FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4261

DATE FILMED 4-16-97 CAMERA NO. 1

CAMERAMAN Jm N

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BEFORE THE
FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
SEP 15 2 04 PM '95

MUR 4261

THE CENTER FOR RESPONSIVE POLITICS, 1320 19th Street, NW Suite 700 Washington, D.C. 20036 (202) 857-0044 Complainant, v. NRA Institute for Legislative Action Senator Robert Packwood, Re-elect Packwood Campaign Committee Respondents.	)	**COMPLAINT**

9704379112 73

COMPLAINT OF THE CENTER FOR RESPONSIVE POLITICS

1. This complaint charges that respondent NRA Institute for Legislative Action ("NRA"), has violated the Federal Election Campaign Act, 2 U.S.C. § 431 et seq., as amended ("FECA" or the "Act"), by making corporate contributions prohibited by the FECA.

2. This complaint also charges that respondents Senator Robert Packwood and the Re-elect Packwood Campaign Committee ("Campaign Committee") have violated the FECA by knowingly accepting corporate contributions prohibited by the FECA, and by failing to report certain contributions and expenditures.

PARTIES

3. Complainant Center for Responsive Politics ("Center") is a nonprofit, nonpartisan research organization incorporated in the State of Iowa and headquartered in Washington, D.C. that studies the role that money plays in Federal elections. Founded in 1983, the Center was designed to study Congress and examine potential reforms that could improve both its internal operation and its responsiveness to the American public.

4. Respondent Packwood is a Senator in the United States Senate, representing the state of Oregon.

5. Respondent Campaign Committee is the principle campaign committee for Senator Packwood's 1992 re-election campaign.

6. Respondent NRA is a nonprofit corporation that made expenditures advocating the defeat of Senator Packwood's opponent, Les AuCoin.

APPLICABLE STATUTES AND REGULATIONS

7. The FECA prohibits any corporation from making a contribution or expenditure in connection with any election at which a Senator is to be voted for, or in connection with any primary election held to select a candidate for Senator. 2 U.S.C. § 441b(a); 11 C.F.R. 114.2(b) For purposes of § 441b, the term "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section. 2 U.S.C. § 441b(a)(2); 11 C.F.R. 114.1(a)(1).

8. The FECA prohibits candidates and political committees from knowingly accepting or receiving any contribution prohibited by §441b(a). 2 U.S.C. §441b; 11 C.F.R. 114.2(c).

9. The FECA defines "independent expenditure" as an expenditure expressly advocating the election or defeat of a clearly identified candidate that is made "without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate," and which is "not 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); 11 C.F.R. § 100.16, 109.1.

10. Expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized

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political committees, or their agents, shall be considered to be a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B).

11. The reporting requirements of the FECA require that the total amount of contributions from political committees, and expenditures made to meet candidate or committee operating expenses be reported. 2 U.S.C §434(b); 11 C.F.R. §104.3.

GROUNDS FOR COMPLAINT

12. Attached as Exhibit 1 is an excerpt, dated October 6, 1992, from Senator Packwood's diaries, as well the comments of the Senate Select Committee on Ethics ("Ethics Committee"), as reprinted in Appendix C of the Summary of the Counsel's Report Regarding Documents Related to the Investigation of Senator Robert Packwood (Sept. 7, 1995) ("Appendix C") in which the senator refers to meeting with a representative from the NRA, saying:

> He showed me the piece the National Rifle Association is going to send out hitting _____. God, is it tough! It starts right out: vote to toss out ___ and vote for Senator Bob Packwood...I cannot tell you how tough it is. They are going to send it to 90,000 members. And, he said if he has enough money he's going to send it out to 100,000 Oregon gun owners, or something like that. Now the question is: Are they going to do a second mailing just before the postcard about "get out and vote." God, things are going in the right direction today. Appendix C at 126 (blanks reflect names omitted on transcript by Ethics Committee).

13. Regarding the October 6, 1992, entry, the Ethics Committee noted that the passages,

> indicate that Senator Packwood was meeting with the NRA and *reviewing* their efforts against his opponent...Senator Packwood testified that...he did not want the press to know about his negotiations with the NRA, and that he was talking with the NRA about the mailing they were going to send their members. Appendix C at 126 (emphasis added).

9 7 0 4 3 7 9 1 2 1 0

14. Attached as Exhibit 2 is the NRA's Report of Communication Costs By Corporations and Membership Organizations for the period of April 1, 1992, through June 30, 1992, on file at the FEC as of September 12, 1995. Exhibit 2 shows that on May 8, 1992, the NRA spent $20,493 on direct mail to its members, opposing Les AuCoin, Senator Packwood's opponent in the 1992 Senatorial race.

15. Attached as Exhibit 3 is the NRA's Report of Communication Costs By Corporations and Membership Organizations for the period of October 1, 1992, through December 31, 1992, on file at the FEC as of September 12, 1995. Exhibit 3 shows that on October 12, 1992, the NRA spent $22,613 on direct mail to its members supporting Les AuCoin, Senator Packwood's opponent in the 1992 Senatorial race. Upon information and belief, and given the NRA's previous expenditures opposing Les AuCoin, the entry was mis-marked, and the expenditure was made opposing Les AuCoin.

16. Upon information and belief, the expenditures made by the NRA on or around October 12, 1992, were not independent expenditures. Rather, they were contributions that were made in cooperation, consultation, or concert, with, or at the suggestion of, Senator Packwood, his Campaign Committee, or his agents. Because respondent is a corporation, these expenditures were corporate contributions prohibited by FECA.

17. Upon information and belief, respondents Senator Packwood and the Re-elect Packwood Campaign Committee knowingly accepted and failed to report corporate contributions prohibited by the FECA.

RELIEF

18. The Center respectfully urges the Commission to conduct a prompt and thorough investigation into the allegations in this Complaint, to declare that the Respondents have violated the FECA and Commission regulations, and to impose penalties for each violation. Finally, the Center urges the Commission to investigate whether the violations described above were knowing and willful so as to mandate enhanced penalties.

9704379112411

Respectfully submitted,

Ellen S. Miller
Executive Director
CENTER FOR RESPONSIVE POLITICS
1320 19th Street, NW
Washington, D.C. 20036
(202) 857-0044

Dated: September 15, 1995

9704379112

VERIFICATION

The undersigned complainant, on behalf of the Center for Responsive Politics, swears that the statements in this Complaint are based on the sources indicated, and, as such, are true and correct to the best of her information and belief.

Ellen S. Miller

Ellen S. Miller

District of Columbia)
) ss

Subscribed and sworn to before me this 15th day of September, 1995

Notary Public
NATALIE R. AROSEMENA
NOTARY PUBLIC
My Commission Expires April 15, 1999

9704379 1213

Exhibit 1

Appendix C of the Summary of the Counsel's Report Regarding Documents Related to the Investigation of Senator Robert Packwood (Sept. 7, 1995)

October 6, 1992, Excerpt from Senator Packwood's Diaries.
Comments of the Senate Select Committee on Ethics

9704379112 4

destroying evidence connecting them to the individual who was to make the expenditures, or to independent expenditures. He stated that if one were going to have coordinated independent expenditures, which is wrong, one would not want any evidence of association with anyone connected to the group that was doing independent expenditures. But they did not do any coordination of independent expenditures. They never had any evidence about the individual named and any potential independent expenditures, nor did they destroy any evidence related to this individual.

