred during the previous month. For example, the next monthly report due in 1991 should be filed by February 20, 1991, and should include all activity from January 1 through January 31, 1991. (See the chart above.)

REPORTING FORMS
Party committees and PACs use newly revised Form 3X (effective January 1, 1991, enclosed). See Record Supplement on Allocation (November 1990) for a description of which committees must file Schedules H1-H4.

WHERE TO FILE
Consult the instructions on the back of the revised Form 3X Summary Page. Note State filing requirements also.

LABEL
Committees should affix the peel-off label from the envelope to Line 1 of the report. Corrections should be made on the label.

*Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise, they must be received by the filing date.

(over)

PARTIES AND PACS MONTHLY

CHANGE IN FILING FREQUENCY
Committees wishing to change their reporting schedule (for example, from monthly to semiannual) must notify the Commission in writing when they file their next report due under their current reporting schedule. Committees may change their filing frequencies no more than once per calendar year.

COMPLIANCE
TREASURERS OF POLITICAL COMMITTEES ARE RESPONSIBLE FOR FILING ALL REPORTS ON TIME. FAILURE TO DO SO IS SUBJECT TO ENFORCEMENT ACTION. COMMITTEES FILING ILLEGIBLE REPORTS OR USING NON-FEC FORMS WILL BE REQUIRED TO REFILE.

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FOR INFORMATION, Call: Information Services Division
800/424-9530 or 202/376-3120

ATTACHMENT 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RA-7

July 10, 1991

Kimberly Lingle, Treasurer
National Freedom Political
Action Committee
P.O. Box 458
Mountlake Terrace, WA 98043

Identification Number: C00238535

Reference: June Monthly Report (5/1/91-5/31/91)

Dear Ms. Lingle:

It has come to the attention of the Federal Election Commission ("the Commission") that your committee may be in violation of 2 U.S.C. §434(a) for failing to file the above referenced Report of Receipts and Disbursements. You were previously notified of the due date for this report.

It is important that you file this report immediately with the Federal Election Commission, 999 E Street, NW, Washington, DC 20463 (or with the Clerk of the House or the Secretary of the Senate, as appropriate). A copy of the report or its relevant portions should also be filed with the Secretary of State or equivalent state officer (see 11 CFR §§108.2, 108.3, 108.4).

Although the Commission may initiate an audit or legal enforcement action concerning this matter, your prompt response and a letter of explanation will be taken into consideration.

If you have any questions, please contact Robert DiNardo on our toll-free number (800) 424-9530. Our local number is (202) 376-2480.

Sincerely,

John D. Gibson
Assistant Staff Director
Reports Analysis Division

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ATTACHMENT 4

MEMORANDUM TO THE FILES:

COMMITTEE: National Freedom Political Action Committee

I.D. NUMBER: C00238535

CONTACT: Kimberly Lingle

DATE: April 4, August 7, and August 28, 1991

ANALYST: Robert B. DiNardo

SUBJECT: Non-Filed 1991 Reports

On the dates listed above I have attempted to locate the treasurer and the committee. I called information in Washington and requested phone numbers for the committee and Ms. Lingle. However, there is no listing for either.

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ATTACHMENT 5

NATIONAL FREEDOM POLITICAL ACTION COMMITTEE
PO BOX 458
MOUNTLAKE TERRACE, WA 98043
August 29, 1991

Mr. Robert DiNardo
Reports Division
Federal Election Commission
Washington, D.C. 20463

Dear Mr. DiNardo;

Enclosed please find the following reports on behalf of the National Freedom Political Action Committee. 1990 Year End Report January 1 - January 31, 1991 Report, February 1 - February 28, 1991 Report, March 1 - March 31, 1991 Report, April 1 - April 30, 1991 Report, May 1 - May 31, 1991 Report, June 1 - June 30, 1991 Report, July 1 - July 31 1991 Report and the August 1 - August 31, 1991 Report.

I will not take the time to rehash the information I have enclosed in my letter to Dodie C. Kent in your General Counsel office. Instead I have enclosed a copy of my letter to him for your review.

Please accept this letter to serve as a temporary Statement of Organization making me Treasurer of NFPAC. At the same time, I would appreciate it if you would send me an official Statement of Organization form for our completion.

I have tried to review our current situation and file all of the due reports that I am aware of. Would you please review our file and advise me as to any other outstanding requirements that need to be taken care of. Upon your response, I will immediately take care of them and forward them to you directly within 10 days from my receipt of them.

Being new to the political action committee arena, I hope that I can count on you and your department to help me ascertain the current status of the National Political Action Committee with the FEC and get things back on track.

In addition to the above, any information in the way of booklets or other instructions that you have that would be of help to me would be greatly appreciated.

Thank you for your kind assistance and I look forward to working with you in an effort to have all outstanding matters resolved and the National Freedom Political Action Committee meeting all reporting requirements on a timely and proper basis.

Sincerely yours,

Kendall McBrier

Kendall McBrier
Treasurer

91,3/11/53/3

ATTACHMENT 6

MEMORANDUM TO THE FILES:

COMMITTEE: National Freedom Political Action Committee

I.D. NUMBER: C00238535

CONTACT: Kendall McBriar, Treasurer

DATE: September 10 and 11, 1991

ANALYST: Robert B. DiNardo

SUBJECT: Missing Reports

I called Ms. McBriar at 4:15 and told her that the Commission received the committee's letter dated August 29. However, no reports were enclosed even though the letter stated that such reports were enclosed. She said the referenced reports were mailed with the letter. I told her that I would contact Dodie Kent in the Commission's Office of General Counsel to see if the reports were in that office. I told Ms. McBriar I would call her tomorrow and update her on the status of these reports.

On September 11, I called Ms. McBriar at 4:00 and told her that the Commission has received the reports referenced in the committee's August 29 letter.

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ATTACHMENT 7

REPORT OF RECEIPTS AND DISBURSEMENTS

For Other Than An Authorized Committee

(Summary Page)

9 1 52 11 4:01

1. NAME OF COMMITTEE (in full)
National Freedom PAC

ADDRESS (number and street) ☐ Check if different than previously reported
PO Box 458

CITY, STATE and ZIP CODE
Hewitt Town Ferndale, WA 98243

2. FEC IDENTIFICATION NUMBER
C00238535

3. ☐ This committee qualified as a multicandidate committee BEFORE THIS Reporting Period on _____ (date)

4. TYPE OF REPORT

- (a) April 15 Quarterly Report
- July 15 Quarterly Report
- October 15 Quarterly Report
- January 31 Year End Report
- July 31 Mid Year Report (Non-election Year Only)
- Termination Report

Monthly Report Due On:

☐ February 20	☑ June 20	☐ October 20
☐ March 20	☐ July 20	☐ November 20
☐ April 20	☐ August 20	☐ December 20
☐ May 20	☐ September 20	☐ January 31

☐ Twelfth day report preceding _____ (Type of Election) election on _____ in the State of _____

☐ Twelfth day report following the General Election _____ in the State of _____

(b) Is this Report an Amendment? ☐ YES ☑ NO

SUMMARY

	COLUMN A This Period	COLUMN B Calendar Year-to-Date
5. Covering Period 5/1/91 through 5/31/91		
6. (a) Cash on hand January 1, 19__		$ 141.11
(b) Cash on hand at Beginning of Reporting Period	$ 27.55	
7. Total Receipts (from Line 18)	$ 962.75	$ 11,991.26
8. Subtotals (add Lines 6(b) and 6(c) for Column A and Lines 6(a) and 6(c) for Column B)	$ 990.30	$ 12,132.37
9. Total Disbursements (from Line 28)	$ 978.40	$ 12,120.97
10. Cash on hand at Close of Reporting Period (subtract Line 9 from Line 8(c))	$ 11.90	$ 11.90
11. Debts and Obligations Owed TO the Committee (from Schedule C and/or Schedule D)	$	
12. Debts and Obligations Owed BY the Committee (from Schedule C and/or Schedule D)	$ 288.10	

For further information contact:
Federal Election Commission
999 E Street NW
Washington, DC 20463
Toll Free 800 424 9530
Local 202 376 3120

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

Typed or Printed Name of Treasurer

Signature of Treasurer | Date

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

FEC FORM 3X

(Revised 4/91)

950043653193

RECEIVED
F.E.C.
92 APR 27 PM 12:25

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

FIRST GENERAL COUNSEL'S REPORT

RAD Referral: 92NF-05
Staff Member: Noriega E. James

SENSITIVE

SOURCE: INTERNALLY GENERATED

RESPONDENTS: National Freedom Political Action Committee and Kendall McBriar, as treasurer[1]

RELEVANT STATUTES: 2 U.S.C. § 434(a)(4)(B)
11 C.F.R. § 104.5(c)(3)

INTERNAL REPORTS CHECKED: Referral Materials

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The Reports Analysis Division ("RAD") referred the National Freedom Political Action Committee and Kendall McBriar, as treasurer, ("Respondents") to the Office of the General Counsel on February 28, 1992. The basis of the attached RAD referral is the failure of the Committee to file its 1991 June Monthly Report of receipts and disbursements, in a timely manner, in violation of 2 U.S.C. § 434(a)(4)(B).[2] The 1991 June Monthly Report was subsequently filed on September 11, 1991.

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1. At the time the report in this matter was due, Kimberly Lingle was the treasurer for the committee.

2. Respondents' 1991 March, April and May Monthly Reports also were not filed in a timely manner.

On May 1, 1991, the committee was referred to this Office for failing to file the 1990 Year End and 1991 February Monthly Reports. See MUR 3324. Also, on August 27, 1991, the Commission approved an audit of the committee pursuant to 2 U.S.C. § 438(b).

II. FACTUAL AND LEGAL ANALYSIS

For the factual and legal analysis, see Attachment 2.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

In addition to recommending that the Commission find reason to believe Respondents violated 2 U.S.C. § 434(a)(4)(B), this Office further recommends that the Commission offer to enter into conciliation with the respondents prior to a finding of probable cause to believe. Attached for the Commission's approval is the proposed conciliation agreement

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IV. RECOMMENDATIONS

1. Open a MUR.

2. Find reason to believe that National Freedom Political Action Committee and Kendall McBriar, as treasurer, violated 2 U.S.C. § 434(a)(4)(B), and enter into conciliation prior to a finding of probable cause to believe.

3. Approve the appropriate letter and the attached Factual and Legal Analysis and proposed conciliation agreement.

Lawrence M. Noble
General Counsel

4/24/92
Date

BY: LGL
Lois G. Lerner
Associate General Counsel

Attachments:
1. RAD Referral
2. Factual and Legal Analysis
3. Conciliation Agreement

95043653196

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /DONNA ROACH DR
COMMISSION SECRETARY

DATE: APRIL 30, 1992

SUBJECT: RAD REFERRAL #92NF-05 - FIRST GENERAL COUNSEL'S REPORT DATED APRIL 24, 1992.

The above-captioned document was circulated to the Commission on MONDAY, APRIL 27, 1992 at 4:00 P.M.

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

Commissioner Aikens _____

Commissioner Elliott _____

Commissioner McDonald _____

Commissioner McGarry _____

Commissioner Potter XXX

Commissioner Thomas _____

This matter will be placed on the meeting agenda for TUESDAY, MAY 5, 1992.

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

95043653197

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of National Freedom Political Action Committee and R. Woodrow, as treasurer	)))))	RAD Referral #92NF-05 (MUR 3516)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on May 5, 1992, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions with respect to RAD Referral #92NF-05:

1. Open a MUR.

2. Find reason to believe that National Freedom Political Action Committee and R. Woodrow, as treasurer, violated 2 U.S.C. § 434(a)(4)(B), and enter into conciliation prior to a finding of probable cause to believe.

(continued)

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3. Approve the appropriate letter, the Factual and Legal Analysis, and the proposed conciliation agreement as recommended in the General Counsel's report dated April 24, 1992

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

Attest:

5-6-92
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 15, 1992

Rick Woodrow, Treasurer
National Freedom Political
Action Committee
PO Box 458
Mountlake Terrace, WA 98043

RE: MUR 3516
National Freedom Political
Action Committee and
Rick Woodrow, as treasurer

Dear Mr. Woodrow:

On May 5, 1992, the Federal Election Commission found that there is reason to believe National Freedom Political Action Committee ("Committee") and you, as treasurer, violated 2 U.S.C. § 434(a)(4)(B), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

95043653200

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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

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.

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 investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Noriega E. James, the staff member assigned to this matter, at (202) 219-3400.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

95043653201

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR: 3516

RESPONDENTS: National Freedom Political Action Committee and Rick Woodrow, as treasurer

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires treasurers of unauthorized political committees to file periodic reports of receipts and disbursements on a quarterly or a monthly basis. 2 U.S.C. § 434(a)(4). Political committees opting to file on a monthly basis, must file monthly reports no later than the 20th day after the last day of the month and complete as of the last day of the month, which delineate the committee's receipts and disbursements during that time. 2 U.S.C. § 434(a)(4)(B).

The National Freedom Political Action Committee ("the Committee") is an unauthorized political committee which elected to file on a monthly basis during the 1991 calendar year.[1] Additionally, a Non-Filer Notice was mailed to the Committee on July 10, 1991, for the 1991 June Monthly Report. The Committee filed its 1991 June Monthly Report of receipts and disbursements on September 11, 1991, 83 days late. Therefore, there is reason to believe that the National Freedom Political Action Committee and Rick Woodrow, as treasurer, violated 2 U.S.C. § 434(a)(4)(B) by failing to file timely its 1991 June Monthly Report.

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1. On February 2, 1992, the Committee submitted a request to have its filing frequency changed to quarterly for the 1992 calendar year.

NATIONAL FREEDOM POLITICAL ACTION COMMITTEE
PO BOX 458
MOUNTLAKE TERRACE, WA 98043

May 27, 1992

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

Jun 2 10 48 AM '92

Mr. Noriega E. James
Federal Election Commission
999 E. Street NW
Washington, D.C. 20463

RE: MUR 3516

Dear Mr. James;

This letter is in response the letter of May 15, 1992 from Joan D. Aikens and our subsequent telephone conversation regarding MUR 3516. I will try to lay out the details concerning our position on this matter in hopes that we can reach a fair agreement.

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 JUN -2 AM 11:51

1) On August 29, 1991 a letter was sent to Dodie C. Kent in your legal department explaining the situation facing the National Freedom Political Action Committee at that time. A letter was also sent to Robert DiNardo in your Reports Division. A copy of both letters is enclosed.

2) At approximately the same time, all outstanding reports described in the letter to Dodie Kent were filed. I am not sure what the delay in time was but according to a letter received from Lisa Stolaruk, these reports are shown filed on September 11, 1991. Including in those filings was the report covered in MUR 3516.

3) During this time, we had numerous conversations with Dodie Kent and our Reports Analyst at the time, Kristen Liebscher. It was our understanding that when these reports were filed, all of our reports were up to date at that point.

4) In the midst of this, we also entered into an audit by your Audit Division which took place in October.

5) As all of the events came to a conclusion we were told that any further late filing of reports could result in a severe penalty and possibly another audit but that if all of our reports from that point on were filed in a timely matter that no further action would be taken provided that a pending MUR 3324 was resolved.

