



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4445

DATE FILMED 10-21-97 CAMERA NO. 2

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

AUG 26 9 55 AM '96

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COMMISSION  
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BEFORE THE FEDERAL ELECTION COMMISSION  
OF THE UNITED STATES OF AMERICA

**Complaint:** Violations of 2 U.S.C. § 441b and 441d.  
**Respondents:** Randy Tate for Congress and KVI Radio--Fisher Broadcasting Company  
**Complainant:** Washington Citizen Action

MUR 4445

Washington Citizen Action hereby brings this complaint against Randy Tate for Congress and Fisher Broadcasting Company for violations of the Federal Election Campaign Act of 1971, as amended ("FECA"). In particular, Fisher Broadcasting Company knowingly and willfully made and the Tate Campaign knowingly and willfully accepted an illegal corporate contribution in violation of 2 U.S.C. § 441b. Furthermore, Fisher Broadcasting Company violated 2 U. S. C. § 441d by failing to notify its listeners that it had paid for communicating the solicitation, and that it was authorized by the Tate Campaign.

For the reasons explained more fully below, Washington Citizen Action therefore respectfully requests that the FEC initiate an expeditious investigation of these matters and that the FEC:

- (a) find that the Tate Campaign and Fisher Broadcasting Company knowingly and willfully violated 2 U.S.C. § 441b;
- (b) find that Fisher Broadcasting Company violated 2 U.S.C. § 441d;
- (c) seek the appropriate penalties and any other injunctive relief it deems necessary as to respondents in accordance with 2 U.S.C. § 437g.

PARTIES

1. Washington Citizen Action is a statewide consumer organization with 50,000 members in Washington. Its mailing address is 100 S. King St. #240, Seattle, WA 98104.
2. Respondent Fisher Broadcasting Company is a Washington corporation, which operates KVI Radio under license from the Federal Communications Commission, and broadcast from Seattle, WA. Its mailing address is 1809 7th Ave, Suite 200 Seattle, WA 98101.

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3. Respondent Tate Campaign is the authorized committee for the re-election of Randy Tate, who is seeking re-election to the U. S. House of Representatives from the 9th District of the State of Washington. Its mailing address is P.O. Box 416, Federal Way, Washington, 98063.

#### FACTS

The following allegations are made on information and belief:

4. The "John Carlson Show" is a talk radio show broadcast regularly on KVI Radio. Its host is John Carlson.
5. Congressman Randy Tate appeared on the John Carlson Show as a guest on April 11, 1996.
6. During the course of that broadcast appearance, Mr. Carlson repeatedly solicited his listeners to make contributions to the Tate Campaign and repeatedly provided the telephone numbers and address for the Tate Campaign for the purpose of enabling listeners to send contributions to the Tate Campaign.
7. Congressman Tate participated in and facilitated such solicitations by confirming the amount of the contribution desired and by providing, on the air, the telephone numbers and address of the Tate Campaign. (See attached transcript).
8. It appears that a number of listeners responded to the solicitation and called the Tate Campaign's telephone number, as a listener called during the broadcast to indicate that the voice mailbox on one of the telephone numbers was already full. (See attached transcript).

#### DISCUSSION

The Federal Election Campaign Act, at 2 U.S.C. § 441b, prohibits corporate contributions or expenditures made "in connection with" federal elections. The term "contribution" includes anything of value given to any campaign committee in connection with any federal election. 2 U.S.C. § 441b(b) (2). There is no doubt that the appearance of Congressman Tate on the John Carlson Show on April 11, 1996 resulted in an in-kind contribution to the Tate Campaign by Fisher Broadcasting Company.

In several advisory opinions, the Commission has developed a two-pronged test to determine whether a federal candidate's appearance on a broadcast program results in a contribution to or expenditure on behalf of the candidate. A contribution or expenditure results if the appearance or communication involves (i) the solicitation, making or acceptance of contributions to the candidate's campaign, or (ii) the communication expressly advocates the nomination, election or defeat of any candidate. See e.g. FEC Advisory Opinions 1992-37; 1992-5; 1992-6.

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In this case, John Carlson, the host of the radio show and an employee of Fisher Broadcasting Company, repeatedly and expressly solicited monetary contributions to the Tate Campaign by imploring his listeners to immediately call the campaign office or to send contributions to that office, and to make a contribution of \$20. Therefore, Fisher Broadcasting Company knowingly and willfully made an illegal in-kind corporate contribution to the Tate Campaign.

