4-1 Stabler Oldaker

DATE OF TRANSMITTAL: AUG 4 1976

TIME OF TRANSMITTAL: 9:00 a.m.

NO. MUR 105 (76)

REC'D: 3/15/76

FEDERAL ELECTION COMMISSION
Washington, D. C.

Complainant's Name: Loren Smith, General Counsel, Citizens for Reagan

Respondent's Name: President Ford (Secretary of State Kissinger)

Relevant Statute: 2 U.S.C. §431(e) by implication

Internal Reports Checked:

Federal Agencies Checked:

SUMMARY OF ALLEGATION

Secretary of State, Henry Kissinger, is using his office "for the express purpose of a campaign platform to promote the Ford candidacy" and is being compensated for such work from public funds.

PRELIMINARY LEGAL ANALYSIS

The issue in this matter is the same as that raised in MUR 077 (Morton) In view of the opinion by five members of the Commission that the Morton file should be closed, with two members concurring in an opinion by Commissioner Harris that the closing be based on procedural grounds, we recommend that a similar result be reached here.

RECOMMENDATION

Close file; send attached letter to Mr. Smith.

MUR 105

PUBLIC CITIZEN LITIGATION GROUP
SUITE 700
2000 P STREET, N. W.
WASHINGTON, D. C. 20036
(202) 785-3704

By Hand May 13, 1976

Honorable Thomas B. Curtis
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Chairman:

Please find eight copies of a memorandum of law which is submitted by Public Citizen as amicus curiae in support of the complaint filed by Citizens for Reagan against the Ford Election Committee, alleging that it had failed to report the on-duty campaign activities of Secretary of State Henry Kissinger as contributions and expenditures. It is the position of Public Citizen that the payment of the salary to a government official such as Secretary Kissinger, while he engages in on-duty campaign activities, constitutes the making of a contribution under the Federal Election Campaign Act and therefore must be reported to the Commission and charged against the appropriate spending limitations for Presidential candidates.

Pursuant to its regulations, the Commission has refused to confirm or deny that the Reagan complaint even exists. For your convenience in dealing with our memorandum we have attached a copy of the Reagan complaint which we obtained from his committee.

Respectfully submitted,

Alan B. Morrison

Alan B. Morrison

cc: Citizens for Reagan
President Ford Committee

77040013711

CITIZENS FOR REAGAN

1835 K Street N.W. • Washington, D.C. 20006 • 202/452-7676

March 12, 1976

Honorable Thomas B. Curtis
Chairman
FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Chairman:

Citizens for Reagan respectfully requests that the Federal Election Commission, pursuant to Section 437 (d) (3 & 4) of Title 2 of the United States Code, launch an immediate investigation of Secretary of State Henry Kissinger's conduct in engaging in his current round of "political stump speeches". It is clear to everyone that Dr. Kissinger is using his high office for the express purpose of a campaign platform to promote the Ford candidacy. This raises serious questions under the Federal election laws currently on the books.

If an incumbent is to be able to use individuals like Dr. Kissinger, paid for by the public, for campaign purposes, while these individuals' expenses are not charged against the incumbent's campaign limits, then the limitations in the law are a mere mockery.

Clearly, the Commission has both a legal and a moral duty to insure that Mr. Ford does not use Dr. Kissinger as a campaign speaker at taxpayers' rather than campaign expense. Kissinger's expenses are now hidden from Commission disclosure and apparently paid out of public funds. The Commission has both the power and the responsibility under 2 U.S.C. 437 (d)(6), (8) & (9) to investigate, take legal action, draft rules and formulate general policy in this matter. Some combination of these is clearly necessary.

If the various candidates for President of both political parties are to be limited to the provisions of 18 U.S.C. Section 608 while the incumbent President can freely use the resources of the Federal Government to promote his campaign, then God help our democracy. If this distortion of fairness is allowed to go unchecked, then we are giving the incumbent a $395 billion campaign budget.

CITIZENS FOR REAGAN

1835 K Street N.W. • Washington, D.C. 20006 • 202/452-7676

July 2, 1976

The Honorable Vernon W. Thomson
Chairman
Federal Election Commission
1325 K. Street, N.W.
Washington, D.C. 20463

Dear Mr. Chairman:

On March 12, 1976, Citizens for Reagan sent a letter to the Commission calling for "An immediate investigation" of Secretary Kissinger's political activities on behalf of the Ford campaign. We hoped the Commission would look into the broad question of "the use of government powers for clearly partisan campaign purposes." We viewed this problem as "the greatest danger facing the current election laws," and therefore urged the Commission to "act on this matter immediately."

On May 13, 1976, the Public Citizen Litigation Group filed a memorandum of law with the Commission supporting the legal basis of our request. Since that date more and more questionable uses of the power of the incumbency and the resources of government by the Ford administration have come to our attention. We feel that these actions endanger our free political system and raise the specter of the abuses that the new election law was supposed to prevent.

We have noted numerous cases of Ford White House staff who are listed as reimbursed only for campaign travel on the Ford Committee's reports. Does this mean that their efforts and services can be used with impunity to promote Mr. Ford's election campaign while the taxpayer picks up the tab? Are these in-kind contributions of staff time allowed to escape all financial disclosure and remain unfettered by the contribution and expenditure limitations that bind all other presidential candidates?

Apparently, the Ford Committee has been financing much of its travel via government credit. While our committee has paid in advance over $800,000 for our candidate's chartered airplanes, the Ford Committee reports a much lower rate of payment for their campaign travel (less than $100,000 for Air Force One travel to date and helicopter charges as low as $11.54 per trip); and these were billed on a credit basis providing immeasurable assistance to his campaign during the period when matching funds were not available. It would appear from the record

special and public Commission meeting to deal with this problem during the week of July 6-9, 1976. This meeting should be public since the overriding question is one of basic legal principal: Does an incumbent have a legal right to use staff and the resources of this public office to promote his campaign? Do such uses constitute contributions and expenditures which must be disclosed? Once these legal questions are resolved, we understand that the normal executive session compliance procedures are mandated.

