



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4271

DATE FILMED 4-1-57 CAMERA NO. 4

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

AK007027

October 3, 1995

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

THROUGH: JOHN C. SURINA  
STAFF DIRECTOR

FROM: ROBERT J. COSTA  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

SUBJECT: PEOPLE FOR ENGLISH - REFERRAL MATTERS (MUR 4271)

On September 21, 1995, the Commission approved the Final Audit Report (FAR) on People for English (the Committee). The report was released to the public on September 27, 1995. The attached findings from the FAR are being referred to your Office:

- Receipt of Excessive Contributions (Finding II.A.)
- Disclosure of Occupation and Name of Employer (Finding II.D.)

The Committee has provided evidence that excessive contributions totaling \$3,275 have been refunded, although not timely. For one excessive contribution in the amount of \$1,000, the refund check has not been negotiated and it remains unresolved. Additionally, excessive contributions which have not been refunded, totaling \$790, remain unresolved.

Although the Committee filed amended Schedules A that contained additional disclosures of occupation and name of employer, this information was not provided for a material number of contributors. The Committee provided copies of letters sent to contributors to obtain this information in order to demonstrate best efforts. However, these letters were not sent within 30 days of receipt of the contribution and the language of the letters was not in accordance with 11 CFR §104.7(b).

It is the opinion of the Audit staff that pursuing as compliance matters the receipt of excessive contributions and disclosure of occupation and name of employer may not constitute the most efficient use of Commission resources.

*Celebrating the Commission's 20th Anniversary*

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

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MEMORANDUM TO LAWRENCE M. NOBLE  
Page 2

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions, please contact Bill Antosz or Alex Boniewicz at 219-3720.

**Attachments:**

- Finding II.A. - Receipt of Excessive Contributions
- Finding II.D. - Disclosure of Occupation and Name of Employer

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**II. Audit Findings and Recommendations**

**A. Receipt of Excessive Contributions**

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitations may be deposited into a campaign depository or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b). If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that any contribution which appears to be illegal under 11 CFR 103.3(b)(3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

The Audit staff's review of contributions received from individuals indicated that nine contributors exceeded their limitation by \$4,065. Excessive contributions from five contributors, totaling \$3,275, were refunded but not timely. One of the contribution refund checks for \$1,000 remains outstanding. The excessive contributions from the remaining four contributors, totaling \$790, were unresolved. The Committee did not establish a separate account in a campaign depository for such contributions; however it has maintained sufficient funds to make the refunds pursuant to 11 CFR 103.3(b)(4).

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The Audit staff discussed this matter with the Committee's representatives at the exit conference and provided a schedule detailing these excessive contributions. The Committee's representatives agreed to refund the remaining excessive contributions.

Subsequent to the exit conference, the Committee's representatives provided the Audit staff photocopies of the front of checks refunding the four unresolved excessive contributions noted above.

In the interim audit report the Audit staff recommended that the Committee provide evidence of refunds of all unresolved excessive contributions in the form of photocopies of the front and back of the negotiated refund checks.

In response to the interim audit report, the Committee provided evidence of refunds, which materially complied with the Audit staff's recommendation. However, for one excessive contribution in the amount of \$1,000, the refund check has not been negotiated and it remains unresolved.

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D. Disclosure of Occupation and Name of Employer

Section 434(b)(3)(A) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the identification of each person who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year together with the date and amount of any such contribution.

Section 431(13)(A) of Title 2 of the United States Code states that the term "identification" means in the case of any individual, the name, the mailing address, and occupation of such individual, as well as the name of his or her employer.

Sections 104.7(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that when the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act. With regard to reporting the identification of each person whose contribution(s) to the political committee and its affiliated committees aggregate in excess of \$200 in a calendar year, the treasurer will only be deemed to have exercised best efforts to obtain, maintain and report the required information if; (1) All written solicitations for contributions include a clear request for the contributor's full name, mailing address, occupation and name of employer, and include the following statement: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year."; and (2) For each contribution received aggregating in

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excess of \$200 per calendar year which lacks required contributor information, the treasurer makes at least one effort after the receipt of the contribution to obtain the missing information. Such effort shall consist of either a written request sent to the contributor or an oral request to the contributor documented in writing. The writing must be made no later than thirty (30) days after receipt of the contribution.

