



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4640

DATE FILMED 7/9/98 CAMERA NO. 4

CAMERAMAN EES

9804389331C

ORIGINAL



REPUBLICAN PARTY OF NEW MEXICO

May 9, 1997

JOHN DENDAHL  
Chairman

BEFORE THE FEDERAL ELECTION COMMISSION

New Mexicans Accion del Pueblo Citizen Action )  
AFL-CIO, AFSCME, and affiliated unions )  
Eric Serna for Congress Committee )  
FEC ID Number C00325944 )

MUR # 4640

MAY 23 1 05 PM '97

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

**COMPLAINT**

The Republican Party of New Mexico, by and through its Chairman, John Dendahl, brings this complaint pursuant to 2 USC § 437g(a)(1). The Republican Party of New Mexico may be reached at 2901 Juan Tabo NE, Suite 116, Albuquerque, NM 87112.

**I. SUMMARY**

New Mexicans Accion del Pueblo Citizen Action -- an organization that does not disclose its activities to the Federal Election Commission or the New Mexico Ethics Administration -- is illegally funding television advertisements that expressly advocate the election and defeat of federal candidates. Although New Mexicans Accion del Pueblo Citizen Action unlawfully conceals the source of its funds, it appears that these ads are in fact financed by national labor unions based in Washington, D.C. Such expenditures are patently unlawful.

**II. FACTS AND DISCUSSION**

A. *New Mexicans Accion del Pueblo Citizen Action's Ad Constitutes Express Advocacy*

New Mexicans Accion del Pueblo Citizen Action is presently airing a television advertisement that urges viewers to consider certain skewed facts about two federal candidates when they "vote." The ad contains clear and undeniable words to express advocacy (see attached transcription). *Buckley v. Valeo*, 424 U.S. 1 (1976). The ad urges viewers to go to the polls -- "vote May 13" -- and calls for no other action. *FEC v. Furgatch*, 807 F.2d 857 (9th Cir.), cert. denied, 484 U.S. 850 (1987). The ad reminds viewers of the date of the federal election and is being aired exclusively in the one district within the nation where a federal election is taking place. This speech began in the week prior to the election and will surely end next Tuesday.

As the Commission is well aware, the use of such express advocacy (1) clearly distinguishes these advertisements from so-called "issue ads" that urge action other than

9 8 0 4 3 8 9 3 3 1 1

voting and (2) triggers multiple federal spending and disclosure laws which New Mexicans Accion del Pueblo Citizen Action has violated.

B. New Mexicans Accion del Pueblo Citizen Action Is Unlawfully Withholding the Source of Its Contributions from the Federal Election Commission

When an organization spends more than \$1,000 to influence a federal election, it becomes a "political committee" and must register with the FEC. 2 USC §§ 431(A), 433(a). Upon information and belief, the television ads being paid for by New Mexicans Accion del Pueblo Citizen Action cost more than \$1,000. These ads attempt to influence a federal election by definition because they contain certain express advocacy and urge viewers to go to the polls and vote for the Democrat. New Mexicans Accion del Pueblo Citizen Action must therefore register with the FEC and disclose the source of funding, but it has chosen to violate the law and has not registered.

C. New Mexicans Accion del Pueblo Citizen Action Is Using Illegal "Soft Money" Funds to Pay for These Ads

New Mexicans Accion del Pueblo Citizen Action's failure to register with the FEC and disclose its contributions is not inadvertent, however. Rather, New Mexicans Accion del Pueblo Citizen Action does not reveal its contributors because they are clearly sources that could not finance these ads themselves. Specifically, news reports suggest that New Mexicans Accion del Pueblo Citizen Action, like its sister Citizen Action organizations, is funded primarily with out-of-state labor union general treasury funds -- dues paid by working men and women to labor union headquarters in Washington, D.C. See "1992 'Reforms' Help Hide Political Cash," *The News Tribune*, Feb. 19, 1997 (Citizen Action receives large contributions from labor groups such as the AFL-CIO). These labor groups and the Serna campaign are attempting indirectly, what they cannot do directly. Such subterfuges do not cure the underlying illegality.

D. New Mexicans Accion del Pueblo Citizen Action Is Unlawfully Failing to Report Its Advertisements to the Commission

Because they contain express advocacy, New Mexicans Accion del Pueblo Citizen Action's ads are deemed either "independent expenditures" or contributions to the Serna campaign. They would be contributions to Mr. Serna if done at his request or with his prior knowledge and approval. 2 USC § 431(17). As contributions, they would be both unlawfully excessive and from prohibited sources. 2 USC §§ 441a(a)(1)(A), 441b. The Commission should certainly determine the role of Mr. Serna's campaign in coordinating these ads.

If independent expenditures, these expenditures would need to be made with federally-permissible funds -- not soft money -- and the expenditures would need to be reported within 24 hours to the FEC and the New Mexico Ethics Administration. 2 USC § 434(c)(2). New Mexicans Accion del Pueblo Citizen Action has not made any disclosures to either the FEC or the Ethics Administration.

9 8 0 4 3 8 9 3 3 1 2

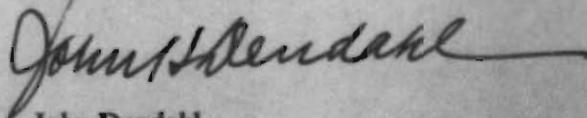
E. New Mexicans Accion del Pueblo Citizen Action's Ads Have Legally-Inufficient Disclaimers.

Advertisements that expressly advocate the election or defeat of a candidate -- such as New Mexicans Accion del Pueblo Citizen Action's ad in question -- must include certain disclaimers. Specifically, such ads must state whether or not they are authorized by the federal candidate on whose behalf they are being run. 2 USC § 441d(a). The New Mexicans Accion del Pueblo Citizen Action ad does not include this basic, legally-required disclaimer and therefore fails in its duty to inform New Mexican voters about the complicity of Eric Serna in this unlawful activity.

**III. PRAYER FOR RELIEF**

The Commission should investigate New Mexicans Accion del Pueblo Citizen Action. This organization is unlawfully using undisclosed, softy-money funds to run advertisements with incomplete disclaimers that are not reported as is required. The Commission is urged to take prompt, meaningful action and other appropriate measures to ensure compliance with the law, to deter further wrongdoing, and to protect voters of New Mexico from this rogue entity's efforts to unlawfully influence their elections.