If the Commission chooses not to act, such refusal constitutes a denial of any relief to our committee. Additionally if the Commission takes no action, then we must assume it has chosen to exercise its exclusive primary jurisdiction under 2 U.S.C. Section 437c (b)(1) in a negative way. In view of the critically short time, our remedy must then be left to the Judiciary.

Sincerely,

Loren A. Smith

Loren A. Smith
General Counsel

LAS:ac

cc: All Federal Election Commissioners
The Honorable Mary Louise Smith

RNC

Republican National Committee.

Mary Louise Smith
Chairman

July 2, 1976

Loren A. Smith, Esquire
General Counsel
Citizens for Reagan Committee
1835 K Street, N. W.
Washington, D. C. 20006

Dear Mr. Smith:

This will acknowledge your letter of June 30 with respect to the decisions made by the Committee on Arrangements for the Republican National Convention for 1976 and ratified by the Republican National Committee at its meeting on June 25, 1976. You allege that the Citizens for Reagan Committee has "been unable to obtain equitable treatment" relating to allotment of rooms and Convention guest tickets at the Republican National Convention for Citizens for Reagan.

The Committee on Arrangements for the Republican National Committee did meet and had a full discussion of this matter on Thursday of last week. At that time the Citizens for Reagan Committee position was fully debated and discussed, and a decision was made by the Arrangements Committee and confirmed by the Republican National Committee on Friday, June 25. That decision followed traditional procedures relating to pre-Convention decision making, consistent with past precedents in relation to prior conventions.

The Committee on Arrangements and the National Committee apparently, by its action, has made its best efforts towards being fair and impartial with regards to rooms and guest tickets, the two issues raised in your letter. As I am sure you know, the Committee on Arrangements did, upon consideration of the appeal of the Citizens for Reagan Committee, increase the number of seats allocated to your Committee by 100, providing 300 guest passes for the Citizens for Reagan Committee and 200 passes for the President Ford Committee. The Committee also provided 450 guest passes for the Administration which includes the Vice-President, Cabinet officers, foreign dignitaries, independent agencies, and the personnel who traditionally and of necessity must be present wherever the President appears.

Dwight D. Eisenhower Republican Center: 310 First Street Southeast, Washington, D.C. 20003. (202) 484-6500.

Loren A. Smith, Esquire
Page Three
July 2, 1976

This matter has been given my full and serious consideration. If there are any additional questions which you may have with regard to conforming with requirements of federal funding of conventions, objections of the Federal Election Campaign Act and other matters of a legal nature, I suggest that you confer with counsel for the Republican National Committee, William C. Cramer.

Very truly yours,

Mary Louise Smith

Mary Louise Smith

CITIZENS FOR REAGAN

1835 K Street N.W. • Washington, D.C. 20006 • 202/452-7676

June 30, 1976

Honorable Mary Louise Smith **HAND DELIVERED**
Chairman, Republican National Committee
310 First Street, S.E.
Washington, D. C. 20003

Dear Mrs. Smith:

In recent days, as you know, we have sought to obtain equitable treatment from the Republican National Committee regarding rooms and convention tickets at the Republican National Convention for Citizens for Reagan, the official presidential campaign organization of Ronald Reagan. Because we have been unable to obtain equal treatment through amicable negotiations, Citizens for Reagan is insisting that the Republican National Committee fully comply with its legal obligation, under 26 U.S.C. Section 9008(c), to stage a national convention that does not benefit any Republican candidate for the nomination in any way over any other candidate.

As you, of course, know, this year for the first time the national convention of our party is fully funded by the tax-payers. Through a system of equal payments to both major parties, a public decision has been made to take the funding of this part of the nominating process out of private hands. In so doing, however, the legal mandate is clear: the convention shall not be a vehicle to advance the candidacy of any one person over another.

In Federal Election Commission Advisory Opinion - 1975 - 72, which you requested, the Federal Election Commission dealt with the problem of a political party benefiting only one candidate for its nomination. In that Advisory Opinion, the Commission found that it would be presumed an impermissible campaign contribution to pay Mr. Ford's travel to party events after January 1, 1976. Before that date the Commission noted:

> "/I/ n the period prior to January 1, 1976,/ during which the Republican National Committee paid over

three hundred thousand dollars in Ford travel expenses7, the RNC will accord equitable treatment to all of its presidential candidates." 40 Fed. Reg. 56589 (1975).

If the Republican National Committee is going to do something for one candidate, it must do it for every candidate for that same office.

Our committee is concerned about preferential treatment given by the convention managers and the Republican National Committee to the White House and, therefore, to the Ford Committee. The allocation of a quota of rooms and passes to the White House is grossly improper. Currently, 388 hotel rooms are allocated to the Ford campaign and White House, while only 100 rooms are allocated to the Reagan campaign. The Ford groups have received 650 gallery passes, while the Reagan campaign has received only 300. We must demand absolute numerical equality in all of these areas.

The White House and the incumbency have no proper role in this convention. Any special functional role granted to the White House officially recognizes a serious misuse of government funds and the incumbency by the Ford campaign.

I recognize that these are strong words, but they express deep concerns for a fair and honest convention. I am having this letter hand-delivered so we may resolve this matter this week. I will call you at 11:00 A.M. Friday hoping that this matter can be resolved. If we do not reach a mutually acceptable solution at that time, then I'm afraid we will have no recourse but to initiate litigation or complaint proceedings before the Federal Election Commission.