AUDIOTAPE	CORMACK TRANSCRIPT
October 6, 1992 Came back to the office and met with from the National Rifle Association at three o'clock. *He showed me the piece the National Rifle Association is going to send out hitting . God, is it tough! It starts right out: vote to toss out and vote for Senator Bob Packwood. Toss out of Congress someone who believes he made a mistake when he supported your Second Amendment Right. Vote to toss out .* *Then they quote when said Congressmen who were supported by the NRA were patsies. Or, if you had an endorsement by the NRA you were in an ideological straitjacket.* *Then, the article in The Washington Post: Confessions of a Former NRA Supporter.* *I cannot tell you how tough it is. They are going to send it to 90,000 members. And, he said if he has enough money he's going to send it out to 100,000 Oregon gun owners, or something like that. Now the question is: Are they going to do a second mailing just before the postcard about "get out and vote."* *God, things are going in the right direction today. It's a month to go and there are going to be ups and downs, but we're up today.* *Dictated through Tuesday, October 6th at four o'clock. And here, Cathy, I'm going to*	Came back to the office and met with of the NRA. I kind of like the guy but he is a bit of a braggart about how many races he sees the NRA winning and how solid is going to be the NRA's control in the House. He didn't talk so much about the Senate. He may be right by my intuition tells me the tide is turning against the NRA. With more and more crime I think you're going to see a situation where people will think gun registration is the answer. It isn't going to solve these problems. And I'm not sure what will but I don't think we want to try to take guns away from people. I think the second amendment defends that right. I'm happy to hear out and I'm happy to hear of his plans for the House races and I assume they will support me although they haven't said that for sure.

Again, the deleted passages indicate that Senator Packwood was meeting with the NRA and reviewing their efforts against his opponent. In the substituted passage, Senator Packwood distances himself from the NRA and their goals, and does not mention that he was counting on the NRA's support.

Senator Packwood testified that he was probably responsible for deleting the information from the audiotape and substituting the information that appears in the Cormack transcript, because he did not want the press to know about his negotiations with the NRA, and that he was talking with the NRA about the mailing they were going to send to their members. The entry that was

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Exhibit 2

NRA Report of Communication Costs by Corporations and Membership Organizations

April 1- June 30, 1992

9704379112 16

1. (a) NAME OF ORGANIZATION

NRA Institute for Legislative Action

(b) ADDRESS (Number and Street)

1600 Rhode Island Avenue

(c) CITY, STATE AND ZIP CODE

Washington, DC 20036

2. IDENTIFICATION NUMBER (Assigned by FEC) Jun 17 4 09 PM '92

C70000716

3. TYPE OF ORGANIZATION (Check Appropriate Box)

- [ ] Corporation
- [ ] Labor Organization
- [ ] Membership Organization
- [ ] Trade Association
- [ ] Cooperative
- [ ] Corporation without capital stock
- [ ] Other _____ (Specify)

4. TYPE OF REPORT (Check One)

- [ ] Monthly Report for Month of _____
- [ ] Pre-General Election Report for the Election held on November 4, 1992.
- [ ] Post-General Election Report for the Election held on November 4, 1992.
- [ ] Amendment for _____ (Which report)

5. This report covers the period 4/1/92 through 6/30/92.

SUMMARY OF EXPENDITURES

Date of Communication (Month)	Class or Category Communicated With	Date of Communication	Check One: Express	Check One: Coordinated	Identify Candidate, Office Sought, District and State, and Whether for Primary or General Election	Cost of Communication (Per Candidate)
[illegible]	[illegible]	4/7/92	X		Gene Green, TX-29 Special Primary Election	44.69
[illegible]	[illegible]	4/7/92	X		Gene Green, TX-29 Special Primary Election	271.68
[illegible]	[illegible]	4/10/92	X		Gene Green, TX-29 Special Primary Election	403.85
(Month)		4/20/92	X		William Clinger, PA-5 Primary Election	4,650.45
[illegible]	[illegible]	4/20/92	X		Bud Shuster, PA-9 Primary Election	4,891.60
[illegible]	[illegible]	4/20/92	X		Arlen Specter, PA-Senate Primary Election	81,208.60
(Month)		4/20/92	X		Lauch Faircloth, NC-Senate Primary Election	19,721.80

(NOTE: [illegible])

TOTAL EXPENDITURES FOR COMMUNICATIONS THIS PERIOD $ 201,269.83

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

James Jay Baker
(Type or Print Name)

James Jay Baker
(Signature of Person Designated to Sign This Report)

Executive Director
(Title)

(NOTE: Submission of false information or misleading information may subject the person making the report to penalties of [illegible])

Direct Mail	Members 8-MAY-92	X		Tony Meeker, OR-1 Primary Election	3,040.40
Direct Mail	Members 8-MAY-92		X	Les AuCoin, OR-1 Primary Election	80 [illegible]
Direct Mail	Members 11-MAY-92	X		Ira Marlowe, NJ-6 Primary Election	5,161.84
Direct Mail	Members 13-MAY-92	X		Drew Edmondson, OK-2 Primary Election	2,478.00
Direct Mail	Members 18-MAY-92	X		Earl Hilliard, AL-7 Primary Election	1,819.40
Direct Mail	Members 18-MAY-92	X		H. L. Richardson, CA-3 Primary Election	3,712.96
Direct Mail	Members 18-MAY-92	X		Bill McCuen, AR-4 Primary Election	3,396.56
Direct Mail	Members 19-MAY-92	X		Bill Alexander, AR-1 Primary Election	2,118.40
Direct Mail	Members 20-MAY-92	X		Bill McCuen, AR-4 Primary Election	2,336.98
Direct Mail	Members 20-MAY-92	X		Carroll Hubbard, KY-1 Primary Election	2,530.56
Direct Mail	Members 22-MAY-92	X		Tom McClintock, CA-24 Primary Election	1,946.36
Direct Mail	Members 22-MAY-92	X		Chuck Bader, CA-41 Primary Election	1,862.00
Direct Mail	Members 22-MAY-92	X		Bob Dornan, CA-46 Primary Election	1,387.84
Direct Mail	Members 22-MAY-92	X		Bob Lagomarsino, CA-22 Primary Election	2,336.62
Direct Mail	Members 22-MAY-92	X		Elton Gallegly, CA-23 Primary Election	1,884.48

Exhibit 3

NRA Report of Communication Costs by Corporations and Membership Organizations

October 1- December 31, 1992

9704379124 9

Washington, D.C. 20463

Approved by GAO
B-138865 (R0621)
Expires 4-30-81

BY CORPORATIONS AND MEMBERSHIP ORGANIZATIONS

(See Reverse Side)

1. (a) NAME OF ORGANIZATION

NRA Institute for Legislative Action

(b) ADDRESS (Number and Street)

1600 Rhode Island Avenue

(c) CITY, STATE AND ZIP CODE

Washington, DC 20036

2. IDENTIFICATION NUMBER (Assigned by FEC)

C70000716

3. TYPE OF ORGANIZATION (Check Appropriate Box)

- ☐ Corporation
- ☐ Labor Organization
- ☒ Membership Organization
- ☐ Trade Association
- ☐ Cooperative
- ☐ Corporation without capital stock
- ☐ Other _____ (Specify)