6) In December, 1991, MUR 3324 was resolved through a Conciliation Agreement and a civil penalty was paid. Again, one of the conditions of the settlement was that all outstanding reports be filed prior to FEC acceptance of the settlement. Since all outstanding reports had been filed and current reports had been filed on a timely basis, the FEC approved the agreement. Again, we were assured that as long as all future reports were filed on time that no further action would be taken.

7) Since the resolution of the matters discussed with Dodie Kent, Kristen Liebscher, Robert DiNardo and your Audit Department, each and every report due has been filed on a timely basis persuant to 2 U.S.C. 434 (a) (4), the provision of the Federal Election Campaign Act of 1971, as amended. We have made the timely filing of reports a very serious priority and the

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record will clearly show that once our previous problems were resolved, the National Freedom Political Action Committee has operated within both the letter and intent of the requirements of the Federal Election Commission.

We fully understand and accept the Commission's apparent crack-down on late filers. Having been recently through an audit procedure as well as the payment of a civil penalty, we have no desire to go through any of this again and will continue, as we have been since the resolution of the problems last year, to file all reports on the day they our due, if not prior to those dates.

In light of the above facts I would respectfully request that MUR 3516 be resolved with the disposition of "Reason to believe but took no further action".

In addition, I also request that no further MUR's be filed in relation to any of the reports listed in the letter of September 27, 1991 from Lisa Stolaruk unless a future report is not filed by the required time.

Mr. James, we have worked hard to resolve all of our previous problems with the Federal Election Commission and the record will shown that we have been successful in reaching that goal. All reports since then have been filed on a timely basis. We have reached agreement on MUR 3324 and paid the appropriate penalty. We have fully cooperated with your Audit Division. In short, we have brought ourselves into full compliance with the Federal Campaign Act and intend to remain in full compliance.

I believe that we are making a reasonable request and hope that the Commission will agree to our request.

Thank you for your assistance on the phone and if you have any further questions or need additional information, please do not hesitate to contact me.

I look forward to hearing from you.

Yours truly,

Rick Woodrow
Treasurer
National Freedom Political
Action Committee

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NATIONAL FREEDOM POLITICAL ACTION COMMITTEE
PO BOX 458
MOUNTLAKE TERRACE, WA 98043
August 29, 1991

Mr. Robert DiNardo
Reports Division
Federal Election Commission
Washington, D.C. 20463

Dear Mr. DiNardo;

Enclosed please find the following reports on behalf of the National Freedom Political Action Committee. 1990 Year End Report January 1 - January 31, 1991 Report, February 1 - February 28, 1991 Report, March 1 - March 31, 1991 Report, April 1 - April 30, 1991 Report, May 1 - May 31, 1991 Report, June 1 - June 30, 1991 Report, July 1 - July 31 1991 Report and the August 1 - August 31, 1991 Report.

I will not take the time to rehash the information I have enclosed in my letter to Dodie C. Kent in your General Counsel office. Instead I have enclosed a copy of my letter to him for your review.

Please accept this letter to serve as a temporary Statement of Organization making me Treasurer of NFPAC. At the same time, I would appreciate it if you would send me an official Statement of Organization form for our completion.

I have tried to review our current situation and file all of the due reports that I am aware of. Would you please review our file and advise me as to any other outstanding requirements that need to be taken care of. Upon your response, I will immediately take care of them and forward them to you directly within 10 days from my receipt of them.

Being new to the political action committee arena, I hope that I can count on you and your department to help me ascertain the current status of the National Political Action Committee with the FEC and get things back on track.

In addition to the above, any information in the way of booklets or other instructions that you have that would be of help to me would be greatly appreciated.

Thank you for your kind assistance and I look forward to working with you in an effort to have all outstanding matters resolved and the National Freedom Political Action Committee meeting all reporting requirements on a timely and proper basis.

Sincerely yours,

Kendall McBrier

Kendall McBrier
Treasurer

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NATIONAL FREEDOM POLITICAL ACTION COMMITTEE
PO BOX 458
MOUNTLAKE TERRACE, WA 98043
August 29, 1991

Dodie C. Kent
Federal Election Commission
Washington, D.C. 20463

Dear Dodie:

I have recently taken over as Treasurer of the National Freedom Political Action Committee. As you know, this organization is the subject of MUR 3324. If there are other matters with the FEC outstanding I am not aware of them but I have written to the Reports Division requesting an update on exactly where NFPAC stands and if there are any remaining outstanding reporting requirements that have not yet been met.

Although I have a fairly good background in bookkeeping, I am not totally familiar with all of the laws concerning political action committees and the Federal Election Commission. I have spent a significant amount of time recently studying the booklet concerning federal reporting requirements and think that I have at least a basic understanding although I am going to need your help as well as the help of your Reports Division to get this matter resolved.

NFPAC is a relatively small political action committee that specializes in training grassroots volunteers and helping them work for or against various candidates in their own communities. A review of their reports will demonstrate that this is a PAC on the low end of the financial roster and writes very few checks to candidates. Apparently, the 1990 year end report along with a letter requesting a change from monthly filing to semi-annual was completed but never sent.

In the mean time, Kimberly Lingle who was the former treasurer and was responsible for the completion and timely filing of the reports, has literally dropped out of sight and it has been difficult trying to put all of this together without her input. From what I have been able to piece together, Kimberly urgently left Washington state due to some serious medical and personal problems. No one associated with NFPAC has seen or heard from her since and so I have had to go in blind to resolve our current problems with the FEC.

I have the letter from Mr. Lawrence Noble, dated July 29, 1991 before me which demands a response within 15 days. Since it has been just a few days since I have seen this letter I hope you will bear with me in the delay in responding. I realize that this is no doubt an unusual request but I think you will agree that the circumstances surrounding all of this are likewise unusual.

Since the Year End Report was not filed prior to now, (it was sent to your Reports Division today) and the change of reporting dates was never mailed, (all monthly reports from January through July were also mailed today to your Reports Division), there is no question that NFPAC has violated U.S.C. §434 (a) (4). In

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studying your reporting requirements. It is very clear that the FEC considers the timely filing of reports a very serious matter and NFPAC has failed to meet these requirements.

On the other hand, I have tried to lay out for you as clearly as possible the circumstances surrounding this matter and I want you to know with certainty that as the new treasurer of the National Freedom Political Action Committee it is my intention to see that all reports in the future are filed on a timely basis and that NFPAC fully operates within the laws governed by the Federal Election Commission.

Not being familiar with the manner in which the FEC operates, I am not clear as to where to go from here. As I stated earlier, to the best of my knowledge all outstanding reports have been filed as of today. In addition, I have written to your Reports Division in an attempt to be sure that any and all outstanding reporting requirements have been met. If they respond that there are still matters to be addressed, I can assure you that they will receive my prompt attention and be taken care of immediately.

While I can't undo the past, I can clear up all outstanding requirements and see to it that a situation such as this does not happen in the future.

Would you please advise me as to the current status of MUR 3324 as well as any other matters currently under consideration in regards to the National Freedom Political Action Committee. I can assure you of my own personal cooperation in doing all that I can to get these matters resolved and getting NFPAC operating on a sound and responsible basis.

Thank you for your kind assistance in this matter. Due to my lack of political action committee background, I trust that I can count on you and your office to provide me with the cooperation I will need in order to put all of this behind us.

I look forward to your response and sincerely hope that we can find a solution that will allow your office to meet its obligation to the government and American public while at the same time enable NFPAC to solve these problems and get back on track with the Federal Election Commission.

Yours truly,

Kendall McBriar

Kendall McBriar
Treasurer

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MS-L

Kendall McBriar, Treasurer
National Freedom Political Action
Committee
P.O. Box 458
Mountlake Terrace, WA 98043

SEP 27 1991

Identification Number: C00238535

Reference: 1991-1992 Election Cycle Reports

Dear Ms. McBriar:

It has come to the attention of the Federal Election Commission ("the Commission") that your committee may have violated 2 U.S.C. §434(a), by failing to timely file Reports of Receipts and Disbursements. The following is a list of the reports in question.

Report Type	Due Date	Date Filed
February Monthly (1/1/91-1/31/91)	2/20/91	9/11/91
March Monthly (2/1/91-2/28/91)	3/20/91	9/11/91
April Monthly (3/1/91-3/31/91)	4/20/91	9/11/91
May Monthly (4/1/91-4/30/91)	5/20/91	9/11/91
June Monthly (5/1/91-5/31/91)	6/20/91	9/11/91
July Monthly (6/1/91-6/30/91)	7/20/91	9/11/91
August Monthly (7/1/91-7/31/91)	8/20/91	9/11/91

Timely filing is a specific requirement of the Federal Election Campaign Act ("the Act") and is essential to fulfilling the public disclosure concept embodied in that law. The Commission views failure to timely file reports as a serious violation of the Act. This communication is to advise you that, notwithstanding any matters which may be pending before the Commission, any additional report which is not submitted in a timely manner by your committee may result in the Commission initiating legal enforcement or audit action.

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You may submit a letter of explanation in response to this notification. If, however, you have any questions, please feel free to contact Robert DiNardo on our toll-free number, (800) 424-9530. My local number is (202) 219-3580.

Sincerely,

Lisa J. Stolaruk
Chief, Party/Non-Party Branch
Reports Analysis Division

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MUR 4013

AUDIT REFERRAL - OCTOBER 21, 1992

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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October 21, 1992

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: INTERIM AUDIT REPORT ON THE NATIONAL FREEDOM POLITICAL ACTION COMMITTEE

Attached for your consideration and review is the interim audit report on the National Freedom Political Action Committee (National Freedom). Also attached at Exhibit A is an outline describing Committee-sponsored workshops, which according to Rick Woodrow is the basis for its independent expenditure program. Your attention is directed to Findings II.B., C., and D. The findings address numerous recordkeeping and reporting deficiencies. Prior to addressing the above findings, certain background information is provided.

National Freedom registered with the Federal Election Commission on September 18, 1989. Mr. Rick Woodrow was the Treasurer from inception through December 10, 1989 and is currently the Treasurer. Mr. Woodrow established National Freedom and controls its day to day operations. The Commission has dealt with Mr. Woodrow on numerous occasions. He was the Treasurer of Life Amendment Political Action Committee (LAPAC) since January 1983.

To date, the Commission has conducted four audits of LAPAC (1980, 1982, 1984, and 1986 election cycles). Initially, LAPAC maintained its headquarters in Washington, D.C., then moved its operations to Stafford, Virginia then to Medford, Oregon, and finally to the last reported mailing address of P.O. Box 5490 Everett, Washington. The four audits of LAPAC generated eight referrals to the Office of General Counsel, including a referral from the last audit (1986 election cycle) for failure to maintain documentation for receipts, disbursements, and for certain bank accounts. LAPAC has not filed a disclosure report since December 19, 1988. That report covered the period October 20, 1988 through November 28, 1988 and disclosed outstanding debts owed by LAPAC of approximately $82,000. In addition to being its Treasurer, Mr. Woodrow controls its day to day operations.

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Although National Freedom Political Action Committee did not register with the Federal Election Commission until September 1989, it reported receiving contributions and making expenditures in March 1989. Its mailing address, according to its disclosure reports, was P.O. Box 458, Mountlake Terrace, Washington. Mountlake Terrace, Washington is approximately 20 miles from Everett, Washington.

Based on the following, it is the opinion of the Audit staff that National Freedom Political Action Committee is an extension or successor of LAPAC:

- LAPAC ceased filing disclosure reports in December 1988 and National Freedom Political Action Committee commenced operating in March 1989.

- Both committees reported making independent expenditures either in support of or in opposition to federal candidates based on their pro-life position.

- The mailing address for one of National Freedom's bank accounts was the same mailing address of LAPAC, P.O. Box 5490, Everett, WA.

- During the period January 1, 1987 through November 28, 1988, LAPAC itemized contributions from 38 contributors. Twenty-five of those contributors also made contributions to National Freedom.

- Mr. Woodrow controlled the daily operations of both committees.

- Findings noted during the audit of National Freedom are similar to the problems noted during the audits of LAPAC.

Finding II.B. (Failure to Maintain Records) concerns National Freedom's failure to maintain canceled checks for 299 disbursements and debit advices for 51 other disbursements. This matter directly impacts Findings II.C. and D.

Finding II.C. (Failure to Disclose Required Information) concerns among other things, the incomplete, inaccurate, and misleading disclosure of information on both Schedules B and E. Based on the canceled checks available for review, we noted in sixty-six instances that the payee disclosed on FEC reports differed from the payee on the canceled check. The majority of the discrepancies noted were itemized disbursements to Target

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Consulting.*/ The respective canceled checks were payable to apartment complexes, cash, Rick Woodrow, Robin Woodrow, or Kim Lingle (a former Treasurer). Other instances of inaccurate reporting concerned the disclosure of disbursements to the U.S. Postmaster for postage. Canceled checks representing such disclosures were payable to Continental Furniture, Fountain Court (an apartment complex), and Rick Woodrow. Finally, a disbursement was reported to Stephen (sic) Yost in the amount of $210.53, the purpose disclosed as travel. The canceled check, although payable to Stephen (sic) A. Yost, was endorsed "Steven A. Yost, Attorney at Law Client Trust Account". (Rick Woodrow stated that Mr. Yost represented him in a personal matter.)

Finding II.D. (Disclosure of Independent Expenditures) questions a majority of the expenditures disclosed. It appears that these expenditures do not meet the definition of independent expenditures. Further, it appears the reported independent expenditures may not be expenditures as defined at 11 C.F.R. §100.8(a)(1).

National Freedom reported 187 independent expenditures, 106 of these expenditures were reported as being made to Target Consulting. Only 44 canceled checks, supporting the 106 reported expenditures, were available for review. None of the canceled checks reviewed were payable to Target Consulting. The canceled checks were payable to cash (18), Rick Woodrow (18), Fountain Courts Apartments (1), Serene Village Apartments (2), Kim Lingle (4), and Robin Woodrow (1). Sixty-two canceled checks/advices for savings withdrawals were not available for review.

National Freedom reported nine other independent expenditures to Commander Auto for travel. When questioned, Rick Woodrow stated the expenditures represented installment payments relative to the purchase of his personal car which he used for Committee business.

It should be noted that the conclusions reached in Findings II.C. and D. are based on a review of 241 canceled checks. It is our opinion that the exceptions noted will be considerably greater subsequent to our review of 299 canceled checks and 51 debit advices being requested in Finding II.B.

Should you have any questions, please contact Tom Nurthen or Rick Halter at 219-3720.

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*/ According to Rick Woodrow, Target Consulting is an entity that he controls. Further, according to the Secretary of State (State of Washington), Target Consulting, Inc. failed to file its annual report and was dissolved on September 8, 1989. Mr. Rick Woodrow is its registered agent.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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INTERIM REPORT OF THE AUDIT DIVISION ON NATIONAL FREEDOM POLITICAL ACTION COMMITTEE

I. Background

A. Overview

This report is based on an audit of National Freedom Political Action Committee (the Committee) undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. Prior to conducting any audit under this section, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

The Committee registered with the Federal Election Commission on September 18, 1989, and maintains its headquarters in Mountlake Terrace, Washington.