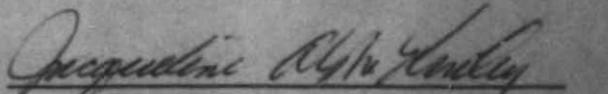
Respectfully Submitted,



John Dendahl  
Chairman  
Republican Party of New Mexico

State of New Mexico    )  
County of Santa Fe    )

Signed and sworn to before me this 20th day of May, 1997.



**NOTARY PUBLIC**  
My commission expires June 2, 1997

98043093313

New Mexicans Accion del Pueblo Citizen Action  
Television Advertisement  
:30

**AD TEXT**

Eric Serna supports federal funding for education and job training

And student loans that help make college affordable for working families.

Bill Redmond says he would eliminate federal funding for education and job training

Abolish the Department of Education and eliminate federal student loans.

Before we vote May 13th -- know the facts.

**AD VIDEO**

*Serna Picture*, "Supports Federal Funding for Education and Job Training"

"Supports funding for student loans"

*Redmond Picture*, "Eliminate funding for education and job training"

"Abolish the Department of Education"  
"Eliminate Student Loans"

*Young girl in classroom raising her hand*

"Paid for by New Mexicans Accion del Pueblo Citizen Action / Deneh Biholni."

9 8 0 4 3 8 9 3 3 1 4



REPUBLICAN PARTY OF NEW MEXICO

JOHN DENDAHL  
Chairman

RESPONSE ADDRESS:  
3101 OLD PUECO TRAIL #693  
SANTA FE, NM 87505  
(505) 982-6136 OR 983-5100

May 30, 1997

BY FACSIMILE -- 202.219.3923

Ms. Alva Smith  
Office of General Counsel  
Federal Election Commission  
Washington, DC

Dear Ms. Smith:

Re: Complaint, MUR # 4640

You inquired as to how one might contact one of the named complainers, New Mexicans Accion del Pueblo Citizen Action. We have the following information:

The television advertisements were placed by Axelrod & Associates  
730 North Franklin  
Chicago, IL 60610

We understand that the following were listed as contacts:  
Nicole King  
202 775 1580 (voice)  
202 296 4054 (fax)

Jane Anne Riedford  
No phone number(s) given

We are attempting to secure one or more videotapes of the advertisements on which our complaint is based, and I will be in touch again as soon as that has been accomplished.

Sincerely,

John Dendahl  
Chairman

MAY 30 5 16 PM '97

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

98043893315



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 2, 1997

John Dendahl, Chairman  
Republican Party of New Mexico  
2901 Juan Tabo, NE, Suite 116  
Albuquerque, NM 87112

RE: MUR 4640

Dear Mr. Dendahl:

This letter acknowledges receipt on May 23, 1997, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended. The respondent(s) will be notified of this complaint within five business 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 notarized and sworn to in the same manner as the original complaint. We have numbered this matter MUR 4640. 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,

A handwritten signature in dark ink, appearing to read "F. Andrew Furley".

F. Andrew Furley  
Supervisory Attorney  
Central Enforcement Docket

Enclosure  
Procedures

9 6 0 4 3 8 9 3 3 1 6



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 2, 1997

Margaret E. McCormick, Associate General Counsel  
AFL-CIO  
815 Sixteenth Street, NW  
Washington, DC 20006

RE: MUR 4640

Dear Ms. McCormick:

The Federal Election Commission received a complaint which indicates that the AFL-CIO 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 4640. Please refer to this number in all future correspondence.

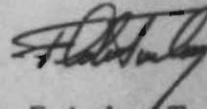
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the AFL-CIO in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted 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.

98043893317

If you have any questions, please contact Alva E. Smith at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Enclosures

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

9  
0  
0  
4  
3  
8  
9  
3  
3  
1  
8



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 2, 1997

Gerald McEntee, President  
American Federation of State, County and  
Municipal Employees  
1625 L Street, NW  
Washington, DC 20036

RE: MUR 4640

Dear Mr. McEntee:

The Federal Election Commission received a complaint which indicates that the American Federation of State, County and Municipal Employees 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 4640. Please refer to this number in all future correspondence.

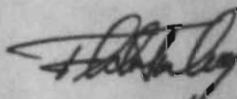
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the American Federation of State, County and Municipal Employees in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. 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.

98043893319

If you have any questions, please contact Alva E. Smith at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Enclosures

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

98004389332C



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

June 2, 1997

John Pound, Treasurer  
Friends of Eric Serna for Congress  
PO Box 8254  
Santa Fe, NM 87504

RE: MUR 4640

Dear Mr. Pound:

The Federal Election Commission received a complaint which indicates that Friends of Eric Serna for Congress ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 4640. 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.

98043893321

If you have any questions, please contact Alva E. Smith at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Enclosures

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

cc: Eric P. Serma

9 8 0 4 3 8 9 3 3 2 2



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 3, 1997

Nicole King  
New Mexicans Accions del Pueblo Citizens Action  
c/o Citizens Action  
1730 Rhode Island Avenue, NW  
Washington, D.C. 20036

RE: MUR 4640

Dear Ms. King:

The Federal Election Commission received a complaint which indicates that you and Citizens 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 4640. Please refer to this number in all future correspondence.

The complaint was not sent to you earlier due to the difficulty in locating a mailing address. Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you and Citizens 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.

*Celebrating the Commission's 20th Anniversary*

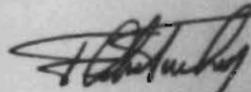
YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

9 8 0 4 3 8 9 3 3 2 3

Nicole King  
Page 2

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Enclosures

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

98043893324

# American Federation of Labor and Congress of Industrial Organizations



815 Sixteenth Street, N.W.  
Washington, D.C. 20006  
(202) 637-5000

**JOHN J. SWEENEY**  
PRESIDENT

**RICHARD L. TRUMKA**  
SECRETARY-TREASURER

**LINDA CHAVEZ-THOMPSON**  
EXECUTIVE VICE PRESIDENT

Edward T. Hanley  
John T. Joyce  
Jay Mazur  
George J. Kourpias  
Michael Sacco  
Gloria T. Johnson  
J. Randolph Babbitt  
Pat Friend  
Sumi Haru  
Leon Lynch  
Arthur Moore  
Jake West  
Martin J. Maddaloni