4. TYPE OF REPORT (Check One):

- ☐ Monthly Report for Month of October - December
- ☐ Pre-General Election Report for the Election Held on November 4, 1980.
- ☐ Post-General Election Report for the Election Held on November 4, 1980.
- ☐ Amendment for: _____ (Indicate report)

5. THIS REPORT COVERS THE PERIOD 10/1/92 THROUGH 12/31/92.

SUMMARY OF EXPENDITURES

Type of Communication	Class or Category Communicated With	Date of Communication	Check One: Support	Check One: Oppose	Identify Candidate, Office Sought, District and State, and Whether for Primary or General Election	Cost of Communication (For Continued)
☒ Direct Mail ☐ Telephone ☐ Telegram ☐ Other	☐ Executive/Administrative Personnel ☐ Stockholders ☒ Members	10/1/92	X		Alan Keyes, MD - Senate General Election	14,903.04
		10/2/92	X		Steve Kelley, FL - 3 General Election	4,752.96
		10/6/92	X		Joe Skeen, NM - 2 General Election	3,776.38
		10/6/92	X		John Dingell, MI-16 General Election	2,690.86
☒ Direct Mail ☐ Telephone ☐ Telegram ☐ Other	☐ Executive/Administrative Personnel ☐ Stockholders ☒ Members	10/6/92	X		Clay Shaw, FL-22 General Election	2,135.60
		10/6/92	X		Tom Love, KS-3 General Election	2,544.08
		10/6/92	X		Collin Peterson, MN-7 General Election	561.88
		10/6/92	X		Dave Camp, MI-4 General Election	3,554.24

(NOTE: For additional communications attach separate sheets containing the same information as above.)

TOTAL EXPENDITURES FOR COMMUNICATIONS THIS PERIOD $ 2,137,938.96

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

James Jay Baker
Type or Print Name

James Jay Baker
Signature and Title of Person Designated to Sign This Report

January 13, 1992
Date

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this report to penalties of 2 U.S.C. 437g or 441b.

Direct Mail	Members 12-OCT-92	X	Barbara Vucanovich, NV-2 General Election	5,900.84
Direct Mail	Members 12-OCT-92	X	Gary Franks, CT-5 General Election	3,209.36
Direct Mail	Members 12-OCT-92	X	William Orton, UT-3 General Election	3,695.64
Direct Mail	Members 12-OCT-92	X	Richard Ray, GA-3 General Election	3,086.00
Direct Mail	Members 12-OCT-92	X	Deborah Pryce, OH-15 General Election	2,198.24
Direct Mail	Members 12-OCT-92	X	R. Harbolscheimer, IL-11 General Election	2,799.36
Direct Mail	Members 12-OCT-92	X	Donald Manzullo, IL-16 General Election	3,836.20
Direct Mail	Members 12-OCT-92	X	Ken Schloemer, IL-17 General Election	2,992.00
Direct Mail	Members 12-OCT-92	X	Thomas Ewing, IL-18 General Election	3,835.04
Direct Mail	Members 12-OCT-92	X	Dan Coats, IN-Senate General Election	26,931.08
Direct Mail	Members 12-OCT-92	X	John Shimkus, IL-20 General Election	5,125.56
Direct Mail	Members 12-OCT-92	X	Mike Huckabee, AR-Senate General Election	14,812.60
Direct Mail	Members 12-OCT-92	X	Lauch Faircloth, NC-Sen General Election	26,511.32
Direct Mail	Members 12-OCT-92	X	Jack Brooks, TX-9 General Election	3,937.12
Direct Mail	Members 12-OCT-92	X	Les AuCoin, OR- General Election	22,613.36

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 20, 1995

Ellen S. Miller, Executive Director
Center for Responsive Politics
1320 19th Street, N.W.
Washington, D.C. 20036

RE: MUR 4261

Dear Ms. Miller:

This letter acknowledges receipt on September 15, 1995, of the complaint you filed on behalf of the Center for Responsive Politics alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act") by the NRA, Senator Packwood and the Re-Elect Packwood Committee. The respondent(s) will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 4261. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure
Procedures

9704379112 52

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 20, 1995

Geoffrey D. Brown, Treasurer
Re-elect Packwood Campaign Committee (1992)
5301 Wisconsin Ave., N.W. Suite 300
Washington, DC 20015

RE: MUR 4261

Dear Mr. Brown:

The Federal Election Commission received a complaint which indicates that the Re-Elect Packwood Campaign Committee (1992) ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4261. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

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If you have any questions, please contact me at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

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

9704379125 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 20, 1995

The Honorable Bob Packwood
259 Russell Senate Office Building
United States Senate
Washington, DC 20510

RE: MUR 4261

Dear Senator Packwood:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4261. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

9704379125 5

If you have any questions, please contact me at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

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

9704379125 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 20, 1995

Tanya K. Metaksa, Executive Director
National Rifle Association (Institute for Legislative Action)
11250 Waples Mill Road
Fairfax, VA 22030

RE: MUR 4261

Dear Ms. Metaksa:

The Federal Election Commission received a complaint which indicates that the National Rifle Association (Institute for Legislative Action) may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4261. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the National Rifle Association (Institute for Legislative Action) in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

9704379 1257

If you have any questions, please contact me at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

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

9704379125 3

NATIONAL RIFLE ASSOCIATION OF AMERICA
11250 WAPLES MILL ROAD
FAIRFAX, VA 22030

OFFICE OF THE
GENERAL COUNSEL

TELEPHONE: (703) 267-1250
FAX: (703) 267-3985

October 5, 1995

Federal Election Commission
ATTN: Mary L. Taksar, Esq.
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
OCT 6 3 09 PM '95

RE: MUR 4261

Dear Ms. Taksar:

Enclosed please find the answer and motion to dismiss with prejudice of the Respondent National Rifle Association Institute for Legislative Action in response to the complaint of The Center for Responsive Politics in the above-captioned matter, together with an executed designation of counsel statement.

We trust that this matter will be dismissed forthwith. Please feel free to contact either myself or counsel of record Robert Dowlut at the address or telephone number listed above if we can be of further service to the Commission.

Sincerely,

Kevin M. Cunningham
Assistant General Counsel

Enclosures: 1. Respondent's Answer and Motion to Dismiss
2. Statement of Designation of Counsel

9704379125 9

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4261

NAME OF COUNSEL: Robert Dowlut

ADDRESS: 11250 Waples Mill Road, 5th Floor
Fairfax, VA 22030

TELEPHONE: (703) 267-1250

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
OCT 6 3 09 PM '95

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

9/27/95
Date

Signature

RESPONDENT'S NAME: Tanya Metaksa, Executive Director

ADDRESS: NRA Institute for Legislative Action
11250 Waples Mill Road
Fairfax, VA 22030

HOME PHONE: n/a

BUSINESS PHONE: (703) 267-1140

97043791220

BEFORE THE
FEDERAL ELECTION COMMISSION

THE CENTER FOR RESPONSIVE POLITICS 1320 19th Street, N.W. Suite 700 Washington, D.C. 20036 (202) 857-0044 Complainant,	)	**MUR 4261**
v.	)	
NRA Institute for Legislative Action, et al., Respondents.	)	**ANSWER and MOTION TO DISMISS COMPLAINT**

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL
Oct 6 3 09 PM '96

97043791251

ANSWER AND MOTION TO DISMISS
COMPLAINANT'S COMPLAINT

COMES NOW THE NATIONAL RIFLE ASSOCIATION OF AMERICA, Institute for Legislative Action, by and through counsel, and for its answer and in support of its motion to dismiss complainant's complaint states:

1. The National Rifle Association of America is a New York not-for-profit corporation with principal offices at 11250 Waples Mill Road, Fairfax, Virginia 22030-7400. The NRA Institute for Legislative Action is a division of the National Rifle Association of America and is not a separate corporate entity. Furthermore, the National Rifle Association of America is a membership organization with approximately 3.2 million *bona fide* "members" as that term is defined at 11 C.F.R. § 100.8(b)(4)(iv).