Sincerely,

Loren A. Smith

Loren A. Smith
General Counsel

cc: Honorable Ody J. Fish, Vice Chairman
Arrangements Committee, Republican National Committee

William C. Cramer, Esq., General Counsel
Republican National Committee

Robert P. Visser, Esq., General Counsel
President Ford Committee

1 6 AUG 1976

Mr. Loren A. Smith
General Counsel
Citizens for Reagan
1835 K Street, N. W.
Washington, D. C. 20006

Re: MUR 105 (76)

Dear Mr. Smith:

This letter is in response to your communication dated March 12, 1976, requesting that the Federal Election Commission investigate possible violations of the Federal Election Campaign Act of 1971, as amended, by President Ford in allegedly using Secretary of State Henry Kissinger to make campaign speeches. I apologize for our delay in responding.

On August 5, 1976, the Commission voted 4-1 to terminate its review into this matter, Commissioner Staebler dissenting. I have appended hereto a copy of the Certification of the Commission's action and a copy of Commissioner Staebler's opinion. The Commission has now closed its file in this matter.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

Enclosures

DRSpiegel:mpc:8/?/76

16 AUG 1976

Mr. Loren A. Smith
General Counsel
Citizens for Reagan
1835 K Street, N. W.
Washington, D. C. 20006

Re: <u>MUR 105 (76)</u>

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Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

Enclosures

DRSpiegel:mpc:8/[illegible]/76

77040013723

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 105 (76)
President Ford	)	
(Secretary of State Kissinger)	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on August 5, 1976, the Commission determined by a vote of 4-1 that there was no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended, had been committed in the above-captioned matter. Voting that there was no reason to believe were Commissioners Aikens, Harris, Springer and Thomson; voting against was Commissioner Staebler. Commissioner Tiernan was absent.

Accordingly, the file in this matter has now been closed.

Marjorie W Emmons

Marjorie W. Emmons
Secretary to the Commission

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

Commissioner Harris

MUR No. 105

Date and Time of Transmittal AUG 4 1976

(?) I object to the recommendation in the 48 hour Report.

COMMENTS: It appears to me that this matter has to come before the Commission for a vote.

Date: 8-4-76   Signature: Thos. E. Harris

PLEASE USE THIS FORM ONLY IF YOU WISH TO NOTE AN OBJECTION WITH REGARD TO THE ABOVE CAPTIONED MATTER. Return all objections to Ms. Marge Emmons in the Secretary's Office on the Fifth Floor. If no objection is received within 24 hours of transmittal, the matter will be deemed approved.

DATE OF TRANSMITTAL: AUG 4 1976

TIME OF TRANSMITTAL: 9:00 a.m.

NO. MUR 105 (76)

REC'D: 3/15/76

FEDERAL ELECTION COMMISSION
Washington, D. C.

Complainant's Name: Loren Smith, General Counsel, Citizens for Reagan

Respondent's Name: President Ford (Secretary of State Kissinger)

Relevant Statute: 2 U.S.C. §431(e) by implication

Internal Reports Checked:

Federal Agencies Checked:

SUMMARY OF ALLEGATION

Secretary of State, Henry Kissinger, is using his office "for the express purpose of a campaign platform to promote the Ford candidacy" and is being compensated for such work from public funds.

PRELIMINARY LEGAL ANALYSIS

The issue in this matter is the same as that raised in MUR 077 (Morton) In view of the opinion by five members of the Commission that the Morton file should be closed, with two members concurring in an opinion by Commissioner Harris that the closing be based on procedural grounds, we recommend that a similar result be reached here.

RECOMMENDATION

Close file; send attached letter to Mr. Smith.

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

Mr. Loren A. Smith
General Counsel
Citizens for Reagan
1835 K Street, N. W.
Washington, D. C. 20006

Re: MUR 105 (76)

Dear Mr. Smith:

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On August , 1976, the Commission voted, , to terminate its review into this matter. The Commission has now closed its files herein.

If you have any questions please do not hesitate to contact my office.

Sincerely yours,

John G. Murphy, Jr.
General Counsel

MUR 105

PUBLIC CITIZEN LITIGATION GROUP
SUITE 700
2000 P STREET, N. W.
WASHINGTON, D. C. 20036
(202) 785-3704

By Hand May 13, 1976

Honorable Thomas B. Curtis
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Chairman:

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Pursuant to its regulations, the Commission has refused to confirm or deny that the Reagan complaint even exists. For your convenience in dealing with our memorandum we have attached a copy of the Reagan complaint which we obtained from his committee.

Respectfully submitted,

Alan B Morrison

Alan B. Morrison

cc: Citizens for Reagan
President Ford Committee

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CITIZENS FOR REAGAN

1835 K Street N W • Washington D C 20006 • 202/452-7676

March 12, 1976

Honorable Thomas B. Curtis
Chairman
FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Chairman:

Citizens for Reagan respectfully requests that the Federal Election Commission, pursuant to Section 437 (d) (3 & 4) of Title 2 of the United States Code, launch an immediate investigation of Secretary of State Henry Kissinger's conduct in engaging in his current round of "political stump speeches". It is clear to everyone that Dr. Kissinger is using his high office for the express purpose of a campaign platform to promote the Ford candidacy. This raises serious questions under the Federal election laws currently on the books.

If an incumbent is to be able to use individuals like Dr. Kissinger, paid for by the public, for campaign purposes, while these individuals' expenses are not charged against the incumbent's campaign limits, then the limitations in the law are a mere mockery.

Clearly, the Commission has both a legal and a moral duty to insure that Mr. Ford does not use Dr. Kissinger as a campaign speaker at taxpayers' rather than campaign expense. Kissinger's expenses are now hidden from Commission disclosure and apparently paid out of public funds. The Commission has both the power and the responsibility under 2 U.S.C. 437 (d)(6), (8) & (9) to investigate, take legal action, draft rules and formulate general policy in this matter. Some combination of these is clearly necessary.

If the various candidates for President of both political parties are to be limited to the provisions of 18 U.S.C. Section 608 while the incumbent President can freely use the resources of the Federal Government to promote his campaign, then God help our democracy. If this distortion of fairness is allowed to go unchecked, then we are giving the incumbent a $395 billion campaign budget.