Further, the Tate Campaign knowingly and willfully accepted an illegal corporate contribution by supplying the telephone number and address of the campaign, as well as encouraging contributors to call in. As the attached transcript shows, a number of listeners did, in fact, respond to the solicitation.

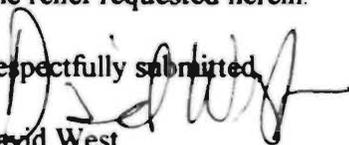
The Federal Election Campaign Act, at 2 U.S. C. § 441d(a), also provides that "Whenever any person...solicits any contribution through any broadcasting station...such communication...(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee."

Based upon the facts as known, it appears that Fisher Broadcasting Company violated section 441d because Fisher Broadcasting Company did not broadcast the disclaimer required by this section when it solicited funds on behalf of the Tate Campaign.

CONCLUSION

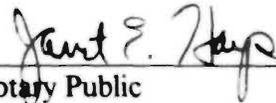
For the reasons set forth above, the Commission should find that the Tate Campaign and Fisher Broadcasting Company have knowingly and willfully violated 2 U.S.C. § 441b and that Fisher Broadcasting Company violated 2 U.S.C. § 441d and provide the relief requested herein.

Respectfully submitted,

  
David West  
Executive Director  
Washington Citizen Action

County of King )  
State of Washington )

Sworn to and subscribed before me this 20th day of August, 1996

  
Notary Public



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

August 30, 1996

David West, Executive Director  
Washington Citizen Action  
100 S. King St. #240  
Seattle, WA 98104

RE: MUR 4445

Dear Mr. West:

This letter acknowledges receipt on August 26, 1996, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). 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 4445. 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,

*Colleen T. Sealander by max*

Colleen T. Sealander, Attorney  
Central Enforcement Docket

Enclosure  
Procedures

27043851546



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

*August 30, 1996*

Sharon J. Sharer, Registered Agent  
Fisher Broadcasting, Inc.  
100 Fourth Ave., North  
Seattle, WA 98109

RE: MUR 4445

Dear Ms. Sharer:

The Federal Election Commission received a complaint which indicates that Fisher Broadcasting, Inc. may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4445. 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 Fisher Broadcasting, Inc. in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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

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

Sincerely,

*Colleen T. Sealander by MAB*

Colleen T. Sealander, Attorney  
Central Enforcement Docket

**Enclosures**

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

27043851548



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

*August 30, 1996*

**J. Shannon Sweatte, General Manager**  
KVI-AM  
Tower Bldg., Ste. 200  
7th Ave. & Olive Way  
Seattle, WA 98101

**RE: MUR 4445**

**Dear Ms. Sweatte:**

The Federal Election Commission received a complaint which indicates that KVI-AM 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 4445. 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 KVI-AM 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.

27043851549

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

Sincerely,

*Colleen T. Sealander by MAB*

Colleen T. Sealander, Attorney  
Central Enforcement Docket

**Enclosures**

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

27043851550



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

August 30, 1996

John Carlson c/o  
"The John Carlson Show"  
KVI-AM  
Tower Bldg., Ste 200  
7th Ave. & Olive Way  
Seattle, WA 98101

RE: MUR 4445

Dear Mr. Carlson:

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 4445. 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.

27043851551

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

Sincerely,

*Colleen T. Sealander by mail*

Colleen T. Sealander, Attorney  
Central Enforcement Docket

**Enclosures**

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

27043851552



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**August 30, 1996**

**Kevin L. Shannon, Treasurer**  
**Randy Tate for Congress Committee**  
**PO Box 4216**  
**Federal Way, WA 98063**

**RE: MUR 4445**

**Dear Mr. Shannon:**

The Federal Election Commission received a complaint which indicates that Randy Tate for Congress Committee ("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 4445. 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 Randy Tate for Congress 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 a member of the Central Enforcement Docket at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

*Colleen T. Sealander by mms*

Colleen T. Sealander, Attorney  
Central Enforcement Docket

Enclosures

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

27043851554



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

August 30, 1996

The Honorable Randy Tate  
5616 99th St. CT. E.  
Puyallup, WA 98373

RE: MUR 4445

Dear Mr. Tate:

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 4445. Please refer to this number in all future correspondence.