2. The National Rifle Association of America is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office.

3. The National Rifle Association denies that it has violated the Federal Election Campaign

Act, 2 U.S.C. § 431 *et seq.*, as amended ("FECA" or "the Act"), by making corporate contributions prohibited by the FECA to Senator Robert Packwood or the Re-elect Packwood Campaign Committee during the period alleged in the complaint, or at any other time.

4. The complainant acknowledges in paragraph 14 of its complaint that the reportable cost of $20,493 incurred on or about May 8, 1992, and made by the NRA Institute for Legislative Action was for the purpose of communicating with the organization's membership. But even if this cost could somehow be construed to be an independent expenditure rather than a cost for membership communication, it simply boggles the mind as to how an alleged meeting occurring on October 6, 1992, could conceivably taint a transaction made five months beforehand on May 8, 1992.

5. The complainant again acknowledges in paragraph 15 of its complaint that the reportable cost of $22,613 made by the NRA Institute for Legislative Action and incurred on or about October 12, 1992, was for the purpose of communicating with the organization's membership.

6. The Code of Federal Regulations provides at 11 C.F.R. § 100.8(b) that "the term *expenditure* does *not* include the following payments, gifts or other things of value: (4) *Any cost* incurred *for any communication by a membership organization to its members*, or by a corporation to its stockholders or executive or administrative personnel, is not an expenditure, so long as the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office, *except that the costs incurred by a membership organization, including a labor organization, or by a corporation, directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other*

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than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed $2,000 per election, be reported to the Commission on FEC Form 7 in accordance with 11 C.F.R. § 104.6." (Emphasis added).

7. Respondent National Rifle Association believes, and therefore avers, that the costs incurred on or about May 8, 1992, and October 12, 1992, in opposition to Senator Packwood's opponent were made for the purpose of providing legitimate, privileged communications by a membership organization to its members and therefore were not prohibited corporate contributions within the meaning of the Federal Election Campaign Act. Furthermore, these transactions were timely reported by the NRA Institute for Legislative Action in accordance with the provisions of 11 C.F.R. § 104.6.

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DISCUSSION

Laying aside the fact that complainant's complaint is based on the wholly unsubstantiated hearsay that some unnamed official of the National Rifle Association met with Senator Packwood or his staff regarding his re-election campaign of 1992, and the fact that Senator Packwood himself has publicly disavowed the accuracy of his diaries,[1] the complaint nonetheless evidences a clear misunderstanding of what practices are prohibited by the Federal Election Campaign Act.

According to the complaint, the Center for Responsive Politics purports to be a

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[1]Zuckerman, "Packwood's diary ... a PAC man's nightmare," Political Finance & Lobby Reporter, Vol. XVI, No. 18, September 27, 1995 quoting Senator Packwood's comments on CBS's "Face the Nation," September 10, 1995.

"nonprofit, nonpartisan research organization ... that studies the role that money plays in Federal elections." Clearly the Center has never studied the intricacies of the Federal Election Campaign Act or its implementing regulations. If the Center had studied either the statute or the corresponding regulations, it should know the difference between a corporate "cost" made by a membership organization for the purpose of communicating with its members and an "expenditure" or "independent expenditure."

According to the FECA "the term 'independent expenditure' means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not 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 term 'expenditure' includes (i) any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office; and (ii) a written contract, promise, or agreement to make an expenditure." 2 U.S.C. § 431(9)(A).

However, the term "expenditure" by statute specifically does not include the cost of Respondent's mailings to its members: "any communication by a membership organization to its members, or by a corporation to its stockholders or executive or administrative personnel, is not an expenditure, so long as the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office, except that the costs incurred by a membership organization, including a labor organization, or by a corporation, directly attributable to a communication

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expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed $2,000 per election, be reported to the Commission in accordance with section 434(a)(4)(A)(i) of this title, and in accordance with section 434(a)(4)(A)(ii) of this title with respect to any general election." 2 U.S.C. § 431(9)(B)(iii). The Act (and the regulations) clearly allow a membership organization such as the Respondent to expend corporate funds on membership communications even when that "communication expressly advocat[es] the election or defeat of a clearly identified candidate."

Thus, the costs of the mailings made on May 8, 1992, and October 12, 1992, were not "expenditures" at all within the meaning of the Act or within the implementing regulations promulgated by the Commission (except to the extent that the amounts involved triggered a reporting requirement which the Respondent dutifully complied with) and, consequently, neither could they be "independent expenditures" capable of being tainted by prior communication or coordination with the campaign.

Based upon the strength of Senator Packwood's diary entry, the Center has apparently researched the NRA's disclosure reports on file with the Federal Election Commission and "discovered" two reported transactions of costs incurred for the purpose of sending direct mail to NRA members opposing Senator Packwood's opponent, Rep. Les AuCoin. Respondent assumes that the Center -- with no other basis in fact or in law to support its conclusions and, without regard for any statutory or regulatory exception -- has simply deduced that, because a meeting was purportedly held on October 6, 1992 and costs incurred on May 8, 1992, and October 12,

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1992, that indirectly benefitted the Senator's reelection effort, the transactions must, therefore, be illegal corporate campaign contributions. Moreover, as to the May 8, 1992, transaction, the complainant makes no attempt whatsoever to explain how an expense of money made fully five months before the alleged meeting between Senator Packwood and the unnamed NRA official even occurred could possibly be construed to have been made in consultation or cooperation with the Senator's campaign. Simply put, the complainant has made a leap that simply defies logic.

In conclusion, the complainant concedes in paragraphs 14 and 15 of its complaint that the transactions complained of involved reportable costs incurred by the NRA Institute for Legislative Action for the purpose of communicating with NRA members. Such an expense of corporate funds is not only constitutionally protected speech, but is also recognized as a specific exception to the prohibition against the making of corporate campaign expenditures by both the Federal Election Campaign Act, and by the Federal Election Commission in promulgating implementing regulations to the Act.

The complaint of the Center for Responsive Politics evidences a claim so completely and utterly devoid of merit and of such a frivolous nature that, had this action been brought before a federal court, Respondent would seek sanctions under Rule 11 of the Federal Rules of Civil Procedure jointly and severally against both the Center and its Executive Director.

WHEREFORE, PREMISES CONSIDERED, the Respondent National Rifle Association Institute for Legislative Action prays the Commission dismiss with prejudice the complaint of the Center for Responsive Politics.

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Respectfully submitted,

NRA Institute for Legislative Action

by: Robert Dowlut

Robert Dowlut, D.C. Bar No. 321877
Deputy General Counsel
11250 Waples Mill Rd., 5th Floor
Fairfax, VA 22030
(703) 267-1250

ATTORNEY FOR RESPONDENT

VERIFICATION

The undersigned Respondent, on behalf of the NRA Institute for Legislative Action, swears that the factual statements contained in this Answer and Motion to Dismiss are true and correct to the best of her knowledge and belief.