Wayne E. Glenn  
Morton Bahr  
Lanore Miller  
John N. Sturdivant  
Ron Carey  
Douglas H. Dority  
Clayola Brown  
Michael Goodwin  
Carroll Haynes  
Doug McCarron  
Arturo S. Rodriguez  
Alfred K. Whitehead  
John M. Bowers

Vincent R. Sombrotto  
Robert A. Georgine  
John J. Barry  
Frank Hanley  
Arthur A. Cola  
George F. Becker  
M.A. "Mac" Fleming  
Joe L. Greene  
James LaSala  
Andrew McKenzie  
Robert A. Scardelletti  
Andrew L. Stern  
Sandra Feldman

Gerald W. McEntee  
Gene Upshaw  
Moe Blier  
James J. Norton  
Frank Hurt  
Stephen P. Yokich  
Carolyn Forrest  
Sonny Hall  
William Lucy  
A.L. "Mike" Monroe  
Robert E. Wages  
Edward L. Fire

June 5, 1997

Mr. F. Andrew Turley  
Supervisory Attorney  
Federal Election Commission  
Office of the General Counsel  
Central Enforcement Docket  
999 E Street, N.W.  
Washington, DC 20563

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
JUN 5 3 39 PM '97

RE: MUR 4640

Dear Mr. Turley:

I hereby request an extension of time in which to file a response to the complaint on behalf of the AFL-CIO in the above-referenced matter. I will be out of the country for the next two weeks and will not be able to discuss this matter with my client or begin to prepare a response until I return on June 23.

The AFL-CIO received this complaint in this matter on June 3, 1997. I am requesting an extension of 30 days from June 3, 1997 to and including July 18, 1997.

Please let me know as soon as possible if this request is granted.

Sincerely,

*Margaret E. McCormick*  
Margaret E. McCormick

MEC/aab

96043893325



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 9, 1997

Margaret E. McCormick, Associate General Counsel  
AFL-CIO  
815 Sixteenth Street, N.W.  
Washington, D.C. 20006

RE: MUR 4640

Dear Ms. McCormick:

This is in response to your letter dated June 5, 1997, which we received on that day, requesting a 30 day extension 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 July 18, 1997.

If you have any questions, please contact me on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400.

Sincerely,

Alva E. Smith, Paralegal  
Central Enforcement Docket

98043893326



REPUBLICAN PARTY OF NEW MEXICO

JOHN DENDAHL  
Chairman

June 5, 1997

Ms. Alva Smith  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 24063

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
JUN 6 10 05 AM '97

MUR 4640

Dear Ms. Smith:

Enclosed are (1) a copy of the television ad which was run by New Mexicans Accion del Pueblo Citizen Action and (2) a copy of a letter I sent to both the Democrat State Party Chair and Thomas Carroll, campaign manager for the Eric Serna for Congress Committee.

If you have any questions regarding either of these items, please contact me at (505) 982-6136.

Sincerely,

John Dendahl  
Chairman

98043893327



REPUBLICAN PARTY OF NEW MEXICO

JOHN DENDAHL  
Chairman

June 3, 1997

Mr. Thomas Carroll  
Eric Serna for Congress Committee  
5 Jornada Loop  
Santa Fe, NM 87505

Mr. Ray Sena  
Democratic Party of New Mexico  
1600 Lena  
Santa Fe, NM 87505

Dear Mr. Carroll and Mr. Sena:

The Republican Party of New Mexico has filed with the Federal Election Commission ("FEC") complaints alleging violations of federal law in connection with Mr. Serna's recent campaign for Congress. Apparent violations we allege include certain expenditures made by the Democratic Party of New Mexico ("DPNM") and by something called New Mexicans Acción del Pueblo Citizen Action, all in support of Mr. Serna's election.

The purpose of this letter is to ask that all of Mr. Serna's campaign records, as well as those records of the Democratic Party of New Mexico that may be related directly or indirectly to Mr. Serna's candidacy and campaign (including those the DPNM may claim to have been party-building or issue speech), be carefully preserved for such later review as may be required in the disposition of these FEC complaints. A non-exhaustive list of what we mean by "records" includes accounting records, correspondence, memoranda, telephone logs and message slips, advertising copy, telecommunications scripts, campaign finance reports and data storage media.

Very truly yours,

John Dendahl  
Chairman

cc: The Hon. Eric Serna

9 8 0 4 3 8 9 3 3 2 8



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 11, 1997

John Dendahl, Chairman  
Republican Party of New Mexico  
P.O. Box 36900  
Albuquerque, NM 87176

RE: MUR 4640

Dear Mr. Dendahl:

This letter acknowledges receipt on June 6, 1997, of the supplement to the complaint you filed on May 23, 1997. The respondent(s) will be sent a copy of the supplement. You will be notified as soon as the Federal Election Commission takes final action on your complaint.

Sincerely,

*F. Andrew Turley (t28)*

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

98043893329



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 11, 1997

Nicole King  
New Mexicans Accions del Pueblo Citizens Action  
c/o Citizens Action  
1730 Rhode Island Avenue, N.W.  
Washington, D.C. 20036

RE: MUR 4640

Dear Ms. King:

On June 3, 1997, you were notified that the Federal Election Commission received a complaint from John Dendahl alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On June 6, 1996, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400.

Sincerely,

*F. Andrew Turley* <sup>128</sup>

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Enclosures

*Celebrating the Commission's 20th Anniversary*

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

9804389333C



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 11, 1997

Margaret E. McCormick, Associate General Counsel  
AFL-CIO  
815 Sixteenth Street, N.W.  
Washington, D.C. 20006

RE: MUR 4640  
AFL-CIO

Dear Ms. McCormick:

On June 2, 1997, your client was notified that the Federal Election Commission received a complaint from John Dendahl alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your client was given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On June 6, 1996, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400.

Sincerely,

*F. Andrew Turley (FES)*

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Enclosures

*Celebrating the Commission's 20th Anniversary*

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

98043893331



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 11, 1997

Gerald McEntee, President  
American Federation of State, County and  
Municipal Employees  
1625 L Street, N.W.  
Washington, D.C. 20036

RE: MUR 4640

Dear Mr. McEntee:

On June 2, 1997, you were notified that the Federal Election Commission received a complaint from John Dendahl alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On June 6, 1996, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400.