March 12, 1976
Page 2.

It is a new and disturbing development when the Secretary of State becomes a surrogate speaker for the President's campaign while purportedly making a "nonpolitical speech". This use of the powers of incumbency carries on a bad tradition of using the powers of government to promote the reelection of the President. While this practice was always bad, it is even more unfair today when a new election law severely restricts the fundraising and expenditure ability of the challengers. While Mr. Ford may only be doing what others did before him, I had hoped that the new law would have taught us something. Apparently it has not.

The use of government powers for clearly partisan campaign purposes represents the greatest danger facing the current election laws.

I hope the Commission will act on this matter immediately.

Sincerely,

Loren A. Smith
General Counsel

cc: Neil Staebler
Joan D. Aikens
Thomas E. Harris
Vernon W. Thomson
Robert O. Tiernan

CITIZENS FOR REAGAN

1835 K Street N.W. • Washington, D.C. 20006 • 202/452-7676

July 2, 1976

The Honorable Vernon W. Thomson
Chairman
Federal Election Commission
1325 K. Street, N.W.
Washington, D.C. 20463

Dear Mr. Chairman:

On March 12, 1976, Citizens for Reagan sent a letter to the Commission calling for "An immediate investigation" of Secretary Kissinger's political activities on behalf of the Ford campaign. We hoped the Commission would look into the broad question of "the use of government powers for clearly partisan campaign purposes." We viewed this problem as "the greatest danger facing the current election laws," and therefore urged the Commission to "act on this matter immediately."

On May 13, 1976, the Public Citizen Litigation Group filed a memorandum of law with the Commission supporting the legal basis of our request. Since that date more and more questionable uses of the power of the incumbency and the resources of government by the Ford administration have come to our attention. We feel that these actions endanger our free political system and raise the specter of the abuses that the new election law was supposed to prevent.

We have noted numerous cases of Ford White House staff who are listed as reimbursed only for campaign travel on the Ford Committee's reports. Does this mean that their efforts and services can be used with impunity to promote Mr. Ford's election campaign while the taxpayer picks up the tab? Are these in-kind contributions of staff time allowed to escape all financial disclosure and remain unfettered by the contribution and expenditure limitations that bind all other presidential candidates?

Apparently, the Ford Committee has been financing much of its travel via government credit. While our committee has paid in advance over $800,000 for our candidate's chartered airplanes, the Ford Committee reports a much lower rate of payment for their campaign travel (less than $100,000 for Air Force One travel to date and helicopter charges as low as $11.54 per trip); and these were billed on a credit basis providing immeasurable assistance to his campaign during the period when matching funds were not available. It would appear from the record

special and public Commission meeting to deal with this problem during the week of July 6-9, 1976. This meeting should be public since the overriding question is one of basic legal principal: Does an incumbent have a legal right to use staff and the resources of this public office to promote his campaign? Do such uses constitute contributions and expenditures which must be disclosed? Once these legal questions are resolved, we understand that the normal executive session compliance procedures are mandated.

If the Commission chooses not to act, such refusal constitutes a denial of any relief to our committee. Additionally if the Commission takes no action, then we must assume it has chosen to exercise its exclusive primary jurisdiction under 2 U.S.C. Section 437c (b)(1) in a negative way. In view of the critically short time, our remedy must then be left to the Judiciary.

Sincerely,

Loren A. Smith

Loren A. Smith
General Counsel

LAS:ac

cc: All Federal Election Commissioners
The Honorable Mary Louise Smith

CITIZENS FOR REAGAN

1835 K Street N.W. • Washington, D.C. 20006 • 202/452-7676

July 2, 1976

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Chairman
Federal Election Commission
1325 K. Street, N.W.
Washington, D.C. 20463

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that while White House political press travel is financed by the government and uses government employees for arrangements, the other candidates must finance for as long as three months their press travel expenses and hire employees to plan and coordinate the trips. Only limited reimbursements for extensive campaign travel by various cabinet officials and holders of high administrative positions are apparent on the Ford Committee's reports. Given the unusually low charges for White House travel when compared to other campaigns, full disclosure of all political travel by the First Family should be required to give an equitable measure of benefits.

As the campaign spending limits close in on all the candidate's campaigns, the potential of government "fringe benefits" available to an incumbent President become even more significant and must be carefully monitored by the Federal Election Commission to insure that the spirit and the letter fo the Federal Election Law is carried out. The spending limitation would otherwise begrossly unfair under our system. This is especially amplified in the setting of this campaign which is so close that virtually all political commentators agree it is too close to call.

On Wednesday of this week, our committee delivered the attached letter (Appendix A) to the Chairman of the Republican National Committee. It was motivated by what to us is not only a further abuse, but by what is an outrageous political advantage in a contest where even a slight political advantage might be critical.

On the basis of the public record, it appears that the Ford campaign is contemplating the massive use of White House personnel and resources at the Republican National Convention in Kansas City. The White House above and beyond the Ford Committee has been allocated 288 rooms and 450 gallery passes to the convention. In other words, it would appear that the White House is planning to bring almost 3 times the number of personnnel to Kansas City as the amount that they are officially planning to report under their Ford Committee budget.

In running against an incumbent, one must expect to run against the normal advantages of the incumbency; the promises of federal projects, contracts and benefits, the distribution of federal appointments and jobs in primary states immediately before the election, and the ability to use White House dinners and facilities to woo party officials and delegates. We make no complaints about these practices; good, bad, legal or questionable, they are all part of a long established game. However, we must draw the line somewhere. When the White House staff, paid by the taxpayers, is massively used as an adjunct to the Ford Committee, this is improper in the worst sense. This strikes at the heart of fair elections. When the President can travel via government means for the entire campaign at a cost that would not total two full weeks outlay for air travel for other candidates and do it on credit, something is very wrong.