Tanya K. Metaksa
Executive Director
NRA Institute for Legislative Action
11250 Waples Mill Road
Fairfax, VA 22030

COMMONWEALTH OF VIRGINIA)
) ss
COUNTY OF FAIRFAX)

Subscribed to and sworn before me, on this 5th day of October, 1995.

Embossed Hereon is My Commonwealth of Virginia Notary Public Seal
My Commission Expires June 30, 1996
ANGIE A. LEE PAYNE

Notary Public (Seal)

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WASHINGTON, D.C.

BOB PACKWOOD
OREGON

October 6, 1995

Mary L. Taksar, Esquire
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

RE: MUR 4260, MUR 4261, MUR 4262

Dear Ms. Taksar:

I have received the above-referenced matters from the Federal Election Commission. While your letters note that my responses are due within 15 days of receipt, I would like to request a 20 day extension to submit my responses in these three matters. This extension is needed so that I may prepare complete answers to the charges made.

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OFFICE OF GENERAL
COUNSEL
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Thank you for your consideration. In anticipation of your granting this request, my responses are due on October 30, 1995.

Sincerely,

Bob Packwood

BOB PACKWOOD

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(NOT PRINTED AT GOVERNMENT EXPENSE)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 17, 1995

The Honorable Robert Packwood
United States Senate
259 Russell Building
Washington, D.C. 20510

RE: MUR 4261

Dear Senator Packwood:

This is in response to your letter dated October 6, 1995, requesting an extension until October 30, 1995 to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on October 30, 1995.

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

Sincerely,

Alva E. Smith

Alva E. Smith, Paralegal
Central Enforcement Docket

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BOB PACKWOOD
OREGON

United States Senate

WASHINGTON, D.C. 20510

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
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October 30, 1995

Mary L. Tasker, Esquire
Office of the General Counsel
Federal Election Commission
Washington, D.C. 20463

Dear Ms. Tasker:

Re: MUR 4260, MUR 4261, MUR 4262, MUR 4265

I have your letters regarding various complaints. In this letter I respond to the allegations.

As an initial matter, I believe it is important to note one fact common to each of the complaints. Each is based solely on entries from my diary. As you may know, the diary itself was the subject of considerable discussion with the Senate Ethics Committee. Before the FEC uses my diary, for any purpose, it should be familiar with my testimony regarding my diary. This can be found in the depositions, which are part of the public record, see depositions dated January 17, 1995 and June 27, 1995 (sample pages are appended).

1. MUR 4260 -- the Auto Dealers complaint

The complaint filed in the above-captioned case charges that my campaign improperly consulted on independent expenditures conducted by, and therefore received excessive contributions from, the Automobile Dealers and Drivers for Free Trade PAC ("Automobile Dealers"). The complaint is baseless because the facts contained in it do not support the charges made. No violation occurred and the Commission should dismiss this matter promptly.

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FACTS: This complaint charges that there was impermissible consultation or coordination between persons associated with my 1992 Senate campaign and the Automobile Dealers. The complaint states that the Automobile Dealers made independent expenditures of $65,539 in the form of telephone banks supporting my candidacy between October 27, 1992 and November 2, 1992.

The only evidence of alleged improper contact is an excerpt from my diary that has been made public. The diary entry is from March 20, 1992. It states, in part: "Apparently the Automobile Dealers are willing to do some spending against AuCoin."

As demonstrated by the enclosed affidavit from Elaine Franklin, my chief of staff and campaign manager who is referred to in the diary entry, and by my testimony before the Ethics Committee, there was no consultation, coordination or other impermissible contact between us (or anyone associated with my campaign to the best of my knowledge) and the Automobile Dealers regarding the October 27, 1992 to November 2, 1992 expenditures which are the subject of this complaint. Affidavit of Elaine Franklin, at paragraph 4.

LAW: Federal election law defines an independent expenditure as an expenditure expressly advocating the election or defeat of a clearly identified candidate that is made "without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate," and which is "not 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. Section 431(17).

DISCUSSION: I do not recall the conversation the diary entry reflects that I had with Elaine Franklin. However, the activities discussed in the diary entry did not happen. There were no contacts regarding these expenditures that would violate 2 U.S.C. Section 431 (17). Franklin affidavit paragraph 4.

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A fair reading of the complaint itself makes clear there was no violation of the Federal Election Campaign Act or the Regulations. First, the Automobile Dealers did not "do some spending against AuCoin." (emphasis added). There is no charge in the complaint, and no evidence in their reports filed with the Commission, that the Automobile Dealers ever spent any money against AuCoin (the complaint itself notes the independent expenditure was a phone bank in support of my candidacy). To my knowledge, there was no spending against AuCoin. Packwood affidavit paragraph 4; Franklin affidavit paragraph 3.

The second piece of evidence that there was no violation is the timing involved. The Automobile Dealers' spending that is the subject of the complaint began in October 1992. The diary entry upon which the complaint is based took place in March 1992, some seven months earlier, and prior even to the conclusion of the Democratic primary to select a candidate to run against me. There was no improper coordination in this case. In fact, it would be impossible (and certainly counterproductive) to coordinate or consult before a Democratic nominee was even selected.

Therefore, the cooperation or consultation, request or suggestion that allegedly poisons this independent expenditure never happened. This complaint was filed only because of an entry from my diary about activity that never took place which was written seven months before the election it supposedly would have influenced.

While the wording of the diary entry is unfortunate, the complaint is not about any activity that violated the Act. Accordingly, this matter should be dismissed.

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2. MUR 4261 -- the National Rifle Association complaint

For the reasons set forth below, the complaint is without merit and must be dismissed by the FEC.

FACTS: The complaint charges that my campaign committee accepted illegal corporate contributions in the form of independent expenditures that the Center alleges were not independent, as a matter of law. These expenditures were made by the National Rifle Association's Institute for Legislative Action (NRA's Institute"), a membership organization constituted as a nonprofit corporation. The complaint includes as an attachment the NRA's Institute's "Report of Communication Costs by Corporations and Membership Organizations" showing two expenditures against Les AuCoin, my opponent in the 1992 general election.[1] Both expenditures are reported by the NRA as communications with the organization's "members."

DISCUSSION: In filing the complaint, the Center was apparently unaware that federal election law permits membership organizations to mail partisan communications to their members. 11 C.F.R. Sections 100.8(b)(4), 114.3(a)(2), 114.3(c) and 114.7(h). "Any cost incurred for any communication by a membership organization to its members ... is not an expenditure ..." so long as an FEC Form 7 is filed. 11 C.F.R. Section 100.8(b)(4). Since the Center itself attaches the NRA Institute's required form, it is self-evident there is no violation.

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[1] For the record, although not dispositive in this matter (see below), the first expenditure cited in the complaint came on May 8, 1992, in advance of the Oregon primary in which Mr. AuCoin faced a Democratic opponent. This expenditure cannot be called an expenditure on behalf of me or my campaign committee, especially since the diary entry attached to the complaint concerns an October 6, 1992 meeting.

The Act specifically permits organizations such as the NRA's Institute to mail to its members the communications, even if partisan, that are the subject of this complaint. 11 C.F.R. Sections 114.3(a)(2) and 114.7(h). There is no allegation that the communications do not meet the requirements of the regulations, and it is my belief that they did comply with 11 C.F.R Section 114.3(c).