Sincerely,

*F. Andrew Turley* (428)

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Enclosures

*Celebrating the Commission's 20th Anniversary*

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

98043893332



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 11, 1997

John Pound, Treasurer  
Friends of Eric Serna for Congress  
PO Box 8254  
Santa Fe, NM 87504

RE: MUR 4640

Dear Mr. Pound:

On June 2, 1997, you were notified that the Federal Election Commission received a complaint from John Dendahl alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On June 6, 1996, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400.

Sincerely,

*F. Andrew Turley* (fes)

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Enclosures

*Celebrating the Commission's 20th Anniversary*

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

930438933333

OLDAKER, RYAN, PHILLIPS & UTRECHT

ATTORNEYS AT LAW

818 CONNECTICUT AVENUE, N.W.

SUITE 1100

WASHINGTON, D.C. 20006

(202) 728-1010

FACSIMILE (202) 728-4044

Via Facsimile and Messenger

June 16, 1997

Ms. Alva E. Smith  
Federal Election Commission  
Office of General Counsel  
999 E Street, NW  
Washington, DC 20463

RE: MUR 4640

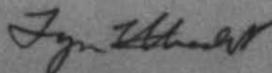
Dear Ms. Smith:

I am writing on behalf of the to request an extension of time to respond to MUR 4640. Due to numerous other matters facing counsel at this time, we are requesting a twenty (20) day extension, which would make the response due date July 10, 1997. I would appreciate your assistance in this matter.

I am also requesting that the Federal Election Commission ("FEC") change the name of the representative of the respondent, New Mexicans Accions del Pueblo Citizens Action. The FEC named Nicole King; however, Nicole King does not work at New Mexicans Accions del Pueblo Citizens Action. The representative of the complaint should be Velia Silva, who is the Executive Director at New Mexicans Accions del Pueblo Citizens Action.

If you have any further questions, or need more information, please contact me at (202) 728-1010.

Sincerely,

  
Lyn Utrecht

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
JUN 16 4 49 PM '97

98043334

STATEMENT OF DESIGNATION OF COUNSEL

JUN 16 4 49 PM '97

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

MUR: 4640  
Name of Counsel: Lyn Utrecht  
Address: Oldaker, Ryan, Phillips & Utrecht  
818 Connecticut Avenue, N.W.  
Suite 1100  
Washington, D.C. 20006  
Telephone: (202) 728-1010

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

6/10/97  
Date

[Signature]  
Signature

Name: Nicole King  
Address: 1730 Rhode Island Avenue, NW  
Washington, DC 20036  
Business Phone: (202) 775-1580

980433335



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Velia Silva, Executive Director  
New Mexicans Accions del Pueblo Citizens Action  
620 Roma N.W.  
Albuquerque, NM 87102

June 30, 1997

RE: MUR 4640

Dear Mr. Silva:

The Federal Election Commission received a complaint and two supplements to the complaint which indicates that New Mexicans Accions del Pueblo Citizens Action and Velia Silva may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of this information is enclosed. We have numbered this matter MUR 4640. Please refer to this number in all future correspondence.

The complaint was not sent to you earlier due to difficulty in obtaining a mailing address. Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against New Mexicans Accions del Pueblo Citizens Action and Velia Silva 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.

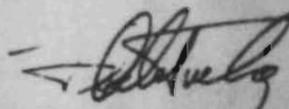
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed 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.

98043893336

Velia Silva  
Page 2

If you have any questions, please contact Aiva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Enclosures

1. Complaint
2. Two Supplements to the Complaint
3. Procedures
4. Designation of Counsel Statement

98043893337



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 30, 1997

Lyn Utrecht, Esquire  
OLDAKER, RYAN, PHILLIPS & UTRECHT  
818 Connecticut Avenue, NW, Suite 1100  
Washington, D.C. 20006

RE: MUR 4640  
Nicole King

Dear Ms. Utrecht:

Thank you for your letter dated June 16, 1997, which we received on that day, requesting an extension until July 10, 1997, to respond to the complaint filed in the above-noted matter and requesting that the representative of the respondent be changed from Nicole King to Velia Silva, Executive Director of New Mexicans Accions del Pueblo Citizens Action.

Based upon the information presently available to us, Nicole King and Citizens Action are proper respondents in this matter. Accordingly, we cannot fulfill your request to replace respondent Nicole King with Velia Silva. After considering the circumstances presented in your letter regarding your extension of time request and pursuant to your June 26, 1997, conversation with Andrew Turley, the Office of the General Counsel has granted the extension. Accordingly, your response is due by the close of business on July 17, 1997.

If you are representing other respondents in this matter, please have the enclosed Statement of Designation of Counsel completed and submitted to me as soon as possible.

If you have any questions, please contact me on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400.

Sincerely,

Alva E. Smith, Paralegal  
Central Enforcement Docket

Enclosure

*Celebrating the Commission's 20th Anniversary*

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

98043338



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 30, 1997

John Dendahl, Chairman  
Republican Party of New Mexico  
P.O. Box 36900  
Albuquerque, NM 87176

RE: MUR 4640

Dear Mr. Dendahl:

This letter acknowledges receipt on May 30, 1997, of the supplement to the complaint you filed on May 23, 1997. The respondent(s) will be sent copies of the supplement. You will be notified as soon as the Federal Election Commission takes final action on your complaint.

Sincerely,

*F. Andrew Turley* (123)

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

980433893339

*Celebrating the Commission's 20th Anniversary*

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 30, 1997

Lyn Utrecht, Esquire  
OLDAKER, RYAN, PHILLIPS & UTRECHT  
818 Connecticut Avenue, N.W., Suite 1100  
Washington, D.C. 20006

RE: MUR 4640  
Nicole King

Dear Ms. Utrecht:

On June 3, 1997, your client was notified that the Federal Election Commission received a complaint from John Dendahl alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time your client was given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On May 30, 1997, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400.

Sincerely,

*F. Andrew Turley (yes)*

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Enclosure

*Celebrating the Commission's 20th Anniversary*

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

9804389334C



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 30, 1997

Nicole King  
Citizens Action  
1730 Rhode Island Avenue, N.W.  
Washington, D.C. 20036

RE: MUR 4640  
Citizens Action

Dear Ms. King:

On June 3, 1997, you were notified that the Federal Election Commission received a complaint from John Dendahl alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On May 30, 1997, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400.