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

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

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

Sincerely,

*Colleen T. Sealander by mab*

Colleen T. Sealander, Attorney  
Central Enforcement Docket

**Enclosures**

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

27043851556

ORIGINAL

FISHER WAYLAND COOPER LEADER & ZARAGOZA L.L.P.  
2001 PENNSYLVANIA AVENUE, N.W.  
SUITE 400  
WASHINGTON, D. C. 20006-1851  
TELEPHONE (202) 659-3494

CLIFFORD M. HARRINGTON  
(202) 775-3541

FACSIMILE  
(202) 296-6518

September 18, 1996

**VIA HAND DELIVERY**

RE: MUR 4445

Colleen T. Sealander, Esquire  
General Counsel's Office  
Federal Election Commission  
Washington, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
SEP 18 5 19 PM '96

Dear Ms. Sealander:

Pursuant to Section 111.6(a) of the Commission's rules, 11 C.F.R. § 111.6(a), Fisher Broadcasting Inc. ("Fisher"), licensee of Station KVI(AM), Seattle, Washington, hereby responds to the above-referenced complaint filed by Washington Citizen Action ("WCA"). WCA claims that Fisher made a prohibited corporate contribution to the Randy Tate for Congress Campaign ("Tate Campaign") and failed to disclose the contribution to its listeners when, during the course of an interview with Tate, the host of a KVI(AM) radio show urged listeners to contribute money to the Tate Campaign, thereby violating Sections 441b and 441d of the Federal Election Campaign Act ("FECA"), 2 U.S.C. §§ 441b, 441d.<sup>1</sup> The FECA and Federal Election Commission ("FEC") regulations, however, exclude from the definition of expenditure or contribution "[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station . . . unless the facility is owned or controlled by any political party, political committee, or candidate . . ." 11 C.F.R. § 100.7(b)(2), 11.8(b)(2); see also 2 U.S.C. § 431(9)(B)(i). In this case, Fisher is neither owned nor controlled by any political organization or candidate. Accordingly, Fisher's program, which contained editorializing or commentary, comes squarely within the exemption, and WCA's complaint must be dismissed.

Station KVI(AM) uses a "hot talk" format to address issues of interest and concern to its listeners. One of the station's programs, the John Carlson Show, is a daily (Monday - Friday) radio talk show on which local political commentator John Carlson interviews guests and accepts

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<sup>1</sup>The copy of the complaint served on Fisher by the Commission failed to include WCA's attachments, which consisted of a press release and a transcript of the broadcast more fully describing the incidents about which WCA complains. Despite this incomplete service, Fisher has obtained a complete copy of the complaint and is therefore able to fully respond.

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questions and comments from listeners who call in. Carlson also provides his own commentary regarding news events, particularly those with local or national political implications.

The April 11, 1996 broadcast of the John Carlson Show featured an interview with Congressman Randy Tate, who is seeking re-election to the United States House of Representatives from the 9th District in the State of Washington.<sup>2</sup> During the interview, Carlson and Tate discussed the upcoming election, which was of interest to KVI-AM listeners, which includes residents of Tate's district. Carlson and Tate also discussed campaign-related issues, including certain union-sponsored political advertisements which opposed Tate's re-election that were being run within the state. During this discussion, Carlson and Tate expressed their personal views that the advertisements contained lies and had been paid for by the mandatory dues of union members, many of whom did not live in Washington and therefore had no interest in the Tate election. Carlson urged listeners, who do live in Washington and have an interest in the election, to call the Tate Campaign and pledge \$20.00.<sup>3</sup>

FECA prohibits corporate contributions to a candidate or political committee in connection with a federal election. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b). The term "contribution" includes "anything of value." 2 U.S.C. § 441b(b)(2); 11 C.F.R. § 114.1(a)(1). The costs incurred by the media in covering news stories, commentaries and editorials, however, are excluded from this definition unless the media facility is owned or controlled by a political party, committee or candidate. See 2 U.S.C. § 431(9)(B)(i); 11 C.F.R. §§ 100.7(b)(2), 100.8(b)(2). As the Commission has recognized, the media exemption is designed to "assur[e] the unfettered right of the newspapers, television networks and other media to cover and comment on political campaigns." Advisory Opinion 1982-44 (quoting H.R. Rep. No. 93-1239, 93d Congress, 2d Sess. 4 (1974)). Fisher and KVI(AM) are not owned, nor are they controlled, by any political organization or candidate. Accordingly, Carlson's interview with Tate, including his personal commentary and editorial comments and solicitation, is exempt from the prohibition on corporate contributions.