CONCLUSION: The law does not consider the communications at issue a contribution or expenditure on behalf of the candidate supported or opposed; such communications are not considered independent expenditures, and there is no prohibition on showing such communications to a candidate. *Id.* Accordingly, there are no grounds for this complaint and it must be dismissed.

3. MUR 4262 and MUR 4265 -- the Phil Gramm complaints

After reviewing the allegations, the facts and the law, it is apparent that the sole reason this complaint was filed was that I made an statement in a publicly released diary entry. Since no actual violation of law occurred,[2] the Commission must dismiss this matter.

The complaint attaches reports to the Federal Election Commission from the National Republican Senatorial Committee ("NRSC") indicating that $96,500 in non-federal funds were transferred to the Oregon Republican Party in 1992. Such transfers are permissible under 11 C.F.R. Section 102.6(a)(1)(ii) ("Transfers of funds may be made without limit on amount between or among a national party committee, a State party committee and/or any subordinate party committee whether or not they are political committees ... and whether or not such committees are affiliated.") and 11 C.F.R. Section 110.3(c)(1) ("The contribution limitations of 11 C.F.R. Sections 110.1 and 110.2 shall not limit the transfers of funds between .. party committees of the same political party.").

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[2] As a technical matter, the Conciliation Agreement in MUR 3524 notes that a state party vendor, Robeson Marketing Communications, without the state party's consent, did use $1,670 from the non-federal account to pay for a federal account disbursement. That matter has been fully conciliated in MUR 3524, and neither I nor anyone involved with my re-election committee knew about the activity or were involved in it.

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My statement before the Senate Ethics Committee explains that entry. Both major parties make frequent transfers of both federal and non-federal dollars to their respective state parties to assist with party building activities, as permitted by federal and state campaign laws. This party building activity helps all candidates who run on the party's ticket in a given election.

In conclusion, these complaints should be dismissed for two reasons: first, we did not violate the Federal Election Campaign Act, and, secondly, the diary entry is explained by my testimony before the Senate Ethics Committee.

Sincerely,

Bob Packwood

BOB PACKWOOD

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM *January 18, 1996* **SENSITIVE**

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: MUR 4261
National Rifle Association of America Institute for Legislative Action
Motion to Dismiss

I. BACKGROUND

On September 15, 1995, the Center for Responsive Politics ("CRP") filed a complaint alleging that in 1992 the National Rifle Association of America Institute for Legislative Action ("NRAILA") violated 2 U.S.C. § 441b by spending $43,106 on member communications that were made either in cooperation, consultation, or concert with, or at the suggestion of, Senator Robert Packwood or the Re-elect Packwood Campaign Committee ("the Packwood Committee"). Attachment 1. CRP states that the expenditures made by NRAILA were not independent expenditures due to coordination and consultation with Senator Packwood, the Packwood Committee, or Senator Packwood's agents and thus, constituted prohibited corporation contributions. The complaint also alleges that the Packwood Committee knowingly accepted corporate contributions in violation 2 U.S.C. § 441b and that the Committee failed to report the contributions in violation of 2 U.S.C. § 434. The bases of the complaint are excerpts

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from Senator Packwood's diaries, comments of the Senate Select Committee on Ethics, and NRAILA's disclosure reports (FEC Form 7 - Reports of Communication Costs).

In its response to the complaint, NRAILA included a motion to dismiss the complaint. Attachment 2. Section II of this report provides a factual and legal analysis regarding respondent's motion to dismiss the complaint. In Section III this Office recommends that the Commission deny the motion.

II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits a corporation from making any contribution or expenditure in connection with any election for Federal office and prohibits any political committee from knowingly accepting such a contribution or expenditure. 2 U.S.C. § 441b. The Act, however, excludes from the definition of contribution and expenditure communications to a corporation's stockholders and executive and administrative personnel and their families on any subject. 2 U.S.C. § 441b(b)(2)(A). Commission regulations extend this exception to include members and their families in the case of incorporated membership organizations. 11 C.F.R. § 114.3(a)(2).

The Act also provides that if a membership organization is not organized primarily for the purpose of influencing the nomination or election of any person for Federal office, any communication by a membership organization (or corporation) to its members is not an expenditure. If the communications expressly advocate the election or defeat of a clearly identified candidate and the cost exceeds $2,000, the expenditure must

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be reported to the Commission (unless the communication is primarily devoted to subjects other than the express advocacy). 2 U.S.C. § 431(9)(B)(iii).

Respondent NRAILA asserts that the National Rifle Association of America ("NRA") is a nonprofit corporation and that NRAILA is a division of NRA, not a separate corporate entity. NRAILA states that it is not organized primarily for the purpose of influencing the nomination or election of any individual to Federal office, and is a membership organization with "members" as defined by 11 C.F.R. § 100.8(b)(4)(iv).

In its motion to dismiss, NRAILA argues that because it is not organized for the purpose of influencing the nomination or election of any individual to Federal office and is a membership organization, the costs incurred for communications to its members were not expenditures within the meaning of the FECA or Commission regulations. NRAILA asserts that it dutifully complied with the requirement that it report costs exceeding $2,000 for communications expressly advocating the election or defeat of a clearly identified candidate when it filed reports (FEC Form 7).[1] NRAILA further argues that these privileged communications did not constitute independent expenditures capable of being tainted by prior communication or coordination with the campaign. NRAILA states that the costs incurred for communications "in opposition to Senator Packwood's opponent were made for the purpose of providing legitimate, privileged communications by a membership organization to its members and, therefore, were not prohibited corporate contributions." See Motion at page 3.

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[1] NRAILA acknowledges that on or about May 8, 1992, it incurred costs of $20,493, and that on or about October 12, 1992, it incurred costs of $22,613 for communications to its members.

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In an October 6, 1992, audiotape excerpt from Senator Packwood's diary, Senator Packwood states that when he came back to the office at 3:00 PM that day he met with someone from the NRA. The name of the individual with whom he met was deleted from the excerpt. Senator Packwood then discusses the tough approach of the NRA in a piece that it would be mailing out and states that "[i]t starts right out : vote to toss out _____ and vote for Senator Bob Packwood." Senator Packwood later notes that in his conversation with the NRA representative he was told that "[t]hey are going to send it to 90,000 members. And he [NRA Representative] said if he has enough money, he's going to send it out to 100,000 Oregon gun owners, or something like that." See Complaint at page 8.

Although NRAILA asserts in its response to the complaint that it is a bona fide membership organization and that the communications at issue were privileged membership communications, the excerpt from Senator Packwood's diary raises three questions that require further analysis: whether the mailing was sent to Oregon gun owners; whether the Oregon gun owners were bona fide members of the organization; and whether the NRAILA's members meet the requirements for membership which are outlined in Commission regulations. It appears that the mailing may have been sent to gun supporters who were not actual members of NRA and, thus, that the mailing may have constituted a mailing to the general public that expressly advocated the election or defeat of a clearly identified candidate. Such a mailing would not qualify for any of the exclusions from the definition of expenditure.

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The only other permissible method for NRAILA to have made expenditures in connection with the 1992 Federal general election in Oregon was independent expenditures.[2] This Office believes that the excerpts from Senator Packwood's diary regarding his contact with the NRA raise the issue of whether strategy discussions and coordination and consultation between Senator Packwood and NRAILA regarding the Oregon election would have invalidated the independence of the expenditures and resulted in in-kind corporate contributions.