We are hoping the Commission would realize the seriousness of these facts and the urgency of doing something in light of the approaching Republican National Convention, now only 6 weeks away. So far, to our knowledge, nothing has been done. I, therefore, respectfully request a

special and public Commission meeting to deal with this problem during the week of July 6-9, 1976. This meeting should be public since the overriding question is one of basic legal principal: Does an incumbent have a legal right to use staff and the resources of this public office to promote his campaign? Do such uses constitute contributions and expenditures which must be disclosed? Once these legal questions are resolved, we understand that the normal executive session compliance procedures are mandated.

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Sincerely,

Loren A. Smith
General Counsel

LAS:ac

cc: All Federal Election Commissioners
The Honorable Mary Louise Smith

Republican
National
Committee.

Mary Louise Smith
Chairman

July 2, 1976

Loren A. Smith, Esquire
General Counsel
Citizens for Reagan Committee
1835 K Street, N. W.
Washington, D. C. 20006

Dear Mr. Smith:

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7704001573

This matter has been given my full and serious consideration. If there are any additional questions which you may have with regard to conforming with requirements of federal funding of conventions, objections of the Federal Election Campaign Act and other matters of a legal nature, I suggest that you confer with counsel for the Republican National Committee, William C. Cramer.

Very truly yours,

Mary Louise Smith

77040015737

CITIZENS FOR REAGAN
1835 K Street N.W. • Washington, D.C. 20006 • 202/452-7676

June 30, 1976

Honorable Mary Louise Smith
Chairman, Republican National Committee
310 First Street, S.E.
Washington, D. C. 20003

HAND DELIVERED

Dear Mrs. Smith:

In recent days, as you know, we have sought to obtain equitable treatment from the Republican National Committee regarding rooms and convention tickets at the Republican National Convention for Citizens for Reagan, the official presidential campaign organization of Ronald Reagan. Because we have been unable to obtain equal treatment through amicable negotiations, Citizens for Reagan is insisting that the Republican National Committee fully comply with its legal obligation, under 26 U.S.C. Section 9008(c), to stage a national convention that does not benefit any Republican candidate for the nomination in any way over any other candidate.

As you, of course, know, this year for the first time the national convention of our party is fully funded by the taxpayers. Through a system of equal payments to both major parties, a public decision has been made to take the funding of this part of the nominating process out of private hands. In so doing, however, the legal mandate is clear: the convention shall not be a vehicle to advance the candidacy of any one person over another.

In Federal Election Commission Advisory Opinion - 1975 - 72, which you requested, the Federal Election Commission dealt with the problem of a political party benefiting only one candidate for its nomination. In that Advisory Opinion, the Commission found that it would be presumed an impermissible campaign contribution to pay Mr. Ford's travel to party events after January 1, 1976. Before that date the Commission noted:

"/I/ n the period prior to January 1, 1976,/ during which the Republican National Committee paid over

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three hundred thousand dollars in Ford travel expenses7, the RNC will accord equitable treatment to all of its presidential candidates." 40 Fed. Reg. 56589 (1975).

If the Republican National Committee is going to do something for one candidate, it must do it for every candidate for that same office.

Our committee is concerned about preferential treatment given by the convention managers and the Republican National Committee to the White House and, therefore, to the Ford Committee. The allocation of a quota of rooms and passes to the White House is grossly improper. Currently, 388 hotel rooms are allocated to the Ford campaign and White House, while only 100 rooms are allocated to the Reagan campaign. The Ford groups have received 650 gallery passes, while the Reagan campaign has received only 300. We must demand absolute numerical equality in all of these areas.

The White House and the incumbency have no proper role in this convention. Any special functional role granted to the White House officially recognizes a serious misuse of government funds and the incumbency by the Ford campaign.

I recognize that these are strong words, but they express deep concerns for a fair and honest convention. I am having this letter hand-delivered so we may resolve this matter this week. I will call you at 11:00 A.M. Friday hoping that this matter can be resolved. If we do not reach a mutually acceptable solution at that time, then I'm afraid we will have no recourse but to initiate litigation or complaint proceedings before the Federal Election Commission.

Sincerely,

Loren A. Smith

Loren A. Smith
General Counsel

cc: Honorable Ody J. Fish, Vice Chairman
Arrangements Committee, Republican National Committee

William C. Cramer, Esq., General Counsel
Republican National Committee

Robert P. Visser, Esq., General Counsel
President Ford Committee

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Alan B. Morrison, Esquire
Public Citizen Litigation Group
Suite 700
2000 P Street, N.W.
Washington, D. C. 20036

Re: MUR 105 (76)

Dear Mr. Morrison:

This is in response to your letter of May 13, 1976, enclosing an amicus brief on behalf of Citizens for Reagan in the above numbered matter.

The Commission has determined, on the basis of the information set forth in the letter filed on behalf of Citizens for Reagan in this matter, that there is no reason to believe that a violation of statutes within its jurisdiction has been committed. Accordingly, the file in this matter has been closed.

I hasten to add that the Commission is fully cognizant of the gravity of the underlying issue herein--the use of staff members paid from public funds to perform campaign-related duties. The Commission anticipates dealing with the area at a future date. In this regard, we appreciate the comments and suggestions in your brief and welcome your further views.

Sincerely yours,

John G. Murphy, Jr.
General Counsel

DSpiegel:cfb

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Suite 700
2000 P Street, N.W.
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Sincerely yours,

John G. Murphy, Jr.
General Counsel

DSpiegel:cfb

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MUR 105

PUBLIC CITIZEN LITIGATION GROUP
SUITE 700
2000 P STREET, N. W.
WASHINGTON, D. C. 20036
(202) 785-3704

RECEIVED
FEDERAL ELECTION COMMISSION

76 MAY 14 P4: 4

By Hand

May 13, 1976

Honorable Thomas B. Curtis
Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mr. Chairman:

Please find eight copies of a memorandum of law which is submitted by Public Citizen as amicus curiae in support of the complaint filed by Citizens for Reagan against the Ford Election Committee, alleging that it had failed to report the on-duty campaign activities of Secretary of State Henry Kissinger as contributions and expenditures. It is the position of Public Citizen that the payment of the salary to a government official such as Secretary Kissinger, while he engages in on-duty campaign activities, constitutes the making of a contribution under the Federal Election Campaign Act and therefore must be reported to the Commission and charged against the appropriate spending limitations for Presidential candidates.