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<sup>2</sup>WCA does not explain why it waited from April until late August to submit its complaint. Given the timing, WCA's failure to contact KVI(AM) or Fisher regarding its concerns, and the press coverage sought by WCA concerning its filing, WCA may be more interested in maximizing adverse publicity against the Tate Campaign than a timely resolution of its concerns.

<sup>3</sup>The statements by Carlson and Tate expressed their own views. As a disclaimer broadcast on all KVI-AM programs indicates, "Commentary and opinions expressed by the participants on this show do not constitute station editorials and do not necessarily reflect the opinions of the staff, advertisers, management or ownership of KVI Radio, nor are the views expressed on this show restricted in any way."

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September 18, 1996

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Moreover, the Commission has expressly sanctioned the activity in which Carlson engaged. In Advisory Opinion 1980-109, the Commission concluded that a commentary writer's endorsement of a Congressional candidate and solicitation of contributions to the candidate or his committee would be covered by the media exemption and would not result in a prohibited corporate contribution by the writer, the subscription periodical for which he worked or the publisher of the periodical. See also Advisory Opinion 1982-44 (finding that program in which the Democratic National Committee proposed to discuss public issues and programs from the Democratic Party prospective and solicit contributions constituted a commentary and, therefore, a television station owner's donation of free cablecast time for the program fell within the media exemption).

On the other hand, the FEC advisory opinions on which WCA relies are not probative. Two of the opinions involve candidates seeking permission to double as reporters or commentators, and the other did not even involve the media. Furthermore, none of the opinions address the media exemption. See Advisory Opinion 1992-37 (expenses incurred by producer, stations and network carrying radio show hosted by candidate not prohibited corporate contributions where show did not air in candidate's district and candidate did not promote or raise funds for candidacy or attack opponents), Advisory Opinion 1992-6 (payment by university of honorarium and travel expenses in connection with lecture at university symposium not a prohibited corporate contribution or expenditure where candidate would make no reference to campaign) Advisory Opinion 1992-5 (production and broadcast of series of cable public affairs programs featuring candidate not prohibited corporate contributions where programs issue oriented and did not mention campaign nor solicit contributions).

WCA also claims that Fisher violated 2 U.S.C. § 441d(a), which requires that any person who "solicits any contribution through any broadcasting station" clearly state the name of the person who paid for the communication and whether the communication was authorized by a candidate's political committee. As established above, however, Carlson's interview with Tate and his political commentary fall within the media exemption and, therefore, do not constitute contributions to the Tate Campaign. Accordingly, § 441d is inapplicable to Fisher's broadcast of the John Carlson Show.

Finally, any attempt to hold Fisher liable for the Tate interview would violate the First Amendment. "Suppression of the right of the press to praise or criticize governmental agents and to clamor and contend for or against change . . . muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free." Mills v. Alabama, 384 U.S. 214 (1966). The FEC has no compelling interest in preventing Fisher from broadcasting an interview of a candidate by a political commentator and the commentator's expression of his personal views on the campaign sufficient to overcome Fisher's and Carlson's rights of freedom of speech and of the press.

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September 18, 1996

Page 4

Thus, the First Amendment and statutory media exemption bar Commission investigation of the substance of WCA's complaint until and unless the Commission finds the media exemption inapplicable. Readers Digest Association, Inc. v. FEC, 509 F. Supp. 1210, 1214 (S.D.N.Y. 1981); see also FEC v. Phillips Publishing, Inc., 517 F. Supp. 1308, 1313 (D.D.C. 1981) (holding that FEC lacked subject matter jurisdiction where publisher's newsletter opposed Senator Kennedy's candidacy for president and solicited subscriptions). In Readers Digest, the court held that the media exemption turns on two threshold questions: (1) whether the press entity is owned by the political party or candidate and (2) whether the press entity was acting as a press entity in distributing the news or commentary complained of. 509 F. Supp. at 1215. As indicated above, Fisher is not owned by any political party or candidate. Furthermore, Fisher was unquestionably acting as a press entity when it broadcast the John Carlson Show. The broadcast of reporters' interviews with political candidates, political commentary and editorials is within the traditional and legitimate press function. Thus, the media exemption applies to Fisher's activity, and the Commission may not proceed further with this investigation.

Sincerely,



Clifford M. Harrington

Counsel for Fisher Broadcasting, Inc.