Sincerely,

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Enclosure

98043893341



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 30, 1997

Gerald McEntee, President  
American Federal of State, County and  
Municipal Employees  
1625 L Street, N.W.  
Washington, D.C. 20036

RE: MUR 4640

Dear Mr. King:

On June 2, 1997, you were notified that the Federal Election Commission received a complaint from John Dendahl alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On May 30, 1997, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400.

Sincerely,

*F. Andrew Turley (#28)*

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Enclosure

96043893342



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 30, 1997

John Pound, Treasurer  
Friends of Eric Serma for Congress  
P.O. Box 8254  
Santa Fe, NM 87504

RE: MUR 4640

Dear Mr. Pound:

On June 2, 1997, you were notified that the Federal Election Commission received a complaint from John Dendahl alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On May 30, 1997, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400.

Sincerely,

*F. Andrew Turley (x28)*

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Enclosure

*Celebrating the Commission's 20th Anniversary*

YESTERDAY, TODAY AND TOMORROW  
DEDICATED TO KEEPING THE PUBLIC INFORMED

98043893343



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 30, 1997

Margaret E. McCormick, Associate General Counsel  
AFL-CIO  
815 Sixteenth Street, N.W.  
Washington, D.C. 20006

RE: MUR 4640  
AFL-CIO

Dear Ms. McCormick:

On June 2, 1997, you were notified that the Federal Election Commission received a complaint from John Dendahl alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. At that time you were given a copy of the complaint and informed that a response to the complaint should be submitted within 15 days of receipt of the notification.

On May 30, 1997, the Commission received additional information from the complainant pertaining to the allegations in the complaint. Enclosed is a copy of this additional information.

If you have any questions, please contact Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 219-3400.

Sincerely,

*F. Andrew Turley* (ATS)

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Enclosure

98043693344

OLDAKER, RYAN, PHILLIPS & UTRECHT

ATTORNEYS AT LAW

818 CONNECTICUT AVENUE, N.W.  
SUITE 1100  
WASHINGTON, D.C. 20006

(202) 728-1010

FACSIMILE (202) 728-4044

July 17, 1997

RECEIVED  
FEDERAL ELECTION  
COMMISSION MAIL ROOM

JUL 17 4 43 PM '97

Ms. Alva E. Smith  
Federal Election Commission  
Office of General Counsel  
999 E Street, NW  
Washington, DC 20463

RE: MUR 4640  
Nicole King  
Velia Silva

Dear Ms. Smith:

New Mexicans Accion del Pueblo Citizen Action ("New Mexico Citizen Action"), hereby submit this response to the complaint in the afore-mentioned matter served on New Mexico Citizen Action on June 5, 1997. We request that the Federal Election Commission ("FEC" or "the Commission") take no further action in this matter.

- I. The respondent was not notified of the complaint within five (5) days after the Commission received notification from the complainant, and thus, the complaint is defective under 2 U.S.C. § 437(g)(a)(1).

2 U.S.C. § 437(g)(a)(1) specifically provides that within five days of receiving a complaint, the Commission shall notify any person named in the complaint of the alleged violation. Even though the Commission received the complaint on May 23, 1997, the Commission contends that it could not notify the respondent until June 5, 1997 because it could not locate the correct mailing address. Since the respondent was not notified within the mandatory five day period and the complainant failed adequately to identify the respondent,<sup>1</sup> this complaint is defective and thus, the complaint should be dismissed.

<sup>1</sup> New Mexicans Accion del Pueblo Citizen Action previously requested that the FEC dismiss Nicole King as the representative for the respondent because she does not work at New Mexicans Accion del Pueblo Citizen Action. The proper representative should be Velia Silva, who is the Executive Director at New Mexicans Accion del Pueblo Citizen Action.

98043893345

II. New Mexicans Accion del Pueblo Citizen Action's advertisements do not constitute express advocacy, as defined in 11 C.F.R. § 100.22.

The Republican Party alleges that the television ads placed by New Mexicans Accion del Pueblo Citizen Action constituted express advocacy as defined in 11 C.F.R. § 100.22 (1997). The Republican Party completely ignores the fact that these ads are permissible expenditures under the corporate regulations and constitute electronic voter guides. These electronic voter guides were prepared in accordance with 11 C.F.R. § 114.4(b)(5). The voter guides included two or more candidates' positions on campaign issues and there was no contact or coordination with either candidate. All information was accessed from publicly available information, such as internet sites, campaign literature and the Republican platform.

The complaint alleges that the television ads "contain certain express advocacy and urge viewers to go to the polls and vote for the Democrat." However, the ads do not constitute express advocacy. The ads do not tell the viewer to vote for or against a specific candidate. The ads state the position of Democratic candidate Eric Serna and Republican candidate Bill Redmond with regard to federal funding for education and job training. The ads then state: "Before we vote May 13th--know the facts." This ad focuses on the issues and is merely a permissible corporate communication which distinguishes the two candidate's positions so that the voter may make an informed decision on election day. This type of corporate communication is specifically permitted under 11 C.F.R. § 114.4.

The basis of the complaint filed by the Republican Party of New Mexico ("Republican Party") is that the ads constitute express advocacy, and thus, are subject to the rules and regulations of the Federal Election Campaign Act ("FECA" or "the Act"). However, the Republican Party completely ignores the corporate regulations which render these expenditures permissible. Because these advertisements do not contain express advocacy, there is no factual or legal basis for any of the other allegations made by the Republican Party. Under the FEC regulations, these ads were permissible corporate communications and do not require reporting to the FEC.

A. New Mexicans Accion del Pueblo Citizen Action did not unlawfully withhold the source of its contributions from the Commission.

The Republican Party alleges that New Mexico Citizen Action unlawfully withheld the source of its contributions from the Commission. In its complaint, the Republican Party also alleges that since New Mexico Citizen Action expended more than \$1,000 to influence federal elections, it ought to register and report as a political committee to the FEC. The complainant completely disregards the corporate regulations governing the activities of New Mexico Citizen Action which specifically allow it to prepare and distribute electronic voter guides for the general public. New Mexico Citizen Action prepared and distributed these voter guides in accordance with § 114.4(b)(5)(i). There is no limit on the amount of money that may be spent to prepare voter guides, and

9 8 0 4 3 3 9 3 3 4 6

thus, it is inconsequential whether New Mexico Citizen Action spent more or less than \$1,000. Under § 114.4, New Mexico Citizen Action's communications to the general public are exempt from the FEC's registration and reporting requirements for political committees, and thus, the source of its contributions for this permissible corporate communication do not need to be reported to the FEC.