The Audit staff reviewed contributions from individuals on a sample basis and determined that for approximately 40% of these contributors, the occupation and/or name of employer was not disclosed as required. Some of the information was available on the Committee's receipts data base, but was not disclosed on its reports.

A review of some of the Committee's solicitation devices showed that the Committee did request occupation and name of employer information and that the Committee did inform the contributors that the information was required by law. However, the Committee could not produce evidence that documented its attempts to contact contributors for the information subsequent to the receipt of the contribution.

The Audit staff spoke to former treasurer, Gail Sherrred, who stated that she had only made telephone calls to obtain the information, and that any information obtained would have been written on the original reports. A review of the original reports did not reduce the number of errors and no written record of the telephone contacts was maintained.

At the exit conference, the Audit staff informed the Committee's representatives of this matter. The Committee's representatives agreed to contact contributors to request the missing occupation/name of employer information and would keep a written journal to document the contacts.

In the interim audit report, the Audit staff recommended that the Committee take the following action:

- produce documents to demonstrate best efforts has been satisfied; or
- absent such demonstration, make an effort to contact those individuals whose contributions aggregate in excess of \$200 in a calendar year and whose occupation and name of employer information is incomplete. The contributors should be requested to provide the necessary information and be informed that Federal law requires the Committee to report such information;
- maintain documentation or a written log of such contacts;

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- file amended memo Schedules A to disclose any occupation and/or name of employer information obtained from those contacts.

In response to the interim audit report, the Committee filed memo Schedules A, which provided additional disclosures of occupation and name of employer. Based on our analysis of the Committee's response, the Audit staff determined that for approximately 24% of contributions from individuals, the occupation and name of employer remained undisclosed.

The Committee also provided copies of the letters sent to contributors which requested their occupation and name of employer. The letters were not sent within 30 days after the receipt of each contribution, as required by 11 CFR 104.7(b). Further, the language in the letters is not in accordance with 11 CFR §104.7(b). The Committee's letters state "Federal Election Commission law requires..." rather than Federal law requires.

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BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

FEB 21 4 21 PM '97

In the Matter of )  
 )  
Enforcement Priority System II )  
 )

**SENSITIVE**

GENERAL COUNSEL'S REPORT

**I. INTRODUCTION**

On September 10, 1996, the Commission approved an Enforcement Priority System for enforcement matters assigned to OGC Public Financing, Ethics & Special Projects staff ("EPS II"). See Memorandum to the Commission, *PFESP Enforcement Priority System*, dated August 6, 1996.

This Office has rated all of its PFESP enforcement cases under EPS II. Based upon that evaluation, this Office has identified 12 MURs for closing. By closing these 12 cases, this Office will be better able to focus its resources on the more significant cases, generally presidential matters. Moreover, these closings will enable us to process the 1996 presidential audits in a more efficient manner.

<sup>1</sup> This Office is currently assessing the impact of *FEC v. Williams*, No. 95-55320 (9th Cir. Filed Dec. 26, 1996), on our caseload. In *Williams*, the court ruled that the five-year statute of limitations under 28 U.S.C. § 2462 applies to the imposition of civil penalties in Commission enforcement actions. Unlike the initial implementation of the Enforcement Priority System ("EPS"), this Office is not recommending that certain cases involving state activity be closed at this time. See, e.g., Implementation of the Enforcement Priority System, approved April 20, 1993. This Office will forward specific recommendations in light of *Williams* in a subsequent report to the Commission.

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Attached for Commission approval is the form letter that would be sent should these recommendations be approved. With the exception of notification letters sent to respondents in audit referrals, this Office will use the form notification letters currently used by the Enforcement Division. Since there is no form notification letter for audit referrals, this Office drafted the form notification letter at Attachment 1. Unlike RAD referrals, audit referrals are immediately assigned a MUR number and will eventually go on the public record when closed. Thus, it is necessary for us to notify the respondents in these instances prior to the matter appearing on the public record.