This Office believes that these questions need to be addressed more fully and, therefore, recommends that the Commission deny respondent's motion to dismiss.

III. RECOMMENDATIONS

1. Deny NRAILA's motion to dismiss the complaint.
2. Approve the appropriate letter.

Attachments
1. Complaint
2. Response/Motion to Dismiss

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[2] Generally, corporations are prohibited from making independent expenditures. Under the MCFL exception, a small, nonprofit corporation, can make independent expenditures using its general treasury funds based on its specific features. The three features that qualified MCFL for an exception to the general ban on corporate expenditures were: MCFL was a nonprofit corporation established to promote political ideas and not to engage in business activities; MCFL had no shareholders or other persons with a claim on its assets or earnings or other disincentives to disassociate with the organization; and MCFL was not set up by a corporation or union and had an established policy of not accepting corporate or union donations. Because the independence of the expenditures is at issue in this matter, this Office has not evaluated whether NRAILA qualifies as an MCFL corporation.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

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

DATE: JANUARY 23, 1996

SUBJECT: MUR 4261 - MEMORANDUM TO THE COMMISSION DATED JANUARY 18, 1996.

The above-captioned document was circulated to the Commission on Thursday, January 18, 1996 at 11:00.

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

Commissioner Aikens	
Commissioner Elliott	XXX
Commissioner McDonald	
Commissioner McGarry	
Commissioner Potter	
Commissioner Thomas	

This matter will be placed on the meeting agenda for Tuesday, January 30, 1996.

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

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BEFORE THE FEDERAL ELECTION COMMISSOIN

In the Matter of	)	
	)	MUR 4261
National Rifle Associaton of America	)	
Institute for Legislative Action.	)	

CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission executive session on January 30, 1996, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 4261:

1. Deny NRAILA's motion to dismiss the complaint.
2. Approve the appropriate letter.

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

Attest:

January 30, 1996
Date

Mary W. Dove
Mary W. Dove
Administrative Assistant

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 2, 1996

Robert Dowlut, Deputy General Counsel
NRA Institute for Legislative Action
11250 Waples Mill Road, 5th Floor
Fairfax, VA 22030

RE: MUR 4261

Dear Mr. Dowlut:

This letter is in reference to the Motion to Dismiss the complaint that you submitted on behalf of the NRA Institute for Legislative Action in the above-noted matter. On January 30, 1996, the Commission decided to deny the Motion to Dismiss the complaint.

If you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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AGENDA DOCUMENT No. X97-16

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) ENFORCEMENT PRIORITY
)

SENSITIVE

MAR 11 1997

EXECUTIVE SESSION

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

The cases listed below have been identified as either stale or of low priority based upon evaluation under the Enforcement Priority System (EPS). This is report is submitted to recommend that the Commission no longer pursue these cases.

II. CASES RECOMMENDED FOR CLOSURE.

A. Cases Not Warranting Further Action Relative to Other Cases Pending Before the Commission

EPS was created to identify pending cases which, due to the length of their pendency in inactive status or the lower priority of the issues raised in the matters relative to others presently pending before the Commission, do not warrant further expenditure of resources. Central Enforcement Docket (CED) evaluates each incoming matter using Commission-approved criteria which results in a numerical rating of each case.

Closing such cases permits the Commission to focus its limited resources on more important cases presently pending before it. Based upon this review, we have identified 25 cases which do

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not warrant further action relative to other pending matters.[1] Attachment 1 to this report contains summaries of each case, the EPS rating, and the factors leading to assignment of a low priority and recommendation not to further pursue the matter.

B. Stale Cases

Effective enforcement relies upon the timely pursuit of complaints and referrals to ensure compliance with the law. Investigations concerning activity more remote in time usually require a greater commitment of resources, primarily due to the fact that the evidence of such activity becomes more remote and consequently more difficult to develop. Focusing investigative efforts on more recent and more significant activity also has a more positive effect on the electoral process and the regulated community.

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[1] These cases are: MUR 4332 (*Bill Thomas Campaign Committee*); MUR 4347 (*Anonymous Respondent*); MUR 4354 (*Brian Steel for Congress*); MUR 4367 (*Philipstown Republicans*); MUR 4371 (*Employment Group*); MUR 4373 (*Cannon for Congress*); MUR 4374 (*Mark Stodola for Congress Primary Committee*); MUR 4375 (*Westchester County Conservative Party*); MUR 4377 (*Braxton for Congress*); MUR 4379 (*Teamsters Local Union No. 135*); MUR 4383 (*Pauken for Congress*); MUR 4384 (*Willie Colon for U.S. Congress*); MUR 4388 (*Bill Witt for Senate and Congress*); MUR 4390 (*Kolbe 96*); MUR 4391 (*Pat Roberts for Congress Committee*); MUR 4393 (*Cecil J. Banks*); MUR 4397 (*AFL-CIO*); MUR 4405 (*Katz for Congress Committee*); MUR 4411 (*First Evangelical Presbyterian Church*); MUR 4414 (*Turietta-Koury for Congress Committee*); MUR 4418 (*Bell Atlantic*); MUR 4421 (*Butler for Mayor*); MUR 4448 (*Friends for Jim Rapp*); Pre-MUR 334 (*Kinnamon for Congress*); and Pre-MUR 335 (*Davis for Congress*).

We have identified cases which have remained on the Central Enforcement Docket for a sufficient period of time to render them stale 12 are not worthy of further action, and merit closure.[4]

We recommend that the Commission exercise its prosecutorial discretion and direct closure of the cases listed below, effective April 1, 1997. Closing these cases as of this date will permit CED and the Legal Review Team the necessary time to prepare closing letters and case files for the public record.

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[4] These cases are: MUR 4139 (*Enid 94*); MUR 4150 (*Frank Fasi*); MUR 4257 (*DSCC*); MUR 4258 (*NRSC*); MUR 4260 (*Packwood & Auto Dealers*); MUR 4261 (*NRA Institute for Legis.*); MUR 4262 (*Oregon Republican Party*); MUR 4265 (*NRSC; Sen. Phil Gramm*); MUR 4272 (*Bishop for Congress*); MUR 4279 (*Russ Berrie Co.*); MUR 4284 (*United We Stand America*); and Pre-MUR 322 (*Royal Hawaiian Country Club*).