B. New Mexicans Accion del Pueblo Citizen Action did not use illegal "soft money" funds to pay for these ads.

The Republican Party alleges that New Mexico Citizen Action used illegal "soft money" to pay for these ads. Corporations are specifically allowed under the FEC corporate regulations to use general treasury funds to prepare and distribute voter guides to the general public. 11 C.F.R. § 114.4(b)(5). The complainant not only ignores this governing regulation but presents no evidence to support its accusation that the money comes from an impermissible source. Based solely upon a quote by Tom McCabe, the director of the Building Industry Association of Washington, the Republican Party asserts that New Mexico Citizen Action is funded by out-of-state labor union general treasury funds. 1992 "Reforms" Help Hide Political Cash, THE NEWS TRIB., Feb. 19, 1997, at B1. There is no factual or legal basis presented by either the Republican Party or by the Building Industry Association to support this conclusion. Regardless, under the corporate regulations, a non-profit corporation may receive labor union general treasury funds to prepare and distribute voter guides to the general public.

C. New Mexicans Accion del Pueblo Citizen Action did not unlawfully fail to report its advertisements to the Commission.

The Republican Party alleges that Citizen Action failed to report its advertisements to the Commission. Under the corporate regulations, New Mexico Citizen Action had no obligation to report its advertisements to the Commission. The Republican Party appears to be confusing those expenditures which are permissible under the corporate regulations with independent expenditures. Alternatively, the Republican Party contends that the advertisements could be considered contributions to the campaign. However, the complainant completely disregards the fact that voter guides are permissible corporate communications and according to the regulations, the funds expended for the preparation and distribution of these advertisements do not need to be reported to the FEC.

D. New Mexicans Accion del Pueblo Citizen Action's ads were permissible corporate communications and did not require a disclaimer.

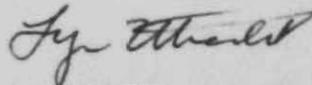
The Republican Party alleges that the ads did not have legally sufficient disclaimers. However, New Mexico Citizen Action's corporate communications were prepared and distributed in accordance with 11 C.F.R. § 114.4. The complainant also suggests that New Mexico Citizen Action failed to make known some sort of coordination between New Mexico Citizen Action and candidate Eric Serna. However,

98043093347

the complainant offers no evidence of any coordination whatsoever between New Mexico Citizen Action and the candidate. New Mexico Citizen Action prepared and distributed these electronic voter guides in accordance with the FEC corporate regulations and included the proper disclaimer.

The voter guides prepared and distributed by New Mexico Citizen Action were in full compliance with the Act and the Commission's regulations. These voter guides did not constitute express advocacy, and thus, they were a permissible corporate communication to the general public. As previously explained, these voter guides were not coordinated with a candidate, candidate's committee, or an agent of the committee. Instead, the complainant makes unsupported allegations that the advertisements were coordinated, without offering any factual basis to support its claims. No evidence whatsoever was offered to support the allegation that any part of the Act was violated. Thus, there is no reason for the Commission to believe that New Mexicans Accion del Pueblo Citizen Action violated any provision of the Act. As such, the Commission should close this matter.

Sincerely,



Lyn Utrecht

98043893348

**STATEMENT OF DESIGNATION OF COUNSEL**

MUR 4640

NAME OF COUNSEL: Lyn Utrecht

FIRM: Oldaker, Ryan, Phillips & Utrecht

ADDRESS: 818 Connecticut Avenue, NW

Suite 1100

Washington, DC 20006

TELEPHONE: (202 ) 728-1010

FAX: (202 ) 728-4044

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.

06/29/97

Date

Velis Silva  
Signature

RESPONDENT'S NAME: Velis Silva

ADDRESS: 620 Roma N.W.

Albuquerque, New Mexico 87102

TELEPHONE: HOME (505 ) 243-7075

BUSINESS (505 ) 243-5929

98043893349

**Herrera, Long & Pound, P.A.**

Attorneys at Law

Judith C. Herrera  
Nancy R. Long  
John B. Pound  
Eugene I. Zamora

August 7, 1997

VIA FACSIMILE (202) 219-3923  
and FIRST CLASS MAIL

F. Andrew Turley, Esq.  
Supervisory Attorney  
Central Enforcement Docket  
Federal Election Commission  
Washington, D.C. 20463

Re: MUR 4640

Dear Mr. Turley:

I am the Treasurer of Friends of Eric Serna for Congress here in New Mexico.

It is with some embarrassment that I must tell you that I only saw your letters in reference to MUR 4640 yesterday, August 6. When the Serna campaign effectively shut down, there was one staff member left, and she had possession of the key to the campaign's post office box here in Santa Fe. Apparently, she fell out of the habit of going to the post office and checking the mail. The bottom line, I am afraid, is that no one went to the post office box until Mr. Serna himself did a couple of days ago, when he found your letters of June 2 and June 11 in the box.

The fault is ours and not yours. This is not an excuse--it is an explanation.

Obviously, I want to respond in detail to these matters. Could I ask you to give us an extension of time, until August 21, to respond

I apologize for this. Please be assured that we take these things seriously and plan to give your office a complete response.

Yours very truly,

HERRERA, LONG & POUND, P.A.

*John B. Pound*  
JOHN B. POUND

jbp/kb

cc: Alva E. Smith (via fax 212/219-3923)

AUG 12 12 51 PM '97  
FEDERAL ELECTION COMMISSION  
WASHINGTON, DC

980433335C

# Herrera, Long & Pound, P.A.

Attorneys at Law

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

AUG 25 11 47 AM '97

Judith C. Herrem  
Nancy R. Long  
John B. Pound  
Eugene I. Zamora

August 20, 1997

F. Andrew Turley, Esq.  
Supervisory Attorney  
Central Enforcement Docket  
Federal Election Commission  
Washington, D.C. 20463

Re: MUR 4640

Dear Mr. Turley:

This letter is the Eric Serna for Congress Committee's response to the complaint in which New Mexicans Accion del Pueblo Citizen Action, the AFL-CIO, AFSCME and affiliated unions, and the Serna campaign are named as respondents. I served as Treasurer for the Serna campaign.