**II. CASES RECOMMENDED FOR CLOSING**

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

Having evaluated the PFESP enforcement caseload, this Office has identified 12 cases that do not warrant pursuit relative to other pending matters.<sup>2</sup> A short description of each case and the factors leading to assignment of a relatively low priority and consequent recommendation not to pursue each case is attached to this Report. See Attachment 2. Also attached are the referral materials where that information has not been circulated previously to the Commission. See Attachment 3.

<sup>2</sup> These matters are: (1) MUR 4251 (Republican State Committee of Delaware); (2) MUR 4266 (Friends of Marc Little); (3) MUR 4271 (People for English); (4) MUR 4300 (The Committee to Elect Michael Flanagan); (5) MUR 4337 (Montana State Democratic Central Committee); (6) MUR 4345 (Nevada State Democratic Party); (7) MUR 4346 (Citizens for Jack Metcalf); (8) MUR 4381 (United Republican Fund of Illinois, Inc.); (9) MUR 4400 (San Bernardino County Republican Central Committee); (10) MUR 4436 (Abraham for Senate); (11) MUR 4441 (Republican Party of Dade County); and (12) MUR 4618 (Mississippi Democratic Party Political Action Committee).

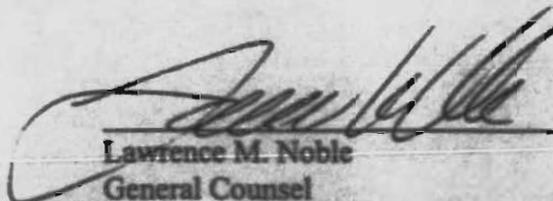
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**RECOMMENDATIONS**

- 1. Approve the notification form letter at Attachment 1.
- 2. Take no further action, close the file effective (date) and approve the appropriate letters in the following matters:

- a. MUR 4251
- b. MUR 4266
- c. MUR 4271
- d. MUR 4300
- e. MUR 4337
- f. MUR 4345
- g. MUR 4346
- h. MUR 4381
- i. MUR 4400
- j. MUR 4436
- k. MUR 4441
- l. MUR 4618

2/21/97  
Date

  
Lawrence M. Noble  
General Counsel

**Attachments**

- 1. Form letter
- 2. Description of low rated cases
- 3. Referral materials not previously circulated

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
Enforcement Priority System II. )

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 27, 1997, the Commission decided by a vote of 5-0 to take the following actions in the above-captioned matter:

1. Approve the notification form letter, as recommended in the General Counsel's Report dated February 21, 1997.
2. Take no further action, close the file effective March 5, 1997 and approve the appropriate letters in the following matters:
 

a. MUR 4251	g. MUR 4346
b. MUR 4266	h. MUR 4381
c. MUR 4271	i. MUR 4400
d. MUR 4300	j. MUR 4436
e. MUR 4337	k. MUR 4441
f. MUR 4345	l. MUR 4618

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

Attest:

2-27-97  
Date

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

Received in the Secretariat: Fri., Feb. 21, 1997 4:21 p.m.  
Circulated to the Commission: Mon., Feb. 24, 1997 11:00 a.m.  
Deadline for vote: Thurs., Feb. 27, 1997 4:00 p.m.

lrd

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

March 19, 1997

Edward E. Smith, Treasurer  
People for English  
P.O. Box 1940  
Erie, PA 16507

RE: MUR 4271

Dear Mr. Smith:

On October 3, 1995, the Audit Division referred the enclosed matters to the Office of General Counsel involving the People for English Committee ("Committee") and Edward E. Smith, as treasurer, for possible enforcement action. The referral emanated from an audit of the Committee undertaken pursuant to 2 U.S.C. § 438(b). After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the Committee. Accordingly, the Commission closed its file in this matter on March 5, 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 me at (800)424-9530 or (202) 219-3690.

Sincerely,

Gregory R. Baker  
Special Assistant General Counsel

Enclosure

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE END OF RUL # 4271

DATE FILMED 4-1-97 CAMERA NO. 4

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