Fisher Wayland Cooper Leader  
& Zaragoza, L.L.P.  
2001 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, D.C. 20006-1851  
(202) 659-3494

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**STATEMENT OF DESIGNATION OF COUNSEL**

**MUR** 4445

**NAME OF COUNSEL:** Mr. Clifford M. Harrington

**FIRM:** Fisher Wayland Cooper Leader & Zaragoza L.L.P.

**ADDRESS:** 2001 Pennsylvania Avenue, N.W.

Suite #400

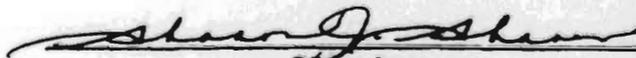
Washington, D.C. 20006-1851

**TELEPHONE:** ( 202 ) 775-3541

**FAX:** ( 202 ) 296-6518

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.

9/4/96  
**Date**

  
**Signature**

**RESPONDENT'S NAME:** Fisher Broadcasting Inc.

**ADDRESS:** 100 4th Avenue North

Seattle, WA 98109

**TELEPHONE: HOME** ( ) \_\_\_\_\_

**BUSINESS** ( 206 ) 443-4048

27043851561

*Randy Tate  
for Congress Committee*

October 28, 1996

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RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

Colleen T. Sealander, Esq.  
Central Enforcement Docket  
Federal Elections Commission  
Washington, DC 20463

Re: MUR 4445

Dear Ms. Sealander:

I am writing in response to your letter of August 30, 1996. This letter will explain why the above-mentioned complaint against me should be immediately dismissed.

Citizen Action's complaint strikes at the core of first amendment protected speech. If its complaint were pursued, it would have a chilling effect on all candidates running for federal office across the country.

Citizen Action seeks redress for an alleged violation of 2 USC Section 441b. Its complaint, however, is defective on its face. Even if one were to accept the veracity of their facts (which we do not), the commentary on KVI Radio on April 11, 1996 was clearly protected speech under both the first amendment and 2 USC 431 (9) (B) (I).

**The Press Exemption**

2 USC 431 (B) (9) (I) clearly exempts from FEC regulations:

"any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee or candidate."

This exemption is not meant to be narrow. As the legislative history suggests:

"It is not the intent of Congress in the present legislation to limit or burden in any way the first amendment freedoms of the press or association. Thus the exclusion assures the unfettered right of the media to cover and comment on political campaigns." (House Report No. 93-943, 93d Congress, 2nd Session, at 4 (1974).

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There are several cases that address this issue directly.

These cases adopted a "two-step procedure for dealing with allegations that a press entity has violated federal election laws...If the press entity is not owned or controlled by a political party or candidate and is acting as a press entity, the FEC lacks subject matter jurisdiction and is barred from investigating the subject matter of the complain." Federal Election Commission v. Phillips Publishing Inc., 517 F. Supp. 1308, 1312 (District of Columbia 1981). See also Reader's Digest Association v. Federal Election Commission, 509 F. Supp. 1210 (S.D.N.Y. 1981) An FEC investigation cannot proceed any further if these two factors are met.

Clearly, the rationale outlined in the Phillips case is on point in this matter. No one has suggested that KVI Radio is owned or controlled by a candidate or political party and no one has suggested that the commentary on April 11, 1996 was not a news story, editorial or out of the radio station's ordinary line of business. John Carlson and I were engaging in a free flowing political discussion, the type of which occurs on talk radio across the country on a daily basis. This news appearance was not undertaken for fundraising purposes.

### Conclusion

The underpinning of the Public Citizen's complaint that "the appearance of Congressman Tate on the John Carlson Show on April 11, 1996 resulted in an in-kind contribution to the Tate Campaign by the Fisher Broadcasting Company" is false. Court cases have clearly enunciated the press entity exception to the applicability of the election laws. Campaign coverage of a candidate, and even the endorsement of a candidate fall under the protected coverage of the first amendment. As such, any incidental solicitation activity that may have occurred on the program remains protected speech.

It is important to state just what is at stake in this proceeding. In Public Citizen's overzealous and legally insufficient effort to determine that a \$20 in-kind corporate contribution has occurred, it is an impingement on my first amendment protections and the radio station's ability to engage in unrehearsed, free wheeling political discourse.

For the aforementioned reasons, this matter should be immediately dismissed. Please do not hesitate to call me if you require any additional information.

Sincerely,

  
Randy Tate

27043851563

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

)  
)  
)  
)

ENFORCEMENT PRIORITY

NOV 10 10 30 AM '97

**SENSITIVE**

**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 report is submitted to recommend that the Commission no longer pursue these cases.