According to the information supplied by Mr. Dendahl, the text of the television ad in question focuses on federal funding for education and job training and student loans. The sponsor of the ad, "New Mexicans Accion del Pueblo Citizen Action", clearly favors federal funding for education and job training and student loans.<sup>1</sup> It is equally apparent from the text of the ad that the sponsor believes that the two candidates for Congress have taken differing positions on these issues. People who view the ads come away with the knowledge that Mr. Serna supports federal funding for education and job training and student loans, and that Mr. Redmond does not. It is fair to say that the sponsor wants all voters who support federal funding for education and job training and student loans to know this about the candidates prior to election day.

The focus of the ad is on the specifically identified issues. The point of the ad, as with any issue-oriented advertisement, is to urge people who share the sponsor's concern about education, job training and student loans to cast their votes in such a way as to increase the likelihood that the desired programs would be created or preserved. The only way to do this is to educate the public about the positions taken by the candidates in connection with these matters.

---

<sup>1</sup>Not that it really matters, but if the name of the sponsor really was "New Mexicans Accion del Pueblo Citizen Action" that was a strange name. In Spanish, "Accion del Pueblo" basically means "citizen action".

9 8 0 4 3 8 9 3 3 5 1

F. Andrew Turley, Esq.  
August 20, 1997  
Page Two

In 1994, an organization which I assumed was the National Rifle Association sponsored ads on television here in New Mexico in connection with a contested campaign for the United States Senate. In the ad, Charlton Heston raised the issue of gun control and chastised one of the candidates for the office by name for falling on the wrong side of that issue. It was apparent to anyone viewing the ad who the NRA and Mr. Heston hoped would win the election. Some voters who viewed the ad may not have known what position the candidates had taken on the issue of gun control. The ad was thus educational in that sense. The overall effect of the ad was to articulate the position of the NRA on an issue to which it attributed importance. I do not know if the Charlton Heston ad was sponsored by the NRA or an organization essentially created by the NRA. I do not know if the sponsor of the ad made reports to the Federal Election Commission. I assume it did not, because it seems clear that such reporting is not required. I would be stunned if the Republican candidate for the Senate reported the monetary value of the Charlton Heston ad as a contribution to his campaign.

Mentioning the names of candidates in an issue-oriented ad does not turn the ad into express advocacy. If it did, the educational purpose behind such ads would be lost. Any group of people interested in a given issue, whether it be job training or gun control, has the absolute constitutional right to broadcast its message.

We know of no law, or of any interpretation of law, which says that the constitution's protection of issue advocacy somehow breaks down in a special election. The sponsor's interest in getting its message out to the voters is equally strong, and just as fully protected, whether there are multiple offices to be filled or just one.

I have spoken with Mr. Serna and Tom Carroll, who managed Mr. Serna's campaign. While they knew that an organization supported with union money planned to run television ads focusing on issues such as job training and student loans, they did not ask that the ads be run or have anything to do with the decision to run them. The campaign had no input on the contents of the ads or any of the arrangements as to when or where the ads would be run. You can reach Mr. Serna at his office at the State Corporation Commission, telephone number (505) 827-4529. You can reach Mr. Carroll at his office, at Daniels Insurance, Inc., telephone number (505) 982-4302.

The Serna campaign was interested in having Mr. Serna elected to Congress. The sponsor of the ads in question was interested in putting education, job training and student loans on the public agenda. What Mr. Dendahl is suggesting is that the Serna campaign should have monitored the publications of various interest groups

2 0 0 4 3 8 9 3 3 5 2

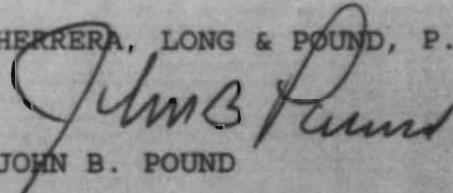
F. Andrew Turley, Esq.  
August 20, 1997  
Page Three

whose views on particular issues coincided with Mr. Serna's. He suggests that the Serna campaign then should somehow have obtained information about the amount of money spent by such interest groups in getting out their respective messages and reported all of this to the Federal Election Commission as contributions. Mr. Dendahl's thesis is ridiculous. The complaint should be dismissed.

Please feel free to be in touch with me should you have any questions. We apologize again for letting your inquiry sit unopened in our post office box all those weeks.

Yours very truly,

HERRERA, LONG & POUND, P.A.



JOHN B. POUND

jbp/kb

cc: Mr. Eric Serna

90043893353

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
WASHINGTON

BEFORE THE FEDERAL ELECTION COMMISSION

MAY 22 3 34 PM '98

In the Matter of \_\_\_\_\_ )

)  
)  
)  
)  
)

CASE CLOSURES UNDER  
ENFORCEMENT PRIORITY

GENERAL COUNSEL'S REPORT

**SENSITIVE**

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.

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 cases permits the

Commission to focus its limited resources on more important cases presently

98043893354

pending before it. Based upon this review, we have identified 14 cases that do not warrant further action relative to other pending matters.<sup>1</sup> The attachment to this report contains a factual summary 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 means to identify those cases which 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.

<sup>1</sup> These cases are: Pre-MUR 360 (*First National Bank of Wheaton, IL*); Pre-MUR 361 (*Teresa Isaac for Congress*); MUR 4663 (*Rodriguez for Congress*); MUR 4698 (*Mayor Louis Bencardino*); MUR 4699 (*Warren County Democratic Committee*); MUR 4705 (*Fox for Congress*); MUR 4706 (*Carl Lindner*); MUR 4712 (*Fox for Congress*); MUR 4714 (*Mary Jane Garcia for Congress*); MUR 4717 (*Hostettler for Congress*); MUR 4718 (*Ozley for Congress*); MUR 4723 (*Oscar H. Flores*); MUR 4724 (*Feinberg for Congress*); and MUR 4727 (*Madison Magazine*).

98043893355

We have identified cases that have remained on the Central Enforcement Docket for a sufficient period of time to render them stale. We recommend that these cases be closed.<sup>3</sup>

98043893356

We recommend that the Commission exercise its prosecutorial discretion and direct closure of the cases listed below, effective June 3, 1998. 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.

<sup>3</sup> These cases are: MUR 4539 (*Sallie Mae Student Loan*); MUR 4543 (*Besicorp*); MUR 4625 (*Hinojosa for Congress*); MUR 4640 (*New Mexicans Accion del Pueblo Citizen Action*); RAD 97L-02 (*Cooksey for Congress*); RAD 97L-03 (*Maxfield for Congress*); RAD 97NF-03 (*Dan Hansen for Congress*); RAD 97NF-08 (*Congressional Accountability PAC*); RAD 97NF-16 (*America's Fund*); 97NF-18 (*Faith, Family & Freedom PAC*); and 97NF-19 (*Pro-Hispanic PAC*).