Pursuant to its regulations, the Commission has refused to confirm or deny that the Reagan complaint even exists. For your convenience in dealing with our memorandum we have attached a copy of the Reagan complaint which we obtained from his committee.

Respectfully submitted,

Alan B Morrison

Alan B. Morrison

cc: Citizens for Reagan
President Ford Committee

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CITIZENS FOR REAGAN

1835 K Street N.W. • Washington, D.C. 20006 • 202/452-7676

March 12, 1976

Honorable Thomas B. Curtis
Chairman
FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C.   20463

Dear Mr. Chairman:

Citizens for Reagan respectfully requests that the Federal Election Commission, pursuant to Section 437 (d) (3 & 4) of Title 2 of the United States Code, launch an immediate investigation of Secretary of State Henry Kissinger's conduct in engaging in his current round of "political stump speeches". It is clear to everyone that Dr. Kissinger is using his high office for the express purpose of a campaign platform to promote the Ford candidacy. This raises serious questions under the Federal election laws currently on the books.

If an incumbent is to be able to use individuals like Dr. Kissinger, paid for by the public, for campaign purposes, while these individuals' expenses are not charged against the incumbent's campaign limits, then the limitations in the law are a mere mockery.

Clearly, the Commission has both a legal and a moral duty to insure that Mr. Ford does not use Dr. Kissinger as a campaign speaker at taxpayers' rather than campaign expense. Kissinger's expenses are now hidden from Commission disclosure and apparently paid out of public funds. The Commission has both the power and the responsibility under 2 U.S.C. 437 (d)(6), (8) & (9) to investigate, take legal action, draft rules and formulate general policy in this matter. Some combination of these is clearly necessary.

If the various candidates for President of both political parties are to be limited to the provisions of 18 U.S.C. Section 608 while the incumbent President can freely use the resources of the Federal Government to promote his campaign, then God help our democracy. If this distortion of fairness is allowed to go unchecked, then we are giving the incumbent a $395 billion campaign budget.

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March 12, 1976
Page 2.

It is a new and disturbing development when the Secretary of State becomes a surrogate speaker for the President's campaign while purportedly making a "nonpolitical speech". This use of the powers of incumbency carries on a bad tradition of using the powers of government to promote the reelection of the President. While this practice was always bad, it is even more unfair today when a new election law severely restricts the fundraising and expenditure ability of the challengers. While Mr. Ford may only be doing what others did before him, I had hoped that the new law would have taught us something. Apparently it has not.

The use of government powers for clearly partisan campaign purposes represents the greatest danger facing the current election laws.

I hope the Commission will act on this matter immediately.

Sincerely,

Loren A. Smith

Loren A. Smith
General Counsel

cc: Neil Staebler
Joan D. Aikens
Thomas E. Harris
Vernon W. Thomson
Robert O. Tiernan

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FEDERAL ELECTION COMMISSION

In the matter of the complaint of	)
CITIZENS FOR REAGAN	)
v.	)
PRESIDENT FORD COMMITTEE	)

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF COMPLAINT OF CITIZENS FOR REAGAN
SUBMITTED BY PUBLIC CITIZEN AS AMICUS CURIAE

This complaint presents a vital question for determination under the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974: [1/] Is the use of United States Government resources, specifically the payment of the salary of a government employee, while engaged in the patently political purpose of influencing the primary elections of 1976, a contribution under the Act? If so, then the Act requires both the contribution and expenditure to be reported to the Federal Election Commission and further requires that the expenditure be charged to the candidate's expenditure limit. Although this complaint is directed primarily against Secretary of State Henry Kissinger's campaign activities, it raises the more general question of whether the salaries of employees who are admittedly doing campaign work, must be reported when they are campaigning during regular working hours.

1/ The Act has again been amended by the Federal Election Campaign Act Amendments of 1976. These Amendments are cited herein only where they are relevant.

In this amicus curiae brief Public Citizen argues that to exempt an incumbent's use of government resources from the reporting and expenditure limit provisions of the Act would permit wholesale circumvention of the reforms brought about by the 1971 and 1974 amendments. We believe that this comprehensive reform cannot tolerate an exception for the use of government resources by an incumbent to foster his own re-election. Not only will the all-encompassing language of the Act not permit such an exception, but a contrary interpretation would create a fundamental unfairness by allowing an incumbent to exclude significant expenditures from public scrutiny and would permit him to receive far greater support for his campaign from the taxpayers than would his opposition. Finally, such an exception would raise serious equal protection questions about the constitutionality of the Act. Since equality is the cornerstone of all of the spending and disclosure limitations and the public funding provisions in the Act, a construction raising equal protection problems should be resorted to only where the language plainly requires it.

Public Citizen has long been concerned about the problems of improper use of government-paid employees to aid the re-election efforts of office holders. There is now pending a lawsuit challenging the legality of using such employees on a substantially full-time basis on the ground that Congress had made no appropriation for such purpose as required by Article 1, Section 9, Clause 7 of the Constitution and 31 U.S.C. § 628.

Public Citizen v. Simon, No. 74-2025, D.C. Cir. argued Oct. 23, 1975. Although the legal questions at issue here are different from that case, we believe that it would be useful for the Commission to have a better idea of the breadth of the misuse of White House staff in the past, and so we are submitting a copy of our brief on summary judgment in the District Court in that case. (Public Citizen v. Shultz, No. 72-2280, D.D.C.) We wish to emphasize, however, that whatever the outcome of that case may be, it cannot dispose of the questions presented by the instant complaint. Thus, even if the use of government-paid White House staff to perform campaign duties while on duty is not absolutely prohibited, the disclosure and limitation questions raised by this complaint are by no means foreclosed.