The audit covered the period March 28, 1989, the date of the Committee's earliest financial activity through December 31, 1990. The Committee reported a beginning cash balance of $-0-; total receipts of $73,238.02; total disbursements of $73,099.91; and an ending cash balance on December 31, 1990 of $141.11.1/

This report is based on documents and workpapers supporting each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in this report and were available to the Commissioners and appropriate staff for review.

1/ The totals do not foot due to math errors.

B. Key Personnel

During the period covered by the audit, the Treasurers were: Mr. Rick Woodrow from inception through December 10, 1989; Ms. Tammy Hjort from December 11, 1989 to September 4, 1990; Ms. Darla Quinn from September 5, 1990 to December 17, 1990; Ms. Kimberly Lingle from December 18, 1990 through the end of the audit period.2/

C. Scope

The audit included such tests as verification of total reported receipts and disbursements and individual transactions; review of required supporting documentation; analysis of debts and obligations; and such other audit procedures as deemed necessary under the circumstances; however, because the Committee provided incomplete disbursement records for 1989 and 1990, the Audit staff's review of disbursements and debts and obligations was limited (see Findings II.B., C., and D.).

II. Audit Findings and Recommendations

A. Failure to File Disclosure Report

Sections 434(a)(1) and (4)(B) of Title 2 of the United States Code state, in relevant part, that the treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of the Act. All political committees other than authorized committees of a candidate shall file a year end report no later than January 31 of the following calendar year.

The Committee did not file a disclosure report for the period November 27, 1990 through December 31, 1990 (Year End Report due to be filed on January 31, 1991). Based on bank statements and other Committee records, the Audit staff identified receipt activity, totaling $3,825.80, and disbursement activity, totaling $4,036.84, which should have been reported during this period.

On September 11, 1991, the Committee filed its 1990 Year End Report; an amendment was filed on October 28, 1991. These reports disclosed the above activity.

Recommendation #1

The Audit staff recommends no further action.

2/ The current Treasurer is Mr. Rick Woodrow, who is referred to throughout this document as the Committee's Director.

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B. Failure to Maintain Records

Section 432(c)(5) of Title 2 of the United States Code states that the treasurer of a political committee shall keep an account of the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, invoice, or cancelled check for each disbursement in excess of $200.

Section 102.10 of Title 11 of the Code of Federal Regulations states, in part, that all disbursements by a political committee, except for disbursements from the petty cash fund under 11 CFR 102.11, shall be made by check or similar draft drawn on account(s) established at the committee's depository.

Section 102.9(b)(2) of Title 11 of the Code of Federal Regulations states, in relevant part, that in addition to the account to be kept under 11 CFR 102.9(b)(1), a receipt or invoice from the payee or a cancelled check to the payee shall be obtained and kept for each disbursement in excess of $200 by or on behalf of, the committee.

Section 102.9(d) of Title 11 of the Code of Federal Regulations states, in part, that in performing recordkeeping duties, the treasurer or his or her authorized agent shall use his or her best efforts to obtain, maintain, and submit the required information and shall keep a complete record of such efforts. If there is a showing that best efforts have been made, any records of a committee shall be deemed to be in compliance with this Act. With regard to the requirements of 11 CFR 102.9(b)(2) concerning receipts, invoices and cancelled checks, the treasurer will not be deemed to have exercised best efforts to obtain, maintain and submit the records unless he or she has made at least one written effort per transaction to obtain a duplicate copy of the invoice, receipt or cancelled check.

Background

During the audit period the Committee maintained, at five depositories, seven checking and one savings account. With respect to the seven checking accounts, a total of 560 transactions were effected by checks, telephone transfers, and bank debit advices. Supporting documentation consisted of a consolidated check register (that recorded information such as the date, check number, payee, memo (purpose) and amount), two hundred forty-one canceled checks and two debit advices.

The Committee did not make available 299 canceled checks, support for 12 telephone transfers, and six debit advices. Further, the Committee did not maintain vendor invoices, receipted bills, etc., for these transactions.

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With respect to the savings account, there were 33 withdrawals; no documentation was made available relative to the withdrawals.

As stated, 241 canceled checks were made available for review. We noted 54 checks (22%), totaling $8,681.92, payable to cash (see Attachment A). Twenty (of the 54) were disclosed as payments to Target Consulting on both Schedules B and Schedules E (Independent Expenditures).3/ It should be noted that the Committee did not maintain any documentation to support such cash transactions.

Recordkeeping Irregularities

The Audit staff identified 11 expenditures in excess of $200, totaling $4,446.50, that were not supported by canceled checks, receipted bills, or invoices. Further, the Committee did not maintain the payee's address for 152 expenditures, totaling $9,098.98. In addition, we identified 10 expenditures that cleared the bank, but were not included in the consolidated check register, and no other records (canceled checks, invoices, receipts, etc.) were maintained to support such transactions. Finally, the Committee did not demonstrate it made any effort to obtain the missing documentation.

Canceled Checks Not Available For Review

As stated, the Committee did not maintain canceled checks for 299 disbursements (see Attachment B), nor did it maintain debit advices for 51 other disbursements (see Attachment C). Although the consolidated check register may on its face meet the minimum recordkeeping requirements for the majority of the above 350 disbursements (i.e., those less than or equal to $200), our review of available canceled checks indicated, that payees (on the canceled check) were inconsistent with payees disclosed, by the Committee, on its FEC reports (see Finding II.C.).4/ Therefore, it is the opinion of the Audit staff that all canceled checks/debit advices must be obtained and reviewed to determine the full nature and scope of recordkeeping and reporting problems.

3/ According to Rick Woodrow, Target Consulting is an entity that he controls. Further, according to the Secretary of State (State of Washington) Target Consulting, Inc. failed to file its annual report and was dissolved on September 8, 1989. Rick Woodrow is its registered agent.

4/ Except for disbursements reportedly made to Target Consulting noted in Finding II.C., the transactions recorded in the check register generally agree with the payees disclosed on Schedule B.

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The Director stated he was not sure the Committee could afford the cost of obtaining copies of canceled checks from the banks. However, subsequent to the exit conference, Ms. Rendall McBrier (Treasurer at the time of fieldwork) informed the Audit staff that she had contacted the banks and requested copies of the canceled checks and debit advices. As of October 16, 1992, no records have been made available to the Audit staff.

Recommendation #2

The Audit staff recommends that within 30 days of service of this report the Committee submit the following:

- legible copies (front and back) of the 299 canceled checks and 51 debit advices;
- supporting documentation in the form of vendor generated invoices or receipted bills for the 11 disbursements totaling $4,446.50;
- evidence that the Committee has updated its records to include the payee's address for 152 expenditures totaling $9,098.98; and,
- (1) a detailed explanation of the circumstances that required the Committee to issue 54 checks payable to "Cash".

  (2) supporting documentation for such transactions.

  (3) an explanation and supporting documentation for other cash transactions effected by the 299 canceled checks and 51 debit advices requested above.

Based on our review of the above, further recommendations will be forthcoming.

C. Failure to Disclose Required Information

Sections 434(b)(4)(A) and (5)(A) of Title 2 of the United States Code state, in part, that each report under this section shall disclose, for the reporting period and the calendar year, the total amount of all disbursements; and, the name and address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

During our review of disbursements itemized on Committee's reports, we identified numerous instances where the reported information was incomplete, inaccurate, and/or misleading. We compared canceled checks to the associated entries

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on disclosure reports and noted the following with respect to eighty-four disbursements, totaling $18,741.27:

In sixty-six instances, the reported payee differed from the payee on the canceled check (see Attachment D).

For example, five disbursements, ($3,244) were reportedly made to Target Consulting for "consulting" (three were disclosed on Schedule E, Independent Expenditures and two were disclosed on Schedule B); however, the payees on the canceled checks were apartment complexes. In addition, the canceled check, for one disbursement ($450) reported as made to an apartment complex, was payable to Rick Woodrow.

Forty-eight other disbursements ($8,680) were reported as being made to Target Consulting on Schedules E. However, the respective canceled checks (41) were payable to either Cash, Rick Woodrow, Robin Woodrow, or Kim Lingle (see Finding II.D.). The remaining seven disbursements were effected by undocumented withdrawals from the savings account.

Other instances of inaccurate reporting concerned the disclosure of seven disbursements ($1,482.29) to the U.S. Postmaster for postage. One canceled check representing such disclosure was payable to Continental Furniture; the memo line on this check was annotated "rental and deposit." Another canceled check was payable to Fountain Court, an apartment complex. Four canceled checks were payable to either a former treasurer or Rick Woodrow, and one canceled check was payable to cash. Since no documentation was maintained to support such transactions, it is impossible to determine if the funds were used for postage.

Four disbursements ($1,225.29) were reported as being made to a telephone company, however, two canceled checks were payable to Rick Woodrow and two were payable to Kim Lingle.

One disbursement was reportedly made to Robin Woodrow ($150) but the canceled check was payable to Kim Lingle, another disbursement ($450) was reportedly made to Majestic View Apartments, however, the canceled check was payable to Rick Woodrow.

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Further, the Committee reported a disbursement to Stephen [sic] Yost in the amount of $210.53, with the purpose disclosed as travel. The canceled check, although payable to Stephen [sic] A. Yost, was endorsed "Steven A. Yost, Attorney at Law Client Trust Account." When questioned, the Committee's Director indicated that the check should have been payable to himself and that Steven A. Yost represented him (the Director) in a personal matter.

In eighteen instances, the vendor's/individual's address was either missing or incomplete (see Attachment B).

Finally, in addition to the above, the Audit staff noted numerous disbursements to vendors that appear to represent personal expenses of individuals, as opposed to expenditures that benefit elections, candidates, or normal operating expenses of the Committee. For example, payments were made to hospitals, doctors, medical centers, chiropractors, and insurance companies for various medical purposes. The memo line on one canceled check was annotated "DR's Appt. Kim Lingle". Payments were also made to individuals and apartment complexes for rent. The memo line on one canceled check was annotated, apparently by a representative of the apartment complex, "Woodrow 4-J", another as "Woodrow", and yet another as "Rick Woodrow D-203". The Committee also made four payments to a private school. Three of the payments were disclosed as contributions/donations on Schedule B. Line 27 (Other Disbursements). The memo line of one canceled check was annotated "7 cases candy".

Absent documentation from individuals/vendors such as bills, invoices, receipts, etc., it was not possible to determine the true nature of these disbursements. However, as previously stated, it is the opinion of the Audit staff that many of the payments noted above appear to have benefited individuals associated with the Committee.

Rick Woodrow stated a transaction may appear questionable but is explainable. For example, if the Committee owed him money (back salary), then he may have issued a Committee check to pay his (personal) rent. With respect to the four donations/contributions to the private school, he stated that the school was buying a "sex education pro-life course" and the Committee was contributing to the purchase. When questioned why "candy" was recorded on the memo line of one canceled check, he stated the Committee also purchased candy from the school. The Treasurer was given copies of schedules detailing the above discrepancies.

Recommendation #3

The Audit staff recommends that within 30 days of service of this report the Committee:

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- amend its reports to disclose the vendor's/individual's complete address;

- amend its reports to disclose the correct payee and actual purpose with respect to the sixty-six disclosure errors noted above;

- amend its reports to disclose the correct payee and actual purpose for any additional disclosure errors that may result from a review of the 299 canceled checks and 51 debit advices (see Recommendation #2);

- provide an explanation for disbursements, apparently personal in nature, to demonstrate that the purpose was to influence an election for Federal office or for normal operations of the Committee's headquarters, such explanations should be supported with vendor generated invoice, bills, etc.; and

- provide all forms W-2 and forms 1099 issued by the Committee and Target Consulting for the calendar years 1989 and 1990.

Based on a review of the above, further recommendations will be forthcoming.

D. Disclosure of Independent Expenditures

Sections 109.1 (a) and (b)(1), (2), and (3) of Title 11 of the Code of Federal Regulations define an independent expenditure as an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate which is not made with the cooperation or with the prior consent of, or in consultation with, or at the the request or suggestion of, a candidate or any agent or authorized committee of such candidate. For purposes of this definition, person means an individual, partnership, committee, association, or any organization. Expressly advocating means any communication containing a message advocating election or defeat, including but not limited to the name of the candidate, or expressions such as vote for, elect, support, cast your ballot for, and Smith for Congress, or vote against, defeat, or reject. Clearly identified candidate means that the name of the candidate appears, a photograph or drawing of the candidate appears, or the identity of the candidate is otherwise apparent by unambiguous reference.

Section 109.1(c) of Title 11 of the Code of Federal Regulations states an expenditure not qualifying under this section as an independent expenditure shall be a contribution in-kind to the candidate and an expenditure by the candidate, unless otherwise exempted.

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Pursuant to 11 C.F.R. §109.2(a)(1)(v), the Treasurer signed a notarized statement attesting to the validity of the reported activity disclosed on FEC Schedules E. The Committee itemized 187 independent expenditures, totaling $28,021.96, reportedly in support of four congressional candidates and in opposition to three other congressional candidates. With respect to the reported independent expenditures, 101 canceled checks, totaling $8,909.19, were not available for review. Thirty canceled checks, totaling $5,143.35, were payable to cash and endorsed by either the Director or Spot Tavern.5/

Reported Activity Related to Target Consulting

The reported payees for 106 (of the 187) independent expenditures, totaling $17,486.90, was Target Consulting. For the most part the purposes disclosed on (Schedules E) were either travel or consulting. A review of the canceled checks associated with these reported payments to Target Consulting revealed the following:

Checks Payable To	Number of Checks
Cash	18
Rick Woodrow	18
Fountain Court Apartments	1
Serene Village Apartments	2
Kim Lingle	4
Robin Woodrow	1
Sub-total	44
Canceled Checks/Advices for Savings Withdrawals not Available for Review	62
Total	106

As evidenced by the above, none of the canceled checks made available for review (44 out of 106) were payable to Target Consulting, and 41 percent of the canceled checks reviewed were payable to "Cash". No documentation generated by the payee was available for review.

Other Activity

The Committee also reported nine other independent expenditures, totaling $2,244.65, to Commander Auto for travel. When questioned, the Director stated, the expenditures represented installment payments relative to the purchase of his personal car which he used for Committee business.

5/ According to the Director, he was employed part-time at Spot Tavern.

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Rick Woodrow stated that independent expenditures are a "gray area" and not much has been written on the subject. He attempted to be conservative in reporting by classifying all candidate support relative to workshops as independent expenditures.

Conclusion

As stated, the Committee reportedly made 187 independent expenditures totaling $28,021.96. Twenty-five of the expenditures ($2,197.47) were reported as being made for postage, shipping, printing, and list rentals, the the remaining 162 independent expenditures were reported for purposes of travel ($9,905.20) and consulting ($15,919.29). These expenditures do not appear to meet the definition of independent expenditures. If the Committee believes that such expenditures were on behalf of the identified candidates, then such expenditures should be considered in-kind contributions.