III. RECOMMENDATIONS.

A. Decline to open a MUR, close the file effective April 1, 1997, and approve the appropriate letters in the following matters:

1. Pre-MUR 322
2. Pre-MUR 334
3. Pre-MUR 335.

B. Take no action, close the file effective April 1, 1997, and approve the appropriate letters in the following matters:

1. MUR 4139	13. MUR 4347	25. MUR 4390
2. MUR 4150	14. MUR 4354	26. MUR 4391
3. MUR 4257	15. MUR 4367	27. MUR 4393
4. MUR 4258	16. MUR 4371	28. MUR 4397
5. MUR 4260	17. MUR 4373	29. MUR 4405
6. MUR 4261	18. MUR 4374	30. MUR 4411
7. MUR 4262	19. MUR 4375	31. MUR 4414
8. MUR 4265	20. MUR 4377	32. MUR 4418
9. MUR 4272	21. MUR 4379	33. MUR 4421
10. MUR 4279	22. MUR 4383	34. MUR 4448
11. MUR 4284	23. MUR 4384	
12. MUR 4332	24. MUR 4388	

3/5/97
Date

Lawrence M. Noble
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document #X97-16
Enforcement Priority	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 11, 1997, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions with respect to the above-captioned matter:

A. Decline to open a MUR, close the file effective April 1, 1997, and approve the appropriate letters in the following matters:

1. Pre-MUR 322;
2. Pre-Mur 334;
3. Pre-MUR 335.

B. Take no action, close the file effective April 1, 1997, and approve the appropriate letters in the following matters:

1. MUR 4139;
2. MUR 4150;
3. MUR 4257;
4. MUR 4258;
5. MUR 4260;
6. MUR 4261;
7. MUR 4262;
8. MUR 4265;
9. MUR 4272;
10. MUR 4279;
11. MUR 4284;
12. MUR 4332;
13. MUR 4347;
14. MUR 4354;
15. MUR 4367;
16. MUR 4371;
17. MUR 4373;
18. MUR 4374;

(continued)

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19.	MUR 4375;	27.	MUR 4393;
20.	MUR 4377;	28.	MUR 4397;
21.	MUR 4379;	29.	MUR 4405;
22.	MUR 4383;	30.	MUR 4411;
23.	MUR 4384;	31.	MUR 4414;
24.	MUR 4388;	32.	MUR 4418;
25.	MUR 4390;	33.	MUR 4421;
26.	MUR 4391;	34.	MUR 4448.

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

Attest:

3-12-97
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 1, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kent Cooper, Executive Director
Center for Responsive Politics
1320 19th Street, N.W.
Washington, DC 20036

RE: MUR 4261

Dear Mr. Cooper: Kent

On September 15, 1995, the Federal Election Commission received Ellen S. Miller's complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action in the matter. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on April 1, 1997. This matter will become part of the public record within 30 days.

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

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 1, 1997

Geoffrey D. Brown, Treasurer
Re-Elect Packwood Campaign Committee (1992)
5301 Wisconsin Ave., NW, Suite 300
Washington, DC 20015

RE: MUR 4261

Dear Mr. Brown:

On September 20, 1995, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action against the Re-Elect Packwood Campaign Committee (1992) and you, as treasurer. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on April 1, 1997.

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 Jennifer Henry at (202) 219-3400.

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 1, 1997

The Honorable Bob Packwood
American Business Task Force
P.O. Box 91195
Washington, DC 20090-1195

RE: MUR 4261

Dear Senator Packwood:

On September 20, 1995, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action against you. This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on April 1, 1997.

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 Jennifer Henry at (202) 219-3400.

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 1, 1997

Robert Dowlut, Esq.
National Rifle Association of America
11250 Waples Mill Road
Fairfax, VA 22030

RE: MUR 4261

Dear Mr. Dowlut:

On September 20, 1995, the Federal Election Commission notified Tanya K. Metaksa, Executive Director of NRA-ILA, of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission exercised its prosecutorial discretion to take no action against the National Rifle Association (Institute for Legislative Action). This case was evaluated objectively relative to other matters on the Commission's docket. In light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter on April 1, 1997.

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 Jennifer Henry at (202) 219-3400.

Sincerely,

F. Andrew Turley
Supervisory Attorney
Central Enforcement Docket

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VA 22030-7400

APR 4 2 53 PM '97

CLOSED

OFFICE OF THE
EXECUTIVE DIRECTOR

TANYA K. METAKSA

CLOSED

April 4, 1997

Federal Election Commission
ATTN: Mr. F. Andrew Turley, Supervising Attorney
Central Enforcement Docket
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 4261; Comments for Inclusion on Public Record

Dear Mr. Turley:

I have received your letter of April 1, 1997, wherein you advise that "in light of the information on the record, the relative significance of the case, and the amount of time that has elapsed, the Commission determined to close its file in this matter [MUR 4261] on April 1, 1997." Although the NRA Institute for Legislative Action is pleased to receive this news, I cannot help but wonder why it took the Commission over 18 months to arrive at this conclusion based upon the following facts and circumstances.

MUR 4261 resulted from a complaint filed on September 15, 1995, by an organization known as The Center for Responsive Politics ("the Center") which alleged that the NRA Institute for Legislative Action ("NRA-ILA") violated the *Federal Election Campaign Act*, 2 U.S.C. § 431, *et seq.*, apparently based upon information the Center obtained from reading former United States Senator Robert Packwood's diaries. On October 5, 1995, NRA-ILA filed with the Commission an Answer and Motion to Dismiss Complainant's Complaint citing, *inter alia*, certain provisions of the Center's own complaint that acknowledged that the conduct complained of by Center was permissible NRA communications with its membership, and pointing out that Senator Packwood himself had publicly disavowed the accuracy of his diaries[1]. While these two facts alone should have warranted the immediate dismissal of the Center's complaint, the NRA was notified by the Commission on February 2, 1996, that the Motion to Dismiss had been denied on January 30, 1996.

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[1]Zuckerman, "Packwood's diary ... a PAC man's nightmare," Political Finance & Lobby Reporter, Vol. XVI, No. 18, September 27, 1995, quoting Senator Packwood's comments on CBS's "Face the Nation," September 10, 1995.

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It is both interesting and ironic that at the same time the Commission was refusing to dismiss MUR 4261, Kent Cooper, the FEC's Assistant Staff Director for Public Disclosure, was apparently negotiating to become the new Executive Director of the Center.[2] I am particularly troubled that a high-ranking staff member of the Federal Election Commission apparently was engaged in employment discussions with an organization that had current matters pending before the FEC while he may have been in a position to exert influence over the FEC's enforcement actions. I am also curious as to whether the lure of private sector employment with the Center for Responsive Politics for Mr. Cooper may have played any role in the decision of the FEC to deny the motion to dismiss such a patently frivolous claim.

Notwithstanding this apparent conflict of interest, however, I will once again -- for the public record -- categorically deny that the NRA Institute for Legislative Action violated any provision of federal law in connection with Senator Packwood's 1992 reelection campaign. The Center plainly conceded in paragraphs 14 and 15 of its complaint that the transactions complained of involved reportable costs incurred by the NRA Institute for Legislative Action for the purpose of communicating with NRA members. Such an expense of corporate funds is not only constitutionally protected speech, but is also recognized as a specific exception to the general prohibition against the making of corporate campaign expenditures by both the *Federal Election Campaign Act*, and by the Federal Election Commission in promulgating implementing regulations to the Act contained in title 11 of the Code of Federal Regulations.

The complaint brought by the Center for Responsive Politics evidences a claim so completely and utterly devoid of merit, and of such a frivolous nature that, had this action been brought before a federal court, this organization would have sought sanctions under Rule 11 of the Federal Rules of Civil Procedure against both the Center and its Executive Director. In closing, it is not surprising that the Commission has "determined to close its file on this matter." What is amazing is that it has taken over 18 months and the expenditure of untold amounts of taxpayer dollars for the Commission to reach this decision.

Sincerely,

Tanya K. Metaksa
Executive Director

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[2] *Call of the NSC, Exiting the FEC*, The Washington Post, December 20, 1996.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4261

DATE FILMED 4-16-97 CAMERA NO. 1

CAMERAMAN JMN

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