Lastly, although the specific matter raised in the complaint involving Secretary Kissinger is a narrow, and perhaps a unique one, the problem presented is much broader. Thus, we urge the Commission to address the legal issue presented at this time so that everyone concerned will then know what is expected in terms of reporting and spending. There will be time enough later to handle specific factual situations once the basic legal issue is resolved.

ARGUMENT

UNITED STATES GOVERNMENT RESOURCES USED TO SUPPORT POLITICAL CAMPAIGN ACTIVITIES SHOULD BE CONSIDERED CAMPAIGN CONTRIBUTIONS AND EXPENDITURES UNDER THE FEDERAL ELECTION LAWS.

When Ronald Reagan procures from a supporter the money to pay the salary and expenses of one of his campaign workers, there is no doubt that the transaction is governed by the provisions of the Federal Election Campaign Act. This is so whether the contribution is made in cash to the Reagan Committee, or the supporter donates the services of an employee on the supporter's payroll. 2 U.S.C.§ 431(e)(4). Mr. Reagan is therefore obliged to report the contribution to the Treasurer of his campaign committee, 2 U.S.C. § 432(b), who must record it, 2 U.S.C. § 432(c), and eventually report it to the Federal Election Commission, 2 U.S.C. § 434. Any member of the public is entitled to access to the reports and can see who contributed how much money and how that money was spent. 2 U.S.C. § 438(a)(4). In addition, the money is considered a "qualified campaign expense" because Mr. Reagan requested the worker to incur the expense. 26 U.S.C. § 9032(9). As a "qualified campaign expense" the money counts towards the $10 million expenditure limit which Mr. Reagan and the other candidates have accepted as a condition to public financing. 26 U.S.C. §§ 9033(b), 9035.

When President Ford has Cabinet officials and White House advisors undertake campaign activities, the government pays their salaries, but the Ford campaign considers itself subject to none of the restraints placed upon Mr. Reagan and the other candidates in the same situation. The Ford campaign committee does not record the contribution, nor does it report the contribution or how it was spent. Thus, the information is not made available to the public so that the electorate can judge the propriety of the action. Worse still, the salaries paid by the government to further the President's campaign effort are not charged to the candidate's campaign limit, nor do they serve to reduce the matching funds which the government is providing to candidates who qualify. In our view the Act prohibits such unfairness and we urge this Commission to so rule.

I. The Broad Language of the Federal Election Campaign Act Subsumes the Use of Government Resources For Campaign Purposes.

The Federal Election Campaign Act Amendments of 1974 represent a comprehensive reform which regulates campaign spending by imposing limits on campaign contributions and expenditures, by requiring reporting of contributions and expenditures, by providing for federal funds to finance Presidential elections, and by creating the Federal Election Commission to administer the Act. The Act was the culmination of a long line of campaign acts beginning in 1907 and its comprehensiveness came about "through the failure of piecemeal regulation to preserve the integrity of federal elections." Buckley v. Valeo, 519 F.2d 821, 907 (D.C. Cir. 1975)(Appendix C, "Brief History of Federal Election Regulation"), aff'd in part and rev'd in part, 44 U.S.L.W. 4127 (1976). In interpreting the provisions of the Act, the Supreme Court noted Congress' effort "to achieve 'total disclosure' by reaching 'every kind of political activity' in order to insure that the voters are fully informed and to achieve through publicity the maximum deterrence to corruption and undue influence possible." Buckley v. Valeo, 44 U.S.L.W. at 4149 (footnote omitted). When read in this light, the comprehensive language of the Act embraces contributions by all organizations, including the government.

"Contribution" is broadly defined under the Act to include, among other things, "the payment, by any person other than a candidate or a political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purpose . . . ." 2 U.S.C. § 431(e)(4); 26 U.S.C. § 9032(D). Clearly, in terms of utility to a campaign and of avoiding having to pay the salary of a campaign aide, the government payment of the salary of an official who spends a substantial part of his working hours campaigning for the President is comparable to any other contribution under this section of the Act. The only arguable basis of avoiding this common sense result would be to determine that the government is not a "person" under the Act. "Person" is also broadly defined to mean "an individual, partnership, committee, association, corporation, labor organization, and any other organization or group of persons . . . ." 2 U.S.C. § 431(h).[2/] Thus, on the face of it, the government is an organization, and therefore a person within the meaning of the Act.

An examination of the other uses of the word "person" in the Act confirms the view that its all-encompassing character

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2/ The legislative history of the Act says nothing about this definition except to repeat it. The language originated in the Federal Election Campaign Act of 1971 and the legislative history of that Act is equally unenlightening as to the meaning of "person." The only court comment on the definition is that it is a "broad definition." Buckley v. Valeo, 44 U.S.L.W. at 4134, 4139 n. 45.

includes the government. Political committees must keep a record of every "person" to whom an expenditure is made and must include that information in their reports. 2 U.S.C. §§ 432(c)(4), 434(b)(9). Obviously a committee which purchases materials from the G.P.O. must include that information on its expenditure record even though the GPO is part of the government. In the same vein, it would be absurd to interpret this provision to mean that expenditures to the United Parcel Service must be recorded, but those to the Postal Service need not be because the latter is a government organization but not a "person."

Furthermore, it is clear that "person" includes "government" because the Congress found it necessary to exclude expressly some government contributions and expenditures from the provisions of the Act. For instance, one section, which has since been repealed, required "any person" who publishes or broadcasts campaign material to file a report with the Federal Election Commission. The Congress saw fit to note specially in that section that this report requirement does not apply "to any publication or broadcast of the United States Government." 2 U.S.C. § 437a, repealed, The Federal Election Campaign Act Amendments of 1976, § 105. The inevitable inference is that without the specific exemption, the United States Government would have been considered a "person" and its broadcasts and reports would have necessitated a report to the Federal Election Commission.