However, it is the opinion of the Audit staff that a majority of the above expenditures benefited individuals associated with the Committee and not federal candidates or elections. It is also our opinion that expenditures reported as being made for travel and consulting purposes but supported by the canceled checks payable to cash, the Director, his wife, the treasurer, car dealers, etc., are not expenditures as defined at 11 C.F.R. 100.8(a)(1). Finally, the Audit staff does not believe the inconsistencies are confined to the Committee's reported independent expenditure's but are a reflection of the problems associated with expenditures reported on Schedules B as well.

Recommendation #4

The Audit staff recommends that within 30 days of service of this report the Committee submit documentation that demonstrates the activity disclosed on Schedule E qualifies as independent expenditures. Absent such a showing, further recommendations will be forthcoming.

E. Apparent Prohibited Contributions

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution in connection with any primary election or caucus held to select candidates for any political office, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section.

Section 431(8)(B)(vii) of Title 2 of the United States Code states, in part, that any loan of money by a State bank, a federally chartered depository institution shall be made in accordance with applicable law and in the ordinary course of

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business, on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule, and such loan shall be considered a loan by each endorser or guarantor, in that proportion of the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.

Section 100.7(b)(11) of Title 11 of the Code of Federal Regulations states, in part, that a loan will be deemed to be made in the ordinary course of business if it: bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule.

At various times during the audit period, the Committee opened seven checking accounts. From these accounts the Committee bounced 212 checks and was charged $2,474 by the respective banks. Subsequently, two of the accounts were closed via bank initiated credit adjustments to the accounts' outstanding negative balances.6/ These credit adjustments, totaling $1,620.08, were the banks' effort to reverse its NSF charges, bank fees and in one case, to reverse checks paid by the bank even though the account was in an overdrawn status. It is the opinion of the Audit staff that reversing unpaid bank charges and honoring checks drawn on a negative balance account could result in prohibited contributions by the banks (see Attachment F).

Sixty-seven days after closing, one depository re-opened the same account with the same number for the Committee and recovered $932.68 of the unpaid bank charges. However, bank charges, totaling $687.40 remain unresolved.

Rick Woodrow stated, in his opinion, that it was a usual and customary transaction for a bank to reverse charges and that he did not consider this action to be a contribution. The Audit staff provided the Committee a schedule of the apparent prohibited contributions.

Recommendation #5

The Audit staff recommends that within 30 days of service of this report the Committee obtain documentation from the respective Banks that demonstrates bank reversing entries totaling $1,620.08 did not constitute prohibited contributions, or refund $687.40 ($1,620.08 - 932.68) to the various banks and present evidence of such refunds (front and back of refund checks.)

6/ Four other accounts were closed by banks, however, credit adjustments totaled only $122.88, with each adjustment less than $100.

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F. Misstatement of Financial Activity

Sections 434(b)(2) and (4) of Title 2 of the United States Code state, in part, that each report should disclose the total amount of all receipts and disbursements for the reporting period and calendar year.

A reconciliation of the bank activity to the Committee's disclosure reports for 1989 and 1990 revealed a net underreporting of receipts totaling $3,306.24 and a net underreporting of disbursements totaling $3,612.01.

Subsequent to the beginning of the audit fieldwork, the Committee submitted amended reports which materially corrected the reporting deficiencies noted above.

Recommendation #6

The Audit staff recommends no further action on this matter.

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NATIONAL FREEDOM PAC
54 Checks Payable to Cash

Name of Bank -- Account Number

1. Seafirst Bank --

13 Checks:

Check #	Amount	Check #	Amount
1	$110.00	1006	$ 83.00
2	350.00	1007	100.00
4	117.00	1011	50.00
5	98.00	No #	151.50
1001	30.25	1021	35.40
1002	150.00	1043	225.00
1003	43.50		

2. U.S. Bank --

32 Checks:

Check #	Amount	Check #	Amount
137	$217.00	137	$140.00
243	226.96	139	140.00
263	555.50	148	100.00
266	621.18	155	60.00
274	400.00	160	110.00
283	299.85	162	80.00
286	250.00	163	160.00
102	183.00	185	125.00
103	100.00	198	20.00
104	100.00	210	200.00
105	40.00	217	125.00
106	135.00	218	100.00
113	670.00	221	70.00
115	150.00	224	300.00
116	90.00	227	150.00
120	60.00	229	275.00

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NATIONAL FREEDOM PAC
54 Checks Payable to Cash

Name of Bank -- Account Number

3. Pioneer Bank --

2 Checks:

Check #	Amount
95	$216.78
135	278.00

4. First Interstate Bank --

7 Checks:

Check #	Amount
1049	$ 75.00
1064	70.00
1065	65.00
1066	40.00
1068	50.00
1069	40.00
1072	50.00

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NATIONAL FREEDOM PAC
299 Missing Canceled Checks

Name of Bank -- Account Number

1. Security Pacific Bank Washington --

28 Checks Missing:

1042	1065
1044 to 1045	1067
1047 to 1054	1069 to 1075
1057 to 1059	1077 to 1078
1062 to 1063	1081

2. Pioneer Bank --

39 Checks Missing:

87 to 97	519
99*/	521 to 522
100	525 to 527
501	551
505 to 507	553
509	556 to 560
512	562 to 563
514 to 517	

3. U.S. Bank --

136 Checks Missing:

101 to 108	226 to 228
110 to 112	230 to 231
114 to 123	233
125 to 134	235 to 237
136	239 to 242
139	245 to 258
141 to 152	261 to 262
154 to 160	264
162	267
164	269 to 271
166 to 179	276 to 277
204	279 to 282
206	284
209 to 211	289 to 292
213 to 224	

*/ There were two checks issued with this number.

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NATIONAL FREEDOM PAC
299 Missing Canceled Checks

Name of Bank -- Account Number

3. U.S. Bank -- (continued)

Checks With No Number:

Amount	Date Cleared Bank Statement
$ 21.57	1/16/90
50.00	1/18/90
65.00	1/19/90
124.90	1/19/90
80.00	1/22/90
172.52	8/16/90

4. Pioneer Bank --

57 Checks Missing:

86 to 88	143
90 to 94	145 to 146
97 to 98	150
99*/	152
100 to 102	154
104 to 107	156
110 to 120	160
123 to 128	164
130 to 134	0 (3/21/90-$240.00)
136 to 141	

5. First Interstate Bank --

39 Checks Missing:

1001 to 1002	1023 to 1026
1004 to 1016	1028 to 1030
1018	1032 to 1044
1020 to 1021	1046

*/ There were two checks issued with this number.

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NATIONAL FREEDOM PAC
51 Missing Debit Advices

Name of Bank -- Account #

1. Seafirst Bank --

12 Missing Debit Advices:

Date of Withdrawal	Amount	Date of Withdrawal	Amount
3/30/89	$150.00	5/03/89	$ 45.00
3/31/89	40.00	5/05/89	150.00
3/31/89	125.00	5/15/89	50.00
4/12/89	400.00	5/16/89	220.00
4/20/89	25.00	5/26/89	5.00
5/01/89	100.00	6/15/89	25.00

2. Pioneer Bank --

33 Missing Debit Advices:

Date of Withdrawal	Amount	Date of Withdrawal	Amount
12/06/89	$100.00	01/08/90	$ 284.50
12/12/89	50.00	01/10/90	75.00
12/18/89	704.09	01/12/90	1,081.00
12/21/89	518.00	01/16/90	592.00
12/22/89	50.00	02/16/90	20.00
12/22/89	75.00	02/26/90	90.00
12/22/89	10.32	02/27/90	40.00
12/22/89	12.99	03/01/90	70.00
12/22/89	165.00	03/07/90	791.80
12/26/89	40.00	03/13/90	75.00
12/27/89	100.00	03/13/90	30.00
12/28/89	150.00	03/14/90	286.23
12/29/89	120.00	03/20/90	75.00
01/02/90	50.00	03/21/90	100.00
01/03/90	110.00	03/26/90	30.00
01/04/90	887.00	04/27/90	7.95
01/05/90	250.00		

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NATIONAL FREEDOM PAC
51 Missing Debit Advices

Name of Bank -- Account #

3. U.S. Bank --

6 Missing Debit Advices:

Date of Withdrawal	Amount	Date of Withdrawal	Amount
6/27/90	$125.00	6/29/90	$141.70
6/28/90	260.00	6/29/90	300.00
6/29/90	100.00	7/09/90	100.00

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NATIONAL FREEDOM PAC
Disclosure Discrepancies

Date	Check Number	Amount	Payee on Check	Payee Disclosed on FEC Reports
10/09/90	138	589.00	Serene Village Apts.	Target Consulting
11/10/90	173	600.00	" "	" "
12/10/90	207	600.00	" "	" "
11/04/89	503	635.00	Fountain Court	" "
11/04/89	504	820.00	" "	" "
07/20/89	1013	125.00	Rick Woodrow	Target Consulting
07/31/89	1019	300.00	" "	" "
08/28/90	108	400.00	" "	" "
06/26/89	A	100.00	" "	" "
07/03/89	1001	75.00	" "	" "
08/22/89	1033	150.00	" "	" "
08/24/89	1039	70.00	" "	" "
06/27/90	205	260.00	" "	" "
07/23/90	238	250.00	" "	" "
02/08/90	138	75.00	" "	" "
08/02/89	1023	170.00	" "	" "
09/25/89	1066	200.00	" "	" "
11/27/89	520	250.00	" "	" "
08/06/90	259	250.00	" "	" "
12/18/89	564	300.00	" "	" "
02/07/90	135	682.00	" "	" "
06/29/90	212	260.00	" "	" "
08/31/90	111	50.00	" "	" "
08/23/90	105	100.00	Cash	Target Consulting
09/05/90	113	670.00	"	" "
09/08/90	115	150.00	"	" "
09/09/90	116	90.00	"	" "
10/02/90	120	60.00	"	" "
10/10/90	139	140.00	"	" "
10/29/90	155	60.00	"	" "
11/01/90	163	160.00	"	" "
10/21/90	148	100.00	"	" "
10/30/90	160	110.00	"	" "
06/08/90	1064	70.00	"	" "
06/12/90	1068	50.00	"	" "
06/12/90	1072	50.00	"	" "
06/10/90	1066	40.00	"	" "
06/09/90	1065	65.00	"	" "
10/09/90	137	140.00	"	" "
10/31/90	162	80.00	"	" "
11/20/90	185	125.00	"	" "

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NATIONAL FREEDOM PAC
Disclosure Discrepancies

Date	Check Number	Amount	Payee on Check	Payee Disclosed on FEC Reports
01/03/90	N/A	110.00	Savings Withdrawal	Target Consulting
01/08/90	N/A	100.00	" "	" "
01/12/90	N/A	191.20	" "	" "
03/07/90	N/A	791.80	" "	" "
12/22/89	N/A	75.00	" "	" "
12/21/89	N/A	322.00	" "	" "
01/16/90	N/A	83.00	" "	" "
10/04/90	127	100.00	Kim Lingle	Target Consulting
11/05/90	169	250.00	" "	" "
11/19/90	181	45.00	" "	" "
10/09/90	134	285.00	" "	" "
08/22/89	1030	100.00	Robin Woodrow	Target Consulting
12/05/89	524	217.43	Continental Furniture	U.S. Postmaster
10/29/89	98	235.00	Fountain Court	" "
10/19/90	146	217.00	Kim Lingle	" "
10/29/90	157	100.00	Kim Lingle	" "
06/14/89	1030	276.50	Rick Woodrow	" "
07/17/89	1011	211.36	Rick Woodrow	" "
09/08/89	1043	225.00	Cash	" "
10/01/90	119	257.09	Kim Lingle	GTE
10/29/90	156	414.02	Kim Lingle	"
08/09/90	268	202.68	Rick Woodrow	"
06/16/89	1031	351.50	Rick Woodrow	"
10/16/90	140	150.00	Kim Lingle	Robin Woodrow
07/06/89	1004	450.00	Rick Woodrow	Majestic View Apts.

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NATIONAL FREEDOM PAC
Disclosure Errors

Date	Payee	Amount	Exception
01/31/90	Nancy Bell	$ 80.00*/	No Address
07/02/90	Northwest Cartage	241.25	No Address
07/12/90	Steven's Hospital	140.43*/	No Address
07/26/90	Steven's Hospital	226.96	No Address
08/08/90	Tammy Hjort	140.43*/	No Address
09/04/90	PUD	111.90*/	No Street Address
10/01/90	Kim Lingle	257.09	No Street Address
10/17/90	Cornerstone Christian School	360.00	No Street Address
10/17/90	Cornerstone Christian School	252.00	No Street Address
10/29/90	GTE	414.02	No Street Address
11/21/90	Lund's Office Supplies	200.00	No Street Address
05/07/90	GTE	259.83	No Address
05/29/90	GTE	54.62*/	No Address
06/04/90	PUD	130.00*/	No Address
06/04/90	PUD	155.00*/	No Address
10/31/89	GTE	239.89	No Address
10/31/89	GTE	239.89	No Address
06/27/89	GTE	166.96*/	No Street Address

*/ Transaction amounts less than $200.01 require itemization because aggregate year-to-date payments exceed $200.00 (see 11 C.F.R. §104.3(b)).

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INTERIM AUDIT REPORT TO OGC

PROHIBITED CONTRIBUTIONS FROM THE BANK

BANK	ACCT. #	DATE OPENED	DATE CLOSED	CREDIT ADJUSTMENT TO CLOSE	AMOUNT OF CREDIT ADJUSTMENT PAID	AMOUNT OF CREDIT ADJUSTMENT UNRESOLVED
US Bank		1/15/90	4/18/90	$ 317.95	$ 153.00	$ 164.95
US Bank		1/15/90	4/18/90	779.68	779.68	-0-
First Interstate Bank		4/27/90	7/31/90	522.45	-0-	522.45
		TOTALS:		$1,620.08	$ 932.68	$ 687.40

SENSITIVE

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

FIRST GENERAL COUNSEL'S REPORT

LRA # 434
STAFF MEMBER: Delanie DeWitt Painter

SOURCE: INTERNALLY GENERATED

RESPONDENTS: National Freedom Political Action Committee, and Rick Woodrow

RELEVANT STATUTES:

2 U.S.C. § 431(17)
2 U.S.C. § 432(b)(3)
2 U.S.C. § 434(b)(4)
2 U.S.C. § 434(b)(5)(A)
2 U.S.C. § 434(b)(6)(iii)
2 U.S.C. § 432(c)(5)
2 U.S.C. § 438(b)
2 U.S.C. § 441b(a)
11 C.F.R. § 102.9(b)
11 C.F.R. § 102.10
11 C.F.R. § 102.15
11 C.F.R. § 109.1(b)(2)
11 C.F.R. § 109.1(b)(3)

INTERNAL REPORTS CHECKED:

Audit Documents

FEDERAL AGENCIES CHECKED:

None

I. GENERATION OF MATTER

This matter was generated by an audit of National Freedom Political Action Committee ("the Committee") and Rick Woodrow, as Treasurer, ("Respondents") undertaken in

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accordance with 2 U.S.C. § 438(b). Attachment 1.1/ The Committee is involved in another ongoing enforcement matter, MUR 3516.