This is the first Enforcement Priority Report that reflects the impact of the 1996 election cycle cases on the Commission's enforcement workload. We have identified cases that are stale which are recommended for dismissal at this time. This is the highest number of cases identified as stale in a single report, and the highest number of stale cases recommended for closure at one time, since the inception of EPS in 1993.

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## 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 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, resulting in a numerical rating for 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 cases that do not warrant further action relative to other pending matters.<sup>3</sup> Attachment I 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 difficult to develop as it ages. Focusing investigative efforts on more recent and more significant activity also has a more positive effect on the electoral process and the regulated community. In recognition of this fact, EPS provides us with the

<sup>3</sup> These cases are:

RAD 97L-10 (*Citizens for Randy Borow*); RAD 97L-16 (*Republican State Central Committee of South Dakota*); Pre-MUR 347 (*Producers Lloyds Insurance Company*); Pre-MUR 348 (*Peoples National Bank of Commerce*); Pre-MUR 349 (*Trump Plaza*); Pre-MUR 350 (*Citibank, N.A.*); Pre-MUR 355 (*Feingold Senate Committee*); MUR 4494 (*Georgianna Lincoln*);

MUR 4586 (*Friends of Zach Wilson*); MUR 4590 (*Oklahoma Education Association*); MUR 4600 (*San Diego Police Officers Assoc.*); MUR 4612 (*Ceresa Doggett for Congress*); MUR 4615 (*Catholic Democrats for Christian Values*); MUR 4616 (*American Legislative Exchange Council*); MUR 4620 (*Eastern Connecticut Chamber of Commerce*); MUR 4622 (*Telles for Mayor*); MUR 4626 (*Gutknecht for Congress*); MUR 4629 (*Janice Schakowsky*); MUR 4636 (*IBEW Local 505*); MUR 4637 (*Detman for Congress*); MUR 4639 (*Larson for Congress*); MUR 4641 (*Becker for Congress*); MUR 4644 (*Detroit City Council*); MUR 4651 (*Mike Ryan*); MUR 4653 (*Pritzker for Congress*); MUR 4656 (*H. Carroll for Congress*); and MUR 4657 (*Buchanan for President*)

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means to identify those cases which, though earning a higher rating when received, remained unassigned for a significant period due to a lack of staff resources for effective investigation. The utility of commencing an investigation declines as these cases age, until they reach a point when activation of a case would not be an efficient use of the Commission's resources.

We have identified cases that have remained on the Central Enforcement Docket for a sufficient period of time to render them stale. We are recommending the closure of cases based on staleness.<sup>6</sup>

<sup>6</sup> These cases are: MUR 4283 (*Chenoweth for Congress*); MUR 4341 (*Juan Soliz for Congress*); MUR 4402 (*U.S. Representative Helen Chenoweth*); MUR 4435 (*Lincoln for Congress*); MUR 4439 (*UAW*); MUR 4442 (*Lipinski for Congress*); MUR 4444 (*Roberts for Congress*); MUR 4445 (*Randy Tale for Congress*); MUR 4446 (*Clinton/Gore '96 Primary*); MUR 4447 (*Random House, Inc.*); MUR 4449 (*Clinton Administration*); MUR 4453 (*Mike Ward for Congress*); MUR 4454 (*Ralph Nader*); MUR 4459 (*Clinton/Gore '96*); MUR 4474 (*Salvi for Senate*); MUR 4477 (*BBDO-New York*); MUR 4481 (*Diamond Bar Caucus*); MUR 4485 (*Perot '92 Petition Committee*); MUR 4486 (*Bunda for Congress*); MUR 4495 (*Pennsylvania PACE for Federal Elections*); MUR 4496 (*Norwood for Congress*); MUR 4497 (*Pease for Congress*); MUR 4510 (*Stabenow for Congress*); MUR 4511 (*Bob Coffin for Congress*); MUR 4514 (*Friends for Franks*); MUR 4515 (*Clinton Investigative Commission*); MUR 4521 (*VMAL 630 AM*); MUR 4525 (*Senator Larry Pressler*); MUR 4527 (*Brennan for Senate*); MUR 4536 (*Signature Properties, Inc.*); MUR 4540 (*Tim Johnson for SD*); MUR 4542 (*Dan Frisa for Congress*); MUR 4552 (*Charles W. Norwood*); MUR 4554 (*John Byron for Congress*); MUR 4556 (*Jim Wiggins for Congress*); MUR 4561 (*Jay Hoffman for Congress*); MUR 4564 (*National Republican Congressional Committee*); MUR 4567 (*DNC Services Corp.*); MUR 4569 (*McGovern Committee*); RAD 96L-11 (*New York Republican County Committee*); Pre-MUR 343 (*NRSC*); and Pre-MUR 312 (*Joseph Demio*). The *Demio* case involves fundraising related to former Congresswoman Mary Rose Oakar's 1992 congressional campaign. It was held as a courtesy to the Department of Justice pending resolution of a parallel criminal matter in the District Court for the District of Columbia. Mr. Demio recently entered into a plea agreement with the Department of Justice (on which we were not consulted) in which he agreed, among other things, to waive the statute of limitations regarding civil violations of the FECA. Considering the age of the case and activity, the fact that DOJ has not formally referred this matter to us, and the Commission's continuing resource constraints, dismissal is the appropriate disposition of this matter.