III. RECOMMENDATIONS.

A. Decline to open a MUR, close the file effective June 3, 1998, and approve the appropriate letters in the following matters

RAD 97L-02  
RAD 97L-03  
RAD 97NF-03

RAD 97NF-08  
RAD 97NF-16  
RAD 97NF-18

RAD 97NF-19  
Pre-MUR 360  
Pre-MUR 361

B. Take no action, close the file effective June 3, 1998, and approve the appropriate letters in the following matters:

MUR 4539  
MUR 4543  
MUR 4625  
MUR 4640  
MUR 4663

MUR 4698  
MUR 4699  
MUR 4705  
MUR 4706  
MUR 4712  
MUR 4714  
MUR 4717

MUR 4718  
MUR 4723  
MUR 4724  
MUR 4727

5/22/98  
Date

LM Noble (LNL)  
Lawrence M. Noble  
General Counsel

9  
8  
6  
4  
3  
8  
9  
3  
3  
5  
7

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
Case Closures Under ) Agenda Document No. X98-31  
Enforcement Priority )

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 9, 1998, do hereby certify that the Commission took the following actions with respect to Agenda Document No. X98-31:

1. Decided by a vote of 5-0 to

A. Decline to open a MUR, close the file effective June 15, 1998, and approve the appropriate letters in the following matters:

- |                |                |
|----------------|----------------|
| 1. RAD 97L-02  | 6. RAD 97NF-18 |
| 2. RAD 97L-03  | 7. RAD 97NF-19 |
| 3. RAD 97NF-03 | 8. Pre-MUR 360 |
| 4. RAD 97NF-08 | 9. Pre-MUR 361 |
| 5. RAD 97NF-16 |                |

(continued)

98043893358

B. Take no action, close the file effective June 15, 1998 and approve the appropriate letters in the following matters:

- |             |              |
|-------------|--------------|
| 1. MUR 4539 | 9. MUR 4706  |
| 2. MUR 4543 | 10. MUR 4712 |
| 3. MUR 4625 | 11. MUR 4714 |
| 4. MUR 4640 | 12. MUR 4717 |
| 5. MUR 4663 | 13. MUR 4718 |
| 6. MUR 4698 | 14. MUR 4723 |
| 7. MUR 4699 | 15. MUR 4724 |
| 8. MUR 4705 | 16. MUR 4727 |

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

Attest:

6-10-98  
Date

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

98043893359



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 16, 1998

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. John Dendahl, Chairman  
Republican Party of New Mexico  
2901 Juan Tabo, NE, Suite 116  
Albuquerque, NM 87112

RE: MUR 4640

Dear Mr. Dendahl:

On May 23, 1997, 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 June 15, 1998. 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

9804389336C



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 16, 1998

Mr. Gerald McEntee, President  
American Federation of State, County and  
Municipal Employees  
1625 L Street, NW  
Washington, D.C. 20036

RE: MUR 4640

Dear Mr. McEntee:

On June 2, 1997, 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 American Federation of State, County and Municipal Employees. 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 the matter on June 15, 1998.

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 Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 694-1650.

Sincerely,

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

98043893361



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 16, 1998

Ms. Velia Silva, Executive Director  
New Mexicans Accions del Pueblo Citizens Action  
620 Roma N.M.  
Albuquerque, N.M. 87102

RE: MUR 4640  
New Mexicans Accions del Pueblo Citizens Action

Dear Ms. Silva:

On June 30, 1998, 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 New Mexicans Accions del Pueblo Citizens 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 the matter on June 15, 1998.

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 Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 694-1650.

Sincerely,

F. Andrew Tuttle  
Supervisory Attorney  
Central Enforcement Docket

98043893362



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 16, 1998

Ms. Nicole King  
Citizens Action  
1730 Rhode Island Avenue, N.W.  
Washington, D.C. 20036

RE: MUR 4640  
Citizens Action

Dear Ms. King:

On June 3, 1997, 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 Citizens 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 the matter on June 15, 1998.

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 Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 694-1650.

Sincerely,

F. Andrew Tarley  
Supervisory Attorney  
Central Enforcement Docket

9 8 0 4 3 8 9 3 3 6 3



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 16, 1998

Mr. Larry Gold, Associate General Counsel  
AFL-CIO  
815 Sixteenth Street, NW  
Washington, D.C. 20006

RE: MUR 4640  
AFL-CIO

Dear Mr. Gold:

On June 2, 1997, the Federal Election Commission notified Ms. Margaret E. McCormick 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 AFL-CIO. 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 the matter on June 15, 1998.

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 Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 694-1650.

Sincerely,

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

9 8 0 4 3 8 9 3 3 6 4



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 16, 1998

Mr. John Pound, Treasurer  
Friends of Eric Serna for Congress  
P.O. Box 8254  
Santa Fe, NM 87504

RE: MUR 4640

Dear Mr. Pound:

On June 2, 1998, 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 Friends of Eric Serna for Congress 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 the matter on June 15, 1998.

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 Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 694-1650.

Sincerely,

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

9 8 0 4 3 8 9 3 3 6 5



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 16, 1998

Ms. Lyn Utrecht, Esquire  
Oldaker, Ryan, Phillips & Utrecht  
818 Connecticut Avenue, NW, Suite 1100  
Washington, D.C. 20006

RE: MUR 4640  
Nicole King and Velia Silva

Dear Ms. Utrecht:

On June 3, 1997 and June 30, 1997, the Federal Election Commission notified your clients, Nicole King and Velia Silva, respectively, 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 clients. 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 the matter on June 15, 1998.

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 Alva E. Smith on our toll-free telephone number, (800) 424-9530. Our local telephone number is (202) 694-1650.

Sincerely,

F. Andrew Turley  
Supervisory Attorney  
Central Enforcement Docket

Celebrating the Commission's 30th Anniversary

VENTURE IN TODAY AND TOMORROW  
PLEASE RECYCLE RESPONSIBLY FOR THE ENVIRONMENT

98043893366



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4640

DATE FILMED 7/9/98 CAMERA NO. 4

CAMERAMAN EES

9  
8  
0  
4  
3  
8  
9  
3  
3  
6  
7