The proposed Interim Audit Report on the Committee delineated a number of apparent violations, including: failure to maintain adequate records of disbursements; failure to properly report disbursements; erroneous reporting of disbursements as independent expenditures; commingling of personal and Committee funds; and acceptance of prohibited contributions from banks. After reviewing the proposed Interim Audit Report, this Office recommended that the Audit Division refer this matter because of Mr. Woodrow's prior history of noncompliance and repeated failures to cooperate with Commission investigations. Mr. Woodrow has blatantly ignored the requirements of the election laws and the Commission's efforts to ensure compliance. Several political committees associated with Mr. Woodrow have been involved in numerous Commission audits, compliance matters, and litigation which resulted in judgments and a finding of civil contempt against Mr. Woodrow and two committees.

The reporting and recordkeeping violations in this matter are similar to violations by the previous political

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1/ The audit covered the period from March 28, 1989 through December 31, 1990. During the period covered by the audit the treasurers were: Rick Woodrow from the Committee's inception through December 10, 1989; Tammy Hjort from December 11, 1989 to September 4, 1990; Darla Quinn from September 5, 1990 to December 17, 1990 and Kimberly Lingle from December 18, 1990 through the end of the audit period. The current treasurer is Rick Woodrow.

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committees associated with Mr. Woodrow. In addition to Mr. Woodrow's egregious history of election law violations, the audit revealed potential violations of other federal or criminal statutes within the jurisdiction of the Internal Revenue Service and the Department of Justice, including fraud, misappropriation of funds and income tax evasion.

The Committee has been involved in two prior compliance actions, one of which is ongoing. On May 5, 1992, the Commission found reason to believe that National Freedom Political Action Committee, and Rick Woodrow as treasurer violated 2 U.S.C. § 434(a)(4)(B)

MUR 3516.3/ That compliance matter arose from a referral from the Reports Analysis Division, and involved the Committee's failure to file its 1991 June

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3/ This matter has been held in abeyance in our Office pending the outcome of the audit referral.

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Monthly Report in a timely manner. Previously, on October 8, 1991, the Commission found probable cause to believe that National Freedom Political Action Committee and Kendall McBriar as treasurer violated 2 U.S.C. § 434(a)(4) by failing to file the 1990 Year End and 1991 February Monthly Reports. MUR 3324. The Committee paid a civil penalty of $250 on November 23, 1991.

Mr. Woodrow has been involved in a number of matters before the Commission related to his activities with the Committee and other political action committees, including Life Amendment PAC ("LAPAC") and Citizens Organized to Replace Kennedy ("CORK"). See MUR 1595 (LAPAC and Rick Woodrow); MUR 1876 (CORK and Rick Woodrow); MUR 1968 (CORK and Rick Woodrow). Mr. Woodrow became treasurer of LAPAC in 1983, and controlled its operations. The Commission audited LAPAC four times for the 1980, 1982, 1984, and 1986 election cycles; and these audits generated eight referrals.

In addition, the Commission is involved in litigation with Mr. Woodrow related to previous compliance actions involving violations by LAPAC AND CORK. Federal Election Commission v. Life Amendment Political Action Committee Inc., et al. No. C88-860z (Default judgment entered June 15, 1989); Federal Election Commission v. Life Amendment Political Action Committee Inc., et al., No. C89-1429WD (Default judgment entered January 24, 1990.) The litigation involves two separate cases which were recently merged in a civil contempt proceeding.

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The first case was the result of a compliance action concerning numerous reporting violations by LAPAC, CORK, and Rick Woodrow as treasurer of each committee, including failure to file reports and failure to disclose debts and obligations. On June 15, 1989, the United States District Court for the Western District of Washington granted the Commission's motion for a default judgment on the pleadings and declared LAPAC, CORK, and Rick Woodrow as treasurer of both committees to be in violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). Federal Election Commission v. Life Amendment Political Action Committee Inc., et al. No. C88-860z (Default judgment entered June 15, 1989). The Court's judgment ordered LAPAC and Rick Woodrow, as treasurer, to pay a civil penalty in the amount of $30,000, and CORK and Rick Woodrow, as treasurer, to pay a civil penalty in the amount of $5,000. In addition, the judgment required that CORK and Rick Woodrow, as treasurer, file certain disclosure reports, and ordered both committees and Mr. Woodrow to pay $92.50 in Commission costs. Finally, LAPAC and Rick Woodrow, as treasurer, and CORK, and Rick Woodrow, as treasurer, were permanently enjoined from further similar violations of the Act. After the defendants failed to comply with the June 15, 1989 default judgment, the Commission initiated civil contempt proceedings.

The second case also arose from a compliance matter involving numerous election law violations related to failure to maintain records and comply with reporting requirements,

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including a number of knowing and willful violations. On January 24, 1990, the United States District Court for the Western District of Washington entered a final order and default judgment against Life Amendment PAC and Rick Woodrow, as treasurer, for these violations. Federal Election Commission v. Life Amendment Political Action Committee Inc., et al., No. C89-1429WD (Default judgment entered January 24, 1990.) The Court ordered the defendants to pay a civil penalty of $55,000 for the violations which were not knowing and willful, and a civil penalty of $70,000 for the knowing and willful violations. The Court further ordered that LAPAC amend its disclosure reports and pay the Commission's costs of $33.88. The defendants failed to comply with the judgment, and the Commission initiated a civil contempt proceeding.

The two cases were merged in the civil contempt proceeding. Federal Election Commission v. Life Amendment Political Action Committee Inc., et al. No. C88-860z (Default judgment entered June 15, 1989); Federal Election Commission v. Life Amendment Political Action Committee Inc., et al., No. C89-1429WD (Default judgment entered January 24, 1990.) On September 11, 1992, the Court found LAPAC, CORK, and Rick Woodrow, as treasurer of both committees, in civil contempt and ordered them to pay an additional penalty of $100 per month until the defendants comply with the prior judgments, as well as a payment of $1,000 for the Commission's costs. Following this proceeding, the Commission sent

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interrogatories to Mr. Woodrow requesting information about his financial status. Mr. Woodrow did not respond to the interrogatories, or to numerous attempts by staff of this Office to contact him.

It should be noted that LAPAC has not filed a disclosure report since late 1988, and its last known address was in Everett, Washington. The Committee started receiving contributions in early 1989, and is located in Mountlake Terrace, Washington, 20 miles from Everett, Washington. It appears that the Committee is an extension or successor of LAPAC. Both committees had connections to Mr. Woodrow, since he served as treasurer for both committees and controlled the daily operations of both committees. In addition, both committees disclosed independent expenditures in support of or in opposition to federal candidates based on their "pro-life" positions. One of the Committee's bank accounts has the same mailing address as LAPAC. Moreover, 25 of 38 contributors to LAPAC in 1987-1988 also made contributions to the Committee.

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II. FACTUAL AND LEGAL ANALYSIS

A. Failure To Maintain Records

The Act requires that the treasurer of a political committee keep an account of the name and address of every person to whom any disbursement is made, as well as the date, amount and purpose of the disbursement, the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, and documentation of each

receipt in excess of $200 including a receipt, invoice or canceled check. 2 U.S.C. § 432(c)(5); 11 C.F.R. § 102.9(b). All disbursements shall be made by check from the committee's depository. 11 C.F.R. § 102.10. The treasurer or his authorized agent shall use his or her best efforts to obtain, maintain and submit the required information; to demonstrate best efforts to obtain documentation of disbursements, the treasurer should make at least one written effort per transaction to obtain a copy of the invoice, receipt or canceled check. 11 C.F.R. § 102.9(d).

The Committee maintained eight accounts at five depositories, including seven checking accounts and one savings account. During the audit period, the Committee's checking accounts had 560 transactions in the form of checks, telephone transfers, and bank debit advices. Supporting documentation provided by the Committee included a consolidated check register, 241 canceled checks and two debit advices. The Committee did not provide 299 canceled checks; support for 12 telephone transfers and six debit advices; and did not maintain vendor invoices or receipted bills for these transactions. In addition, the savings account had 33 withdrawals but no available documentation for these disbursements. Therefore, the Committee did not maintain canceled checks for 299 disbursements and did not maintain debit advices for 51 other disbursements.

The referral notes that 11 expenditures in excess of $200 totaling $4,446.50 were not supported by canceled

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checks, receipted bills, or invoices. Moreover, the Committee did not maintain the payee's address for 152 expenditures totaling $9,098.98. In addition, 10 expenditures are not included in the check register or supported by any documentation. The Committee did not demonstrate that it made any efforts to obtain the missing documentation.

While the check register may, on its face, meet the minimum recordkeeping requirements for most of the 350 disbursements under $200, payees on the checks made available for review were inconsistent with payees disclosed on the Committee's disclosure reports. For example, 54 of the checks provided totaling $8,681.92 were made payable to cash, but 20 of these disbursements were reported as payments to Target Consulting on the Committee's disclosure reports.4/ The Committee did not maintain documentation to support these cash transactions. Moreover, it appears that the Committee made no effort to maintain adequate records of its disbursements.

B. Failure To Disclose Required Information

The Act requires that each disclosure report shall disclose, for the reporting period and the calendar year, the total amount of all disbursements, and all disbursements made for operating expenditures. 2 U.S.C. § 434(b)(4)(A). Further, the reports must disclose the name and address of

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4/ Target Consulting was an entity controlled by Rick Woodrow, which has since been dissolved.

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each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expense. 2 U.S.C. § 434(b)(5)(A).

The Audit staff's review revealed numerous instances of itemized disbursements for which reported information was incomplete, inaccurate or misleading. The Audit staff compared canceled checks to the disclosure report entries for 84 disbursements totaling $18,741.27, and noted that in 66 cases, the reported payee differed from the payee on the canceled check.

These discrepancies included five disbursements that were reported as paid to Target Consulting for "consulting", but canceled checks for these disbursements were made payable to apartment complexes. In addition, 41 canceled checks related to disbursements were reported as made to Target Consulting, but were made payable to cash, Rick Woodrow, Robin Woodrow, or Kim Lingle. Seven additional disbursements reported as made to Target Consulting were undocumented withdrawals from the Committee's savings account. Moreover, seven disbursements were reported as made to the U.S. Postmaster for postage, but the checks were made payable to cash, a furniture company, Rick Woodrow, Kim Lingle and an apartment complex. Four other disbursements were reported as made to the telephone company, but the checks were made payable to Rick Woodrow or Kim Lingle. One disbursement

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reported as paid to Robin Woodrow was actually paid to Kim Lingle and one disbursement reported as made to an apartment complex was made payable to Rick Woodrow.

In addition to the 66 disbursements where the reported payee differed from the payee on the check, one disbursement to "Stephen Yost" for travel was actually endorsed "Steven A. Yost Attorney at Law Client Trust Account." It appears that Mr. Yost represented Mr. Woodrow in a personal matter. For 18 disbursements, the vendor's individual address was missing or incomplete.

Moreover, the Audit staff noted numerous instances of disbursements to vendors that appear to be for individual personal expenses rather than for political activity by the Committee. These expenditures include payments for hospitals, doctors, other medical expenses, rent on apartments, four payments to a private school, and candy. Without adequate documentation of these expenditures such as bills, invoices, and receipts, the Audit staff was unable to determine the true nature of these disbursements, but concluded that the disbursements benefited individuals. In conversations with the auditors, Mr. Woodrow explained that if the Committee owed him salary, he may have issued a Committee check to pay his personal rent.

C. Disclosure of Independent Expenditures

The Act defines an independent expenditure as an expenditure that expressly advocates the election or defeat of a clearly identified candidate, or any authorized

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committee or agent of such candidate. 2 U.S.C. § 431(17). The expenditure must also not be made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate. 2 U.S.C. § 431(17). The Commission's regulations provide that "expressly advocating" means any communication containing a message advocating election or defeat, including but not limited to the name of a candidate or expressions such as vote for, elect, support, cast your ballot for, and Smith for Congress, or vote against, defeat or reject. 11 C.F.R. § 109.1(b)(2). A "clearly identified candidate" means that the name or image of the candidate appears, or the candidate is otherwise identified by unambiguous reference. 11 C.F.R. § 109.1(b)(3).

Moreover, the Act requires a reporting political committee to disclose the name and address of each recipient of any disbursement made during the reporting period that has an aggregate value in excess of $200 within the calendar year, connected with an independent expenditure by the reporting committee. 2 U.S.C. § 434(b)(6)(iii). The reporting committee must disclose the date, amount, and purpose of the independent expenditure and whether it supports or opposes a particular candidate, and identify the office sought. Id. Finally, this section requires a certification, under penalty of perjury, as to whether the independent expenditure was made in cooperation, consultation or concert with, or at the request or suggestion

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of the candidate or authorized committee of a candidate benefiting from the expenditure. Id.

In its disclosure reports, the Committee itemized 187 independent expenditures totaling $28,021.96 in support of four congressional candidates and in opposition to three other congressional candidates. Twenty-five of these expenditures totaling $2,197.47 were reported as being made for postage, shipping, printing, and list rentals, and the remaining 162 expenditures were reported as travel expenditures totaling $9,905.20 or consulting expenditures totaling $15,919.29. The treasurer at the time of the reports signed a notarized statement attesting to the validity of the reported independent expenditures.

The documentation related to the reported independent expenditures is incomplete: 101 canceled checks totaling $8,909.19 were not available for review and 30 canceled checks totaling $5,143.35 were made payable to cash and endorsed by Rick Woodrow or "Spot Tavern", where Mr. Woodrow worked part-time. Moreover, the reported payee for 106 of the 187 independent expenditures was Target Consulting with the disclosed purpose of travel or consulting. However, none of the available checks was made payable to Target Consulting. Rather, the checks for these expenditures were made payable to cash (18, or 41%), Rick Woodrow (18), apartment complexes (3), Kim Lingle (4), and Robin Woodrow (1). The remaining 62 canceled checks or savings account withdrawal advices were not available for review.

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Moreover, nine reported independent expenditures totaling $2,244.65 were disclosed as payments to Commander Auto for travel. Mr. Woodrow told the auditors that the payments to Commander Auto were installment payments for his personal car which he used for Committee business. Mr. Woodrow further stated that independent expenditures are a gray area, and that he attempted to be conservative in the reporting of independent expenditures by classifying expenditures related to Committee workshops which supported candidates as independent expenditures. It appears that the Committee may have conducted workshops related to "pro-life" campaigning; however, evidence concerning these workshops is limited, and it is not clear whether the workshops were related to particular federal candidates. Moreover, most of the expenditures do not appear to be related to workshops.

Based on the limited documentation available, it appears that these expenditures do not meet the definition of independent expenditures. There is no evidence that the expenditures were related in any way to a communication which expressly advocated the election or defeat of a clearly identified candidate. Indeed, the available evidence suggests that the majority of these expenditures were not related to any federal candidate or federal election and thus, may not even be expenditures within the definition of the Act. 2 U.S.C. § 431(9). Rather, a majority of the disbursements appear to be payments to benefit individuals associated with the Committee rather than federal candidates.