We recommend that the Commission exercise its prosecutorial discretion and direct closure of the cases listed below, effective November 17, 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.

**III. RECOMMENDATIONS.**

A. Decline to open a MUR, close the file effective November 17, 1997, and approve the appropriate letters in the following matters:

RAD 96L-11  
RAD 97L-10  
RAD 97L-16

Pre-MUR 312  
Pre-MUR 343  
Pre-MUR 347  
Pre-MUR 348

Pre-MUR 349  
Pre-MUR 350  
Pre-MUR 355

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B. Take no action, close the file effective November 17, 1997, and approve the appropriate letters in the following matters:

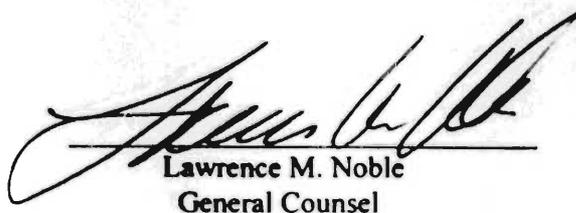
MUR 4283  
MUR 4341  
MUR 4402  
MUR 4435  
MUR 4439  
MUR 4442  
MUR 4444  
MUR 4445  
MUR 4446  
MUR 4447  
MUR 4449  
MUR 4453  
MUR 4454  
MUR 4459  
MUR 4474  
MUR 4477  
MUR 4481  
MUR 4485  
MUR 4486  
  
MUR 4494

MUR 4495  
MUR 4496  
MUR 4497  
MUR 4510  
MUR 4511  
MUR 4514  
MUR 4515  
  
MUR 4521  
MUR 4525  
MUR 4527  
MUR 4536  
MUR 4540  
MUR 4542  
MUR 4552  
MUR 4554  
MUR 4556  
MUR 4561  
  
MUR 4564  
MUR 4567

MUR 4569  
MUR 4586  
MUR 4590  
MUR 4600  
MUR 4612  
MUR 4615  
MUR 4616  
MUR 4620  
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MUR 4639  
MUR 4641  
MUR 4644  
MUR 4651  
MUR 4653  
MUR 4656  
MUR 4657

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11/17/97  
Date

  
Lawrence M. Noble  
General Counsel

Attachment  
Tier 3 Case Summaries

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
Enforcement Priority ) Agenda Document No. X97-77

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 2, 1997, do hereby certify that the Commission took the following actions with respect to Agenda Document No. X97-77:

1. Decided by a vote of 5-0 to

A. Decline to open a MUR, close the file effective December 15, 1997, and approve the appropriate letters in the following matters:

- |                |                 |
|----------------|-----------------|
| 1. RAD 96L-11  | 7. Pre-MUR 347  |
|                | 8. Pre-MUR 348  |
| 3. RAD 97L-10  | 9. Pre-MUR 349  |
| 4. RAD 97L-16  | 10. Pre-MUR 350 |
| 5. Pre-MUR 312 | 11. Pre-MUR 355 |
| 6. Pre-MUR 343 |                 |

B. Take no action, close the file effective December 15, 1997, and approve the appropriate letters in the following matters:

- |             |              |
|-------------|--------------|
| 1. MUR 4283 | 6. MUR 4442  |
| 2. MUR 4341 | 7. MUR 4444  |
| 3. MUR 4402 | 8. MUR 4445  |
| 4. MUR 4435 | 9. MUR 4446  |
| 5. MUR 4439 | 10. MUR 4447 |

(continued)

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Federal Election Commission  
Certification: Agenda Document  
No. X97-77  
December 2, 1997