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For example, checks made payable to cash, Rick Woodrow, Robin Woodrow, Kim Lingle and apartment complexes have no apparent connection to activities related to federal elections.

D. Commingling of Committee and Personal Funds

The Act provides that all funds of a political committee shall be segregated from, and may not be commingled with, the personal funds of any individual. 2 U.S.C. § 432(b)(3); See 11 C.F.R. § 102.15. See, e.g., MUR 2316 (Commission found reason to believe that former treasurer of Kansans for Kline knowingly and willfully violated 2 U.S.C. § 432(b)(3) by writing checks on the committee's account made payable to himself and receiving cash back on deposits of contributions to the committee's account); MUR 2189 (Commission found probable cause to believe the former treasurer of the Hartnett for Congress Committee knowingly and willfully embezzled committee funds in violation of 2 U.S.C. § 432(b)(3))

As previously discussed, it appears that a number of Committee disbursements were made for individual personal expenses rather than for political activity by the Committee. These expenditures include payments to vendors for hospitals, doctors, other medical expenses, rent on apartments, a private school, and candy, all of which appear to have benefited individuals. In addition, nine reported

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independent expenditures totaling $2,244.65 disclosed as payments to Commander Auto for travel were installment payments for Mr. Woodrow's personal car. Additional disbursements reported as independent expenditures were actually checks made payable to cash, Rick Woodrow, Robin Woodrow, Kim Lingle and apartment complexes. It appears that a significant amount of the Committee's receipts were used to pay personal expenditures, including direct cash payments, to benefit Mr. Woodrow, his wife, and other individuals connected to the Committee. Mr. Woodrow apparently used the Committee's accounts as his personal bank account, and used the Committee's receipts as his personal income. Based on the available information, it appears that a substantial amount of Committee funds were commingled with personal funds. Additional information, such as bank account records for individual payees revealing where funds were deposited, would clarify the amount of commingled funds.

E. Apparent Prohibited Contributions

The Act provides that it is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any federal election, or for any candidate, political committee or other person to knowingly accept or receive such a contribution. 2 U.S.C. § 441b(a).

The Committee opened seven checking accounts at various times during the audit period. There were insufficient funds to cash 212 checks from these accounts, and the Committee was

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charged $2,474 by the banks for these overdrafts. Accounts at U.S. Bank of Washington and First Interstate Bank of Washington were closed by bank-initiated credit adjustments to the accounts' outstanding negative balances totaling $1,620.08. The outstanding negative balances were made up of bank fees, charges for the overdrafts, and checks paid by the bank even though the account was overdrawn. U.S. Bank re-opened the Committee's account 67 days after closing it, and obtained $932.68 of the unpaid bank charges. Bank charges totaling $687.40 remain unresolved. There is no indication that these bank transactions were not made in the ordinary course of business. However, additional information concerning the accounts is necessary to clarify this issue.

Based on the available information, it appears that the Committee and Rick Woodrow knowingly and willfully violated the Act.5/ While the violations of the Act involved in the referrals are primarily reporting and recordkeeping violations, the facts raise questions concerning potential violations of other statutes.

5/ In light of Mr. Woodrow's history of blatant election law violations, we believe that Mr. Woodrow should be included as an individual respondent rather than merely as the Committee treasurer if this matter is eventually pursued by the Commission.

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For example, it appears that a substantial portion of the Committee's receipts were not used to make expenditures intended to influence a federal election, but rather, were used to pay personal expenditures such as medical bills, apartment rent, car payments and direct cash payments to benefit Rick Woodrow; his wife, Robin Woodrow; Kimberly Lingle; and other individuals connected to the Committee. The available evidence raises serious questions concerning whether the Committee was set up as part of a fraudulent scheme to misappropriate funds for these individuals from contributors. If the Committee used mailed solicitation materials to claim involvement in political activity, but actually used the contributions received for personal expenses, the Committee may have been involved in criminal violations such as mail fraud.6/ Moreover, it appears that a large portion of the Committee's receipts were used by Mr. Woodrow as personal income, but were not reported as income on his tax returns.

The available information in the audit referral concerning the Committee's activities is inadequate, and pursuit of these matters at this time would likely involve a prolonged and potentially fruitless investigation. The Commission's previous interactions with Mr. Woodrow, the

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6/ This Office has reviewed one Committee solicitation letter dated February 28, 1990 and signed by Rick Woodrow. Attachment 1. The letter states that the Committee needed funds for political training seminars to support several identified candidates for the United States Congress and Senate.

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Committee, LAPAC, and CORK have been characterized by inadequate recordkeeping, blatant disregard for legal reporting and recordkeeping requirements, and repeated failure to respond to Commission inquiries or to comply with Commission determinations and court orders. For example, LAPAC, CORK, and Rick Woodrow, as treasurer of both committees, were permanently enjoined from further similar violations of the Act on June 15, 1989 by the United States District Court for the Western District of Washington. Federal Election Commission v. Life Amendment Political Action Committee Inc., et al. No. C88-860z (Default judgment entered June 15, 1989). However, Mr. Woodrow, as treasurer, has subsequently been involved in multiple similar violations by the Committee.

Moreover, Mr. Woodrow and LAPAC failed to comply with two default judgments against them which arose from their failure to resolve Commission compliance actions after the Commission had made probable cause to believe findings against them. Mr. Woodrow, LAPAC and CORK were found in civil contempt on September 11, 1992. Mr. Woodrow further failed to respond to this Office's interrogatories and repeated attempts to contact him. Given the Commission's previous experience with Mr. Woodrow, and organizations controlled by him such as LAPAC, CORK, and the Committee, it is probable that a compliance matter would lead to additional litigation and extensive use of Commission resources without obtaining any additional relief.

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We further recommend that the Commission take no action at this time regarding the matters related to the audit referrals and hold these matters and MUR 3516 in abeyance

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IV. RECOMMENDATIONS

Take no action at this time regarding reason to believe findings in connection with information contained in the audit referrals concerning National Freedom Political Action Committee and Rick Woodrow.

Hold this matter and MUR 3516 in abeyance

8/12/93
Date

Lawrence M. Noble
General Counsel

Attachments

1. Letter dated February 28, 1990 from Rick Woodrow to Friends of NFPAC

2. Draft Interim Audit Report

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
National Freedom Political Action Committee and Rick Woodrow, as treasurer.	)	(LRA #434)
	)	
	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on November 10, 1993, the Commission decided by a vote of 5-0 to take the following actions in the above-captioned matter:

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(continued)

Take no action at this time regarding reason to believe findings in connection with information contained in the audit referrals concerning National Freedom Political Action Committee and Rick Woodrow.

Hold this matter and MUR 3516 in abeyance

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

Attest:

11-12-93
Date

Delores Hardy
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thurs., Oct. 21, 1993 3:36 p.m.
Circulated to the Commission: Fri., Oct. 22, 1993 12:00 p.m.
Deadline for vote: Wed., Nov. 10, 1993 4:00 p.m.

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Jul 15 11 29 AM '94

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	MUR 3516
	)	LRA #434
National Freedom Political	)	
Action Committee and	)	
Rick Woodrow	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND AND DISCUSSION

On November 10, 1993, the Commission

determined to take no action at that time regarding reason to believe findings in connection with information contained in the audit referrals concerning National Freedom Political Action Committee and Rick Woodrow; and to hold this matter and MUR 3516 in abeyance

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Accordingly, we recommend that the Commission continue to hold this matter and MUR 3516 in abeyance

We further recommend, for administrative purposes, that the Commission open a Matter Under Review with respect to the audit referral of National Freedom Political Action Committee and Rick Woodrow, and merge MUR 3516 into that MUR.

II. RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Open a Matter Under Review with respect to the audit referrals of National Freedom PAC and Rick Woodrow, Jr.

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2. Merge MUR 3516 into the new MUR.

3. Continue to hold this matter in abeyance

7/14/97
Date

Lawrence M. Noble
General Counsel

Staff Assigned: Delanie Dewitt Painter

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
National Freedom Political Action Committee;	)	MUR 3516
Rick Woodrow.	)	(LRA #434)
	)	

MUR 4013

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 20, 1994, the Commission decided by a vote of 6-0 to take the following actions in MUR 3516:

1. Open a Matter Under Review with respect to the audit referrals of National Freedom Political Action Committee and Rick Woodrow, Jr.

2. Merge MUR 3516 into the new MUR.

3. Continue to hold this matter in abeyance

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

Attest:

7-20-94
Date

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

Received in the Secretariat:	Fri., July 15, 1994	11:29 a.m.
Circulated to the Commission:	Fri., July 15, 1994	2:00 p.m.
Deadline for vote:	Wed., July 20, 1994	4:00 p.m.

bjr

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TO THE READER OF THE PUBLIC RECORD FILE:

THE GENERAL COUNSEL'S REPORT, DATED APRIL 28, 1995, IN THE MATTER OF 28 U.S.C §2462 - STATUTE OF LIMITATIONS, CONTAINS DISCUSSION OF SEVERAL CASES CURRENTLY UNDER REVIEW BY THE COMMISSION. THAT DISCUSSION HAS BEEN DELETED FROM THE PUBLIC RECORD FILE, AND PAGES FOLLOWING IT HAVE BEEN REDESIGNATED AS (A), (B), ETC.

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AGENDA DOCUMENT NO. X95-39

RECEIVED
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COMMISSION
SECRETARIAT

Apr 28 4 02 PM '95

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	28 U.S.C. § 2462
	)	Statute of Limitations
	)	

SENSITIVE
MAY 16 1995
EXECUTIVE SESSION

GENERAL COUNSEL'S REPORT

I. INTRODUCTION[1]

As the Commission is aware, on February 24, 1995, the U.S. District Court for the District of Columbia decided in Federal Election Commission v. National Republican Senatorial Committee, 1995 WL 83006 (D.D.C. 1995) ("NRSC"), that the statute of limitations set forth at 28 U.S.C. § 2462 ("Section 2462") applied to Commission enforcement suits seeking civil penalties, relying upon the D.C. Circuit's opinion in 3M Co. v. Browner, 17 F.3d 1453 (D.C. Cir. 1994). This Report discusses the statute of limitations generally, describes

enforcement matters potentially affected by the NRSC court's conclusion and makes recommendations for each of the potentially affected matters.[2]

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1. This is a combined General Counsel's Report from the Enforcement and Public Financing, Ethics and Special Projects ("PFESP") areas of the Office of the General Counsel.

In NRSC, Judge Pratt held that the Commission could not seek a civil penalty in conjunction with its civil enforcement action against the defendant for violations of 2 U.S.C. §§ 441a(h) and 434(b) because the 5-year federal catch-all statute of limitations found at 28 U.S.C. § 2462 applied to Commission-initiated enforcement suits seeking civil penalties. The court, however, allowed the Commission's suit to go forward notwithstanding this conclusion, ruling that Section 2462 did not apply to the declaratory and equitable relief also sought by the Commission. Therefore, the court so far has issued no final appealable decision.

On May 17, 1994, in FEC v. Williams, the U.S. District Court for the Central District of California reached the opposite conclusion about the applicability of 28 U.S.C. § 2462 to the Commission's enforcement actions. Mr. Williams' contributions in the name of another took place more than 5 years before the Commission filed its complaint and counsel raised 28 U.S.C. § 2462 as an affirmative defense. However, the court ruled at an oral hearing that the statute of limitations did not apply. Instead, the court awarded the Commission a $10,000 civil penalty against Mr. Williams for violations of 2 U.S.C. § 441f. FEC v. Williams, No. 93-6321 (C.D. Cal. Jan. 31, 1995), appeal docketed, No. 95-55320 (9th Cir. 1995) ("Williams"). Mr. Williams has filed a notice of appeal regarding, inter alia, the district court's

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statute of limitations decision. Thus, whether and to what extent the statute of limitations at 28 U.S.C. § 2462 will apply to Commission enforcement cases will be before the 9th Circuit shortly, and could also be the subject of a later appeal before the D.C. Circuit in NRSC.[3]

In light of this conflict between the courts and the pendency of the appeal, this Office believes a decision to close enforcement cases based solely on a conclusion that the 5 year statute of limitations would apply to any potential enforcement suits would be unwarranted. This is especially true since neither 28 U.S.C. § 2462 nor the NRSC decision limits the Commission's authority to complete administrative investigations or seek civil penalties in voluntary conciliation prior to filing suit. Nonetheless, the Office of the General Counsel recognises that until the stautue of limitations is finally resolved by the courts, respondents are likely to raise it as a defense, making settlement more complicated. Thus, even though the Commission is not bound by the NRSC decision in other cases, the Office of the General Counsel believes the Commission should take this issue into consideration on a case-by-case basis when looking at its active and inactive enforcement cases -- particularly those with older activity -- and, in an exercise of its prosecutorial discretion, attempt to bring the matters most vulnerable to

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statute of limitations difficulties to an early administrative disposition.[4]

In order to give the Commission the broadest picture of the possible effect of a statute of limitations on its caseload, this Office has analyzed all enforcement cases where there is FECA-violative activity that will be 5 years old at some point during this year. Section II of this Report gives an overview of principles involved in analyzing the statute of limitations issue, with particular attention to determining when a Commission cause of action might accrue, and when the running of the statute may be tolled by equitable principles. Section III describes how this Office applied these principles to its active and inactive enforcement caseload and the approach used in making its recommendations for Commission action. Section IV includes descriptions of each of the potentially affected enforcement matters, outlines the statute of limitations difficulties this Office foresees for each, and recommends specific Commission action for each potentially affected matter.

II. THE LAW

This section discusses 28 U.S.C. § 2462, the federal catch-all statute of limitations, and issues relating to when the statute begins to run, under what circumstances it may be tolled

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and declaratory and equitable relief available to the Commission even if the statute of limitations has run completely.

A. Accrual

Section 2462 requires commencement of a suit for civil penalties within five years from the date when the claim first accrued.[5] Thus, as a threshold matter, in considering the potential effect of the limitations period on a particular case, one must determine the complex issue of when the claim first accrued.

1. General Principles

A cause of action normally accrues when the factual and legal prerequisites for filing suit are in place, i.e., at the precise moment when the violation occurred.[6] However, federal courts have generally applied the discovery rule of accrual, an equitable doctrine under which a claim is considered to have accrued at the time that a potential claimant knew, or through the exercise of reasonable diligence should have known, of the facts underlying the cause of action.[7]

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5. 28 U.S.C. § 2462 provides:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued . . . .

6. United States v. Lindsay, 346 U.S. 568, 569 (1954).

7. See, e.g., Delaware State College v. Ricks, 449 U.S. 250, 259 (1980) (Court implicitly applied discovery rule to Title VII discrimination suit); United States v. Kubrick, 444 U.S. 111, 122-25 (1979) (court implicitly endorsed discovery rule of accrual, but limited it to discovery of facts underlying a claim,

The substantial harm theory of accrual can be considered analytically as a particular application of the discovery rule. It is usually advanced in personal injury actions involving latent injuries or injuries difficult to detect, especially in cases of "creeping disease" such as asbestosis. The rule rests on the idea that plaintiffs cannot have a tenable claim for the recovery of damages unless and until they have been harmed. Under the substantial harm theory, therefore, damage claims in cases involving latent injuries or illnesses do not accrue until substantial harm matures or, in other words, until the harm becomes apparent.

The Supreme Court has cautioned against "attempting to define for all purposes when a cause of action first accrues. Such words are to be interpreted in light of the general purposes of the statute and of its other provisions, and with due regard to those practical ends which are to be served by any limitation of the time within which an action must be brought."[8] Thus, in determining the time of accrual in cases arising under the FECA,

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(Footnote 7 continued from previous page)
rather than extending the rule to discovery of legal cause of action); see also Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1386 (3d Cir. 1994); Dixon v. Anderson, 928 F.2d 212, 215 (6th Cir. 1991); Cada v. Baxter Healthcare Corp., 920 F.2d 446, 450 (7th Cir. 1990); Corn v. City of Lauderdale Lakes, 904 F.2d 585, 588 (11th Cir. 1990); Alcorn v. Burlington Northern Railroad Co., 878 F.2d 1105, 1108 (8th Cir. 1989); Lavellee v. Listi, 611 F.2d 1129, 1131 (5th Cir. 1980); Cullen v. Margiotta, 811 F.2d 698, 725 (2d Cir. 1987); Cline v. Brusett, 661 F.2d 108, 110 (9th Cir. 1981); Bireline v. Seagondollar, 567 F.2d 260, 263 (4th Cir. 1977).

8. Crown Coat Front Co., Inc. v. United States, 386 U.S. 503, 517 (1967) (quoting Reading Co. v. Koons, 271 U.S. 58, 62 (1926)).

courts will look to the nature and goals of the FECA versus the interests underlying the five-year limitations period.

2. Accrual in the Context of the FECA

While the discovery rule has been applied in a wide range of cases, originating in the tort context and extending to, inter alia, contract, Title VII, and RICO actions, to date, it appears that only the United States District Court for the District of Columbia has held that the Section 2462 statute of limitations is applicable to the FECA. The court also addressed the precise question of when a cause of action accrues under the FECA. Inasmuch as the district court in NRSC relied on the decision of the Court of Appeals for the District of Columbia in 3M Co. v. Browner, 17 F.3d 1453 (D.C. Cir. 1994) ("3M"), the latter case will be summarized first.

3M was an action brought by the Environmental Protection Agency ("EPA") to impose civil penalties against a company for violations of the Toxic Substances Control Act, wherein the EPA argued that in the exercise of due diligence it could not have discovered the violations earlier. In 3M, the defendant misstated and failed to include information on notices required by the EPA. The court acknowledged that the District of Columbia Circuit has adopted the discovery rule, under which, as discussed above, a claim is considered to have accrued at the time that a claimant knew or should have known of the facts underlying the cause of action. However, the 3M court found that the discovery rule had only been applied in limited circumstances -- those involving remedial, civil claims -- and specifically rejected the discovery

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rule under the circumstances presented, stating that the rule proposed by the EPA in that case was a "discovery of violation" rule. The court concluded that in civil penalty actions the running of the limitations period of Section 2462 is measured from the date of the violation.[9]

In MRSC, a suit arising from violations of the FECA involving excessive contributions and failure to report such contributions to the FEC, the court repeated the options for defining the time of accrual set forth in 3M, stating that a claim accrues "when the defendant commits his wrong or when substantial harm matures." Then, without pinpointing the exact time of accrual, and without specifically attempting to define accrual in the FECA context, the court held that the FECA claim accrued "considerably before the end of the [FEC's] administrative process." While the district court's accrual finding was imprecise, Judge Pratt's construction of 3M suggests that the discovery rule of accrual may be rejected in FECA claims brought in that Circuit.

On the other hand, the Court of Appeals for the Third Circuit, in considering a citizens' suit brought under the Clean

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9. In 3M, the court cited the Supreme Court's decision in Unexcelled Chemical Corp. v. United States, 345 U.S. 59 (1953), which was a suit for liquidated damages against a government contractor for unlawfully employing child labor. As the 3M decision noted, in that case, the Supreme Court held that "a cause of action is created when there is a breach of duty owed the plaintiff. It is that breach of duty, not its discovery, that normally is controlling." However, the Supreme Court's focus was the question of whether the claim accrued at the time of the violation versus after it had been administratively determined that the contractor was liable. The Court was not concerned specifically with the question of whether the claim accrued at the time of the violation versus when the plaintiff knew or should have known of the facts underlying the claim.

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Water Act, which has statutory self-reporting requirements comparable to the FECA, held the Section 2462 statute of limitations applicable and embraced the discovery rule. There, the Third Circuit held that since the defendant was responsible for filing reports under the Act and the public could not reasonably be deemed to have known about any violation until the defendant filed the report, the cause of action did not accrue until the reports listing the violations were filed.[10] A district court in Virginia[11] has also embraced this discovery rule for determining accrual under the Clean Water Act.[12]

B. EQUITABLE TOLLING

There are instances in which a court may determine that equitable considerations require the statute of limitations to be tolled. Such a determination is made on a case-by-case basis and

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10. Public Interest Research Group v. Powell Duffryn Terminals, Inc., 913 F.2d 64, 75 (3d Cir. 1990), cert. denied, 498 U.S. 1109 (1991).

11. United States v. Hobbs, 736 F. Supp. 1406 (E.D. Va. 1990).

12. Various other circuit courts have grappled with the question of when the federal five-year statute of limitations of Section 2462 begins to run, but these cases, which have produced conflicting rulings, have all involved actions to recover civil penalties rather than actions to impose them. Compare United States Dept. of Labor v. Old Ben Coal Co., 676 F.2d 259 (7th Cir. 1982) (in action to recover civil penalty, claim accrues only after administrative proceeding has ended, penalty has been assessed, and violator failed to pay) and United States v. Meyer, 808 F.2d 912 (1st Cir. 1987) (in civil penalty enforcement action limitations period is triggered on date civil penalty is administratively imposed) with United States v. Core Laboratories Inc., 759 F.2d 480 (5th Cir. 1985) (in suit to recover civil penalty limitations period begins to run on date of underlying violation).

is referred to as equitable tolling.[13] Equitable tolling presumes claim accrual and steps in to toll, or stop, the running of the statute of limitations in light of established equitable considerations.[14] The most fundamental rule of equity is that a party should not be permitted to profit from its own wrongdoing.

There are three principal situations in which equitable tolling may be appropriate: (1) where the defendant has actively misled the plaintiff regarding the plaintiff's cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; and (3) where the

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13. Some courts have pointed out that, in instances where the defendant has taken active steps to prevent the plaintiff from suing, e.g., in cases involving fraudulent concealment, the tolling of the statute of limitations is more appropriately referred to as equitable estoppel. See Cada v. Baxter Healthcare Corp., 920 F.2d 446, 450-51 (7th Cir. 1990).

14. Courts have held that statutes of repose cannot be extended by federal tolling principles, see Baxter Healthcare, 920 F.2d at 451; First United Methodist Church of Hyattsville v. United States Gypsum Company, 882 F.2d 862 (4th Cir. 1989). While statutes of repose and statutes of limitations have sometimes been referred to interchangeably, a statute of repose is legally distinguishable from a statute of limitations. Whereas a statute of limitations is a procedural device motivated by considerations of fairness to the defendant, a statute of repose is a substantive grant of immunity after a legislatively determined period of time and is based on the economic interest of the public as a whole and a legislative balance of the respective rights of potential plaintiffs and defendants. See First United Methodist Church, supra. To date, this Office's research has revealed no instances in which a court has held that Section 2462 is a statute of repose in the legal sense and, therefore, held tolling principles to be inapplicable. Indeed, in 3M, the court noted the potential applicability of the doctrine of fraudulent concealment to Section 2462. See 3M, 17 F.3d at 1461, n.15.

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plaintiff has timely asserted his or her rights mistakenly in the wrong forum.[15]

1. Doctrine of Fraudulent Concealment

The Supreme Court has defined the doctrine of fraudulent concealment as the rule that "where a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party." Holmberg v. Armbrecht, 327 U.S. 392, 397 (1946). The Court went on to state that this equitable doctrine is read into every federal statute of limitation. Id.

The doctrine, as applied by the circuit courts of appeal, requires the plaintiff to plead[16] and prove three elements:

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15. School District of City of Allentown v. Marshall, 657 F.2d 16, 19-20 (3d Cir. 1981) (quoting Smith v. American President Lines, Ltd., 571 F.2d 102, 109 (2d Cir. 1978)). It should also be noted that statutes of limitations are subject to waiver and may be tolled by agreement of the parties. See Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982).

16. Pleading requirements for fraudulent concealment are very strict. Some courts ihvoke Fed. R. Civ. P. 9(b) and require a plaintiff to meet the pleading requirements for fraud. See Dayco Corp. v. Goodyear Tire & Rubber Co., 523 F.2d 389, 394 (6th Cir. 1975). Other courts, while not specifically invoking Rule 9, still require specificity and particularity in pleading. See Rutledge v. Boston Woven Hose & Rubber Co., 576 F.2d 248, 250 (9th Cir. 1978); Weinberger v. Retail Credit Co., 498 F.2d 552, 555 (4th Cir. 1974).

(1) use of fraudulent means by the defendant;
(2) plaintiff's failure to discover the operative facts that are the basis of his cause of action within the limitations period; and
(3) plaintiff's due diligence until discovery of the facts.

State of Colorado v. Western Paving Construction, 833 F.2d 867, 874 (10th Cir. 1987).

The first prong of the plaintiff's burden under the doctrine - the use of fraudulent means by the defendant - warrants some elaboration. The courts have generally held that to establish this element of the doctrine one of two facts must be shown: 1) that fraud is an inherent part of the violation so that the violation conceals itself; or 2) that the defendant committed an affirmative act of concealment - a trick or contrivance intended to exclude suspicion or prevent inquiry.[17] These approaches to establishing the first element of the doctrine of fraudulent concealment have been referred to, respectively, as the self-concealing theory and the subsequently concealed theory. By contrast, the courts have pointed out that silence, without some fiduciary duty, never satisfies this element.[18]

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17. See Riddell v. Riddell Washington Corp., 866 F.2d 1480, 1491 (D.C. Cir. 1989); State of Colorado v. Western Paving Construction, 833 F.2d at 876-78.

18. See Rutledge v. Boston Woven Hose & Rubber Co., 576 F.2d 248, 250 (9th Cir. 1978); Dayco Corp. v. Firestone Tire & Rubber Co., 386 F. Supp. 546, 549 (N.D. Ohio 1974), aff'd sub. nom., Dayco Corp. v. Goodyear Tire & Rubber Co., 523 F.2d 389 (6th Cir. 1975). Some courts have also held that a denial of an accusation of wrongdoing does not constitute fraudulent concealment. See King & King Enters. v. Champlin Petroleum Co., 657 F.2d 1147, 1155 (10th Cir. 1981), cert. denied, 454 U.S. 1164 (1982); but see Rutledge, supra ("denying wrongdoing may constitute fraudulent concealment where the circumstances make the plaintiff's reliance upon the denial reasonable").

Where the plaintiff establishes all three of the required elements, the doctrine provides the plaintiff with the full statutory limitations period, starting from the date the plaintiff discovers, or with due diligence could have discovered, the facts supporting the plaintiff's cause of action.

2. Inducement Due to Intentional or Unintentional Misrepresentation

In cases where the plaintiff has refrained from commencing suit during the period of limitation because of inducement by the defendant, the Supreme Court has found the statutory period tolled because of the conduct of the defendant. See Glus v. Brooklyn Eastern Terminal, 359 U.S. 231 (1973). Under the facts of Glus, supra, the plaintiff averred that the defendant had fraudulently or unintentionally misstated information upon which the plaintiff relied in withholding suit.

3. Subpoena Enforcement

Several district courts have tolled other statutes of limitations in circumstances where the plaintiff was forced to initiate subpoena enforcement proceedings to uncover facts underlying the cause of action.[19] While research to date has not revealed specific instances in which a court has tolled the Section 2462 statute of limitations because the plaintiff was

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19. EEOC v. Gladieux Refinery, Inc., 631 F. Supp. 927, 935-36 (N.D. Ind. 1986) (Court held that the statute of limitations was tolled during the time between issuance of subpoena and enforcement because defendant did not have valid basis for not complying with subpoena); EEOC v. City of Memphis, 581 F. Supp. 179, 182 (W.D. Tenn. 1983) (Court held that the statute of limitations was tolled until documents sought in subpoena were made available to EEOC).

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forced to initiate subpoena enforcement proceedings, Section 2462 is sufficiently similar to those statutes which courts have tolled to suggest that the same result would be appropriate. Further, a good argument could be made for equitably tolling Section 2462 in such circumstances because defendants' refusal to comply with the Commission's subpoenas, whether that refusal is reasonable or otherwise, frustrates the Commission's ability to bring the action within the limitations period. Not tolling the statute of limitations in such circumstances while allowing defendants to plead the statute of limitations as an affirmative defense to actions brought by the Commission would allow defendants to profit from refusing to comply with subpoenas, and thus "offer a tempting method of defeating the basic purpose of [the Act]."[20]

4. Continuous Violation Theory

The continuous violation theory is another theory that operates to toll statutes of limitations. In the case of a continuing violation, the violation is not complete for purposes of the statute of limitations as long as the proscribed course of conduct continues, and the statute of limitations does not begin to run until the last day of the continuing offense.[21]

The Supreme Court has cautioned that continuing offenses are not to be too readily found, explaining in the criminal context that "such a result should not be reached unless the

20. See Hodgson v. International Printing Press, 440 F.2d 1113, 1119 (6th Cir. 1973).

21. See Fiswick v. United States, 329 U.S. 211, 216 (1946); United States v. Butler, 792 F.2d 1528, 1532-33 (11th Cir. 1986).

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explicit language of the substantive criminal statute compels such a conclusion, or the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing one." Toussie v. United States, 397 U.S. 112, 115 (1970). Thus, the question of whether a violation is a continuing one is largely a matter of statutory interpretation involving the precise statutory definition of the violation.

Courts will generally not find that a violation is continuous absent clear language in the statute.[22]

C. Declaratory Relief and Equitable Remedies

The limitations period set forth in 28 U.S.C. § 2462 applies only to suits for civil penalties. Section 2462, by its own terms, has no bearing on suits in equity.[23] The following is a purely exemplary, non-exhaustive list of various forms of equitable relief that may be available. It should be noted that it is within the discretion of the courts to grant or withhold

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22. Compare Toussie, 397 U.S. 112 (1970) (Court held that failure register for draft was not continuing violation where draft statute contained no language that clearly contemplated continuing offense, and regulation under Act referring to continuing duty to register was insufficient, of itself, to establish continuing offense) with United States v. Cores, 356 U.S. 405 (1958) (statute prohibiting alien crewmen from remaining in United States after permits expired contemplated continuing offense where conduct proscribed is the affirmative act of willfully remaining, and crucial word "remains" permits no connotation other than continuing presence). See also Keystone Insurance Company v. Houghton, 863 F.2d 1125 (3d Cir. 1988) (In RICO action, court held that language of the Act, which makes a pattern of conduct the essence of the crime, "clearly contemplates a prolonged course of conduct."); West v. Philadelphia Electric Co., 45 F.3d 744 (3d Cir. 1995) (Court applied continuing violation theory where cause of action required showing of intentional, pervasive, and regular racial discrimination).