Page 2

- |     |          |     |          |
|-----|----------|-----|----------|
| 11. | MUR 4449 | 36. | MUR 4556 |
| 12. | MUR 4453 | 37. | MUR 4561 |
| 13. | MUR 4454 | 38. | MUR 4564 |
| 14. | MUR 4459 | 39. | MUR 4567 |
| 15. | MUR 4474 | 40. | MUR 4569 |
| 16. | MUR 4477 | 41. | MUR 4586 |
| 17. | MUR 4481 | 42. | MUR 4590 |
| 18. | MUR 4485 | 43. | MUR 4600 |
| 19. | MUR 4486 | 44. | MUR 4612 |
| 20. | MUR 4494 | 45. | MUR 4615 |
| 21. | MUR 4495 | 46. | MUR 4616 |
| 22. | MUR 4496 | 47. | MUR 4620 |
| 23. | MUR 4497 | 48. | MUR 4622 |
| 24. | MUR 4510 | 49. | MUR 4628 |
| 25. | MUR 4511 | 50. | MUR 4629 |
| 26. | MUR 4514 | 51. | MUR 4636 |
| 27. | MUR 4515 | 52. | MUR 4637 |
| 28. | MUR 4521 | 53. | MUR 4639 |
| 29. | MUR 4525 | 54. | MUR 4641 |
| 30. | MUR 4527 | 55. | MUR 4644 |
| 31. | MUR 4536 | 56. | MUR 4651 |
| 32. | MUR 4540 | 57. | MUR 4653 |
| 33. | MUR 4542 | 58. | MUR 4656 |
| 34. | MUR 4552 | 59. | MUR 4657 |
| 35. | MUR 4554 |     |          |

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

Attest:

12-4-97  
Date

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

27043851570



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 15, 1997

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

David West, Executive Director  
Washington Citizen Action  
100 S. King St. #240  
Seattle, WA 98104

RE: MUR 4445

Dear Mr. West:

On August 26, 1996, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission 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 December 15, 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 Triley  
Supervisory Attorney  
Central Enforcement Docket

27043851571



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 15, 1997

Clifford M. Harrington, Esq.  
Fisher Wayland Cooper Leader & Zaragoza L.L.P.  
2001 Pennsylvania Avenue, NW, Ste. 400  
Washington, DC 20006-1851

RE: MUR 4445  
Fisher Broadcasting, Inc.

Dear Mr. Harrington:

On August 30, 1996, the Federal Election Commission notified your client 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 your client. 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 December 15, 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 H. Boyt on our toll-free number, (800)-424-9530. Our local number is (202) 219-3690.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Andrew Turley".

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

27043851572



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 15, 1997

J. Shannon Sweatte, General Manager  
KVI-AM  
Tower Bldg., Ste. 200  
7th Ave. & Olive Way  
Seattle, WA 98101

RE: MUR 4445

Dear Ms. Sweatte:

On August 30, 1996, 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 KVI-AM. 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 December 15, 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 H. Boyt on our toll-free number, (800)-424-9530. Our local number is (202) 219-3690.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Andrew Turley".

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

27043851573



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 15, 1997

John Carlson c/o  
"The John Carlson Show"  
KVI-AM  
Tower Bldg., Ste. 200  
7th Ave. & Olive Way  
Seattle, WA 98101

RE: MUR 4445

Dear Mr. Carlson:

On August 30, 1996, 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 December 15, 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 H. Boyt on our toll-free number, (800)-424-9530. Our local number is (202) 219-3690.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Andrew Turley".

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

270438515/4



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 15, 1997

Kevin L. Shannon, Treasurer  
Randy Tate for Congress Committee  
P.O. Box 4216  
Federal Way, WA 98063

RE: MUR 4445

Dear Mr. Shannon:

On August 30, 1996, 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 Randy Tate for Congress Committee 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 December 15, 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 H. Boyt on our toll-free number, (800)-424-9530. Our local number is (202) 219-3690.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Andrew Turley".

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

27043851575



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 15, 1997

The Honorable Randy Tate  
5616 99th St. Ct. E.  
Payallup, WA 98373

RE: MUR 4445

Dear Mr. Tate:

On August 30, 1996, 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 December 15, 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 H. Boyd on our toll-free number, (800)-424-9530. Our local number is (202) 219-3690.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Andrew Turley".

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

27043851576



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4445

DATE FILMED 10-24-97 CAMERA NO. 2

CAMERAMAN JMH

7043851577