23. See Hobbs, 736 F. Supp. at 1410; NRSC, 1995 WL 83006, at *4.

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equitable remedies and courts will exercise that discretion on a case-by-case basis in light of the particular circumstances of each case.

o Declaratory Judgment - A declaratory judgment is a court judgment which establishes the rights of parties or expresses the opinion of the court on a question of law without the court necessarily ordering anything to be done. While a declaratory judgment is similar in some respects to an advisory opinion, unlike the latter, a declaratory judgment is rendered in an adversarial proceeding and is legally binding on all the parties involved.

o Disgorgement - Disgorgement is aimed at preventing the unjust enrichment of a wrongdoer. The disgorgement remedy takes away "ill-gotten gains," thereby depriving a respondent of wrongfully obtained proceeds and returning the wrongdoer to the position the wrongdoer was in before the proceeds were wrongfully obtained.

o Injunction - A prohibitory injunction is a court order that requires a party to refrain from doing or continuing a particular act or activity. Prohibitory injunctions are generally considered preventative measures which guard against future acts rather than affording remedies for past wrongs.

By contrast, a mandatory injunction is a type of injunction that requires some positive action. A mandatory injunction (1) commands the respondent to do a particular thing; (2) prohibits the respondent from refusing (or persisting in refusing) to do or permit some act to which the plaintiff has a legal right; or (3) restrains the respondent from permitting his previous wrongful act to continue to take effect, thus virtually compelling him or her to undo it. A conciliation agreement provision that requires a committee to amend its reports in conformance with the Act is similar in effect to a mandatory injunction, albeit one entered into voluntarily and without court order. In addition, the creative forms of equitable relief listed below are examples of possible mandatory injunctions that the Commission might seek in court.

o Creative Forms of Equitable Relief

- require defendant(s) to notify the public that the defendant(s) violated the FECA, e.g., bulletin board posting.
- require additional reporting relevant to preventing future violations of the type committed.
- require defendant(s) to put different procedures in place to prevent future violations of the type committed.
- require defendant(s) to take courses to become familiar with the requirements of the FECA.

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III. ANALYSIS

This section outlines the underlying legal assumptions and other factors considered by this Office in evaluating and making recommendations for each of the potentially affected cases discussed in Section IV, infra. As a preliminary matter, this Office notes that it has reviewed all of the active and inactive enforcement matters where there appears to have been FECA-violative activity prior to January 1, 1991 that will thus be at least 5 years old by the end of this year. By selecting the cases in this manner, this Office has attempted to bring to the Commission's attention all of the matters where, were the NRSC decision applied, the statute of limitations might run this year.[24]

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This Office has assumed for purposes of these recommendations the possibility of a uniform application of the Section 2462 statute of limitations to the FECA in all circuits

This Office has further assumed that it is possible courts will deem claims arising under the FECA to have accrued at the precise moment that the violation occurred.

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In setting forth the case summaries, this Office has divided its discussion into three sections.

The third

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section analyzes matters which this Office recommends that the Commission not pursue.

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IV. CASE DISCUSSIONS

This section provides brief descriptions of enforcement matters assigned to the Public Financing, Ethics and Special Projects and Enforcement areas, including the Central Enforcement Docket.

3. <u>Cases this Office Recommends the Commission Close</u>

MUR 2984 (Robert Johnson <u>et al.</u>)

This matter involves 1988 corporate fundraising mailings for the 1988 Bush/Quayle campaign and a pattern of contributions made in the name of another, resulting in knowing and willful probable cause findings for violations of 2 U.S.C. §§ 441f, 441b(a), and 441d(a) against the individual and corporate actors.

Of the respondents still open in the matter, Robert G. Johnson and E. Kenneth Twichell were formally referred to the Department of Justice for criminal prosecution; Mr. Johnson pled guilty to felony perjury for lying under oath in a Commission deposition and Mr. Twichell pled guilty to obstructing the Commission's investigation. The corporate respondents, all closely tied to Mr. Johnson, were neither pursued nor prosecuted during the criminal proceeding. As this Office has reported, Mr. Johnson's remaining sentence was stayed based on NRA arguments

No action has taken place since the Supreme Court dismissed the Commission's appeal in <u>NRA</u>, and whether Mr. Johnson will have to serve the balance of his sentence is still unclear.

All of the transactions underlying FECA liability date from 1988, thus posing an obstacle under 28 U.S.C. § 2462 in the event the Commission chose to litigate this matter to obtain civil penalties. The Commission found probable cause in January of 1992, but then referred the matter to the Department of Justice, and resumed proceedings in late 1993 after resolution of the criminal proceedings. Prosecutorial discretion strongly counsels against further pursuing the remaining respondents in this matter. The age of the activity as compared to other pending matters, and the desirability of making public the Commission's initiating role in the prosecution of Mr. Johnson argue in favor of closing this matter.

For the reasons outlined above, this Office recommends the Commission take no further action with respect to the remaining respondents in this matter and close the file.

Staff Assigned: Jonathan Bernstein and Colleen Sealander

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MUR 3182 (Kentucky Democratic Party, et al.)

This matter, a merger of MURs 3145 and 3182, involves television ads broadcast by the Kentucky Democratic Party during the 1990 general election campaign on behalf of the Democratic Party's Senatorial candidate, Dr. Harvey Sloane. The complaints allege that the ads were prepared by the Sloane campaign's media consultant, paid for by the Kentucky Democratic party's nonfederal account, and financed in part by contributions from the ATLA PAC and from Mary C. Bingham. Mrs. Bingham recently passed away.

Most of the outstanding issues in this matter occurred in the Fall of 1990, slightly less than five years ago. Thus, it does not appear that the Commission would presently be barred from seeking a civil penalty even under the strictest reading of Section 2462. In order for the Commission to obtain a judicially imposed civil penalty in this matter, civil suit must be filed by November of 1995. Yet, even if the Commission were to devote substantial resources to this matter, it is virtually inconceivable that the deadline would be met.

First, in order to proceed, the Commission must review and revote its earlier determinations in this matter to comply with the MBA opinion. Second, this matter is still in the investigatory stage and further investigation appears necesarry. Third, the issues are complex and the two staff attorneys previously assigned to this matter have been transferred to other areas of this agency. Moreover, the allocation regulations at issue in this matter are no longer in effect, having been revised in 1991

Finally, it does not appear that equitable relief would be appropriate here as the only feasible remedy we may obtain is injunctive relief on the misallocation issue: The Sloan Committee has virtually no money for disgorgement and Sloan has never been a candidate in any other federal election. In view of all the foregoing, this Office recommends the Commission take no further action and close this file.

Staff Assigned: Lisa Klein (pending reassignment)

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MUR 3228 (Dahlson for Congress, et al.)

This matter was generated by a referral from the Commission's Reports Analysis Division, and involves the subsidization of the campaign by a corporation associated with the candidate (§ 441b(a)) and the misreporting of one of the corporate loans (§ 434(b)). Specifically, the candidate funneled approximately $47,000 in corporate funds to the campaign through his personal checking account, thus concealing the true source of the funds. The candidate/corporate loans took place from May to October 1990. Further, the committee misreported the source of a May 2, 1990 direct contribution from the corporation ($10,000) in its 12-Day Pre-Primary report filed May 21, 1990. Consequently, assuming 28 U.S.C. § 2462 applies, the Commission might be unable to obtain a judicially imposed civil penalty for most of the violations as early as May of this year.

This matter is presently in the investigative stage after an unsuccessful attempt at pre-probable cause conciliation. Most recently, on March 2, 1995, this Office interviewed the campaign's treasurer. The interview established that the treasurer was not involved in the committee's receipt of the funneled corporate contributions and that the misreporting may have resulted from innocent error. Consequently, the available evidence suggests that the candidate Roy Dahlson was the individual chiefly responsible for the violations in this matter.

Additional investigation would be necessary -- including the taking of depositions -- to prove that the § 441b(a) violations by Mr. Dahlson are knowing and willful. This investigation and the subsequent procedural stages leading to litigation would have to be completed in the most expeditious fashion. This Office recommends that the Commission forgo this course. Mr. Dahlson was a one-time candidate who won the primary election but lost the general election with 35% of the vote. Mr. Dahlson is now retired. Accordingly, this matter does not warrant the expenditure of resources necessary for its most expeditious completion and resolution. Therefore, this Office recommends that the Commission take no further action in this matter and close the file.

Staff Assigned: Jonathan Bernstein and Jose Rodriguez

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MUR 3787 (Georgia Republican Party)
Public Financing, Ethics and Special Projects

This case involves violations committed during the 1988 election cycle. In particular, an audit of the Georgia Republican Party ("the Party") revealed that the Party accepted $20,350 in excessive contributions from five individuals that were not resolved in a timely manner. Similarly, the Party accepted $13,403 in prohibited contributions that were not resolved in a timely manner. The Party also did not properly document approximately $333,270 in individual contributions. In addition, the Commission found reason to believe that the respondent violated 2 U.S.C. § 441a(f) by paying phone bank employees to conduct get-out-the-vote activities and voter identification on behalf of the Bush-Quayle campaign.

The Party admits that it erred in accepting the prohibited and excessive contributions, but urged the Commission to accept as a mitigating factor the fact that it rid its accounts of the impermissible amounts upon discovery. Similarly, the Party concedes that it failed to keep adequate records for certain contributions, but asserts that a large portion of those receipts were $35 contributions which it did not believe it was required to document. Finally, this Office has concluded that documentation and affidavits furnished by the Party demonstrate that only $26,700 of the more than $300,000 in Party expenditures made for get-out-the-vote and voter identification activities amounted to impermissible contributions by the Party.

Although it may be possible to enjoin similar conduct in future elections, the Party has acknowledged that it violated the Act. Accordingly, assuming that the NRSC decision is followed and judicially-imposed civil penalties are time-barred then in light of the age of this case and the ordering of the Commission's priorities, we recommend that the Commission take no further action in this matter and close the file. If the Commission adopts this recommendation, the notification letter to the Party will contain appropriate admonishment language.

Staff Assigned: Kenneth E. Kellner and Jane Whang

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MUR 3973 (Bob Davis)

This matter stems from a House Bank Task Force referral indicating that former Representative Bob Davis used his committee's petty cash to make disbursements in excess of $100. Between 1988 and 1992, the committee reported disbursing $22,708 in petty cash disbursements, $16,567 of which was reported as having been disbursed by Mr. Davis. In May of last year the Commission found reason to believe that Mr. Davis, his committee and its treasurer violated 2 U.S.C. § 432(h)(1), and that his committee and its treasurer additionally violated 2 U.S.C. § 432(h)(2) for failing to maintain a petty cash journal as required. However, because RAD had allowed the committee to terminate some months before, the Commission took no further action with respect to the committee's violations. Thus, only Mr. Davis remains a respondent in the case.

Of the $22,708 in petty cash, all but approximately $9,400 was disbursed prior to 1991. Thus, if 28 U.S.C. § 2462 applies, the Commission might be time-barred from obtaining a judicially imposed civil penalty for a substantial portion of the petty cash.

While our inquiries have confirmed that the committee kept no petty cash journal, that it possesses receipts for only a portion of its cash transactions, and that a small number of the disbursements exceeded $100, it now appears that Mr. Davis' role in the committee's petty cash was de minimus. Affidavits from two members of Mr. Davis' congressional staff and one from his former campaign treasurer state that while Mr. Davis was the payee of many of the checks, and was reported as same, this was to enable the staff to easily cash the checks at the Wright-Patman Federal Credit Union. In fact, the affiants maintain, the majority of the petty cash was disbursed by the campaign and congressional staff and not Mr. Davis.

Given the age of these violations, the fact that Mr. Davis is no longer a candidate for federal office and his apparently limited personal involvement in his committee's petty cash violations, this Office recommends the Commission take no further action in MUR 3973 and close the file.

Staff Assigned: Jonathan Bernstein and Colleen Sealander

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MUR 4013 (National Freedom PAC)
Public Financing, Ethics and Special Projects

This matter involves chronic reporting violations and the apparent commingling of Committee funds with the personal funds of the Committee's treasurer, Rick Woodrow. The respondents are the Committee and Mr. Woodrow. The material events occurred in 1990.[31]

This is an inactive, internally generated matter. Assuming that the NRSC decision is followed and judicially-imposed civil penalties are time-barred then in light of the age of the violations at issue this Office recommends that the Commission take no further action with respect to this matter and close the file.

Staff Assigned: Kenneth E. Kellner and Delanie Dewitt Painter

31. On July 20, 1994, MUR 3516 was merged with MUR 4013. In MUR 3516, which arose out of a RAD referral, the Commission found reason to believe that National Freedom PAC committed reporting violations.

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V. RECOMMENDATIONS

Take no further action, close the file and approve the appropriate letters in the following matters:

1) MUR 2984
2) MUR 3182
3) MUR 3228
4) MUR 3787
5) MUR 3973
6) MUR 4013

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With regard to MUR 3492:

1) Accept the attached conciliation counteroffer.

2) Close the file.

3) Approve the appropriate letter.

4) Approve the appropriate letters.

4/28/75
Date

Lawrence M. Noble
General Counsel

Staff Assigned

Staff members assigned to each of the potentially affected matters prepared their respective case discussions; the PFEEP cases were coordinated by Jim Portnoy; Tracey Ligon drafted the legal section; and Colleen Sealander combined the parts into one document.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Multiple MURS
28 U.S.C. § 2462	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on May 16, 1995, do hereby certify that the Commission took the following actions with respect to the above-captioned matter:

1. Decided by a vote of 6-0 to take no further action, close the file and approve the appropriate letters in the following matters.

   MUR 3182
   MUR 3228
   MUR 3973
   MUR 4013

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

2. Decided by a vote of 5-0 to take no further action, close the file and approve the appropriate letters in the following matters:

   MUR 2984
   MUR 3787

   Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision. Commissioner Potter recused himself with respect to these matters and was not present during their consideration.

Attest:

5-18-95
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 26, 1995

Seannie Nienhouse, Treasurer
National Freedom Political Action Committee
P.O. Box 41213
Sacramento, CA 95841

RE: MURs 4013 and 3516
National Freedom
Political Action
Committee and Seannie
Nienhouse, as treasurer

Dear Ms. Nienhouse:

On May 15, 1992, the Federal Election Commission notified the National Freedom Political Action Committee ("Committee"), and you as treasurer, concerning certain violations of the Federal Election Campaign Act of 1971, as amended.

After considering the circumstances of these matters, the Commission has determined to exercise its prosecutorial discretion and to take no further action against the Committee, and you as treasurer. Accordingly, the Commission closed its file in these matters on May 16, 1995.

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,

Gregory R. Baker
Special Assistant General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4013

DATE FILMED 6/27/94 CAMERA NO. 2

CAMERAMAN EES

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # _____

DATE FILMED _____ CAMERA NO. ___

CAMERAMAN _____

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