Another provision exempts members of Congress from reporting as contributions or expenditures

> the value of photographic, matting or recording services furnished to them by the Senate Recording Studio, the House Recording Studio, or by an individual whose pay is disbursed by the Secretary of the Senate or Clerk of the House and who furnishes such services as his primary duty as an employee of the Senate or House of Representatives . . . . 2 U.S.C. § 434(d).

This provision makes it clear that without an express exception, the government would come within the meaning of person and would have otherwise been a person paying the compensation of Congressional workers who are rendering services to a candidate. 3/

Because "person" is broadly defined, and because express provisions are needed in the Act to except the government from the term "person," the government must be considered a person within the meaning of the Act. Since the definition of a contribution includes the payment of compensation by a person to someone rendering services to a candidate, the payment of compensation by the government to an official while he campaigns on behalf of the President, should be declared a contribution under the Act.

It is also clear that the payment of such salaries by the government for work for a candidate is an "expenditure" under

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3/ By making this specific minor exception, Congress indicated that only a few express exceptions would defeat the broad definition of contribution. The Act contains seven express exceptions to the term "contribution," none of which apply here. 2 U.S.C. §§ 431(e)(5)(A)-(F), 434. The only arguably applicable exception is contained in subparagraph (A) -- "Services provided without compensation by individuals who volunteer a portion or all of their time" -- but since the campaign work at issue is undertaken during regular hours as part of the employee's assignment, it is hardly "voluntary." Of course, this same rationale would require Members of Congress who are running for re-election or seeking other federal offices to include on-duty work done by their staffs in their FEC filings.

the Act.[4/] The definition of expenditure includes "a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of . . . (B) influencing the results of a primary election . . . . " 2 U.S.C. § 431(f)(1)(B). Certainly the payment of the salary of a government official while he campaigns is a payment of money or something of value made in order to influence the election, and thus should come under the expenditure reporting provisions of the Act.

In addition, the salary expended so that government officials can work for the re-election of an incumbent should be charged to the $10 million expenditure limits which the candidate has accepted. The Federal Election Campaign Act Amendments of 1976 prohibit presidential candidates who are receiving public funding from spending in excess of $10,000,000 to obtain the nomination and $20,000,000 on the general election. § 320(b)(1). That section further states that "an expenditure is made on behalf of a candidate . . . if it is made by . . . (ii) any person authorized or requested by the candidate . . . to make the expenditure." § 320(b)(2). Certainly White House and Cabinet

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4/ Indeed, as soon as these payments are considered contributions, they are also expenditures since they must cancel each other out on the balance sheet used to report to the FEC. <u>See</u> 11 C.F.R. Supp. B, App. III (1975).

officials campaigning for the President are "authorized or requested" to do so by him. Therefore, the salaries the government pays so that these officials can campaign on behalf of the President must be attributed to his spending limit. 5/

II. The Purpose of Campaign Finance Reform Can Only Be Fulfilled By Including These Salary Payments As Contributions Under The Act.

While the 1974 Amendments were the culmination of a long line of campaign acts beginning in 1907, much of the impetus for comprehensive reform came from the many abuses of the Nixon administration during the 1972 Presidential election. Among the most prominent of these abuses was the extraordinary use of the federal government for campaign purposes, including the extensive use of Cabinet officials and White House advisors in campaign activities. See attached brief in Public Citizen v. Shultz, pp. 9-26. Yet these same abuses continue to occur despite public outcry over the 1972 campaign abuses, and despite the comprehensive campaign reform designed to eradicate such behavior.

This type of abuse is even more objectionable now that Congress has enacted spending limits restraining the expenditures

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5/ Arguably, if the construction urged in this Memorandum is adopted, section 608(b)(1) of Title 18 can be read to limit contributions by the Government, as well as private persons, to $1,000. We believe that such a literal interpretation of a criminal statute should not be followed, and we are aware of no purpose that would be served by so construing it, and no unfairness that would be created by not including the Government. In addition, we note that another provision which might have required the Government to report these salaries itself, 2 U.S.C. § 437(a), has been repealed by section 105 of the 1976 amendments.

of candidates.[6] In order to work, these restraints must be applied equally to everyone, including the President of the United States. Otherwise, the Act would work the inequity of limiting all other candidates to $10 million in expenditures, while allowing the President greater expenditures provided that he take advantage of his incumbency and divert government monies from their true course. The Federal Election Commission cannot reward such patently improper activities.

The shielding of this unfair use of Government resources from the full force of the campaign laws impugns everything which the reform represents. Indeed, to exempt these contributions from the provisions of the Act would be so inequitable as to undermine the entire reform. While other candidates struggle for contributions, the incumbent President could actively use government paid employees to do his campaigning for him. While other candidates must accept expenditures limits in order to obtain public financing, the President would be permitted unlimited use of White House staff to conduct his campaign. It would be a cruel irony if the very Act which was meant to eradicate political campaign corruption were to be interpreted in a

---

6/ While the Supreme Court struck down the expenditure limitations in the Act, it upheld the $10 million primary spending limit and other limits, when used as a condition for eligibility for public financing of a campaign. Buckley v. Valeo, 44 U.S.L.W. at 4144, 4154-4159. It did so because the significant government aid, coupled with a desire to supplant the dominant role of the large contributor, was considered a great enough interest to justify the First Amendment restraint when undertaken voluntarily. 44 U.S.L.W. at 4155.

way which would insure that a fair Presidential election could not be held.

Nor should the Commission shield such activity from public scrutiny. The disclosure provisions are among the most important provisions of the statute and are "supported by compelling governmental interests -- informing the electorate and preventing the corruption of the political process." Buckley v. Valeo, 519 F.2d at 867. These interests were great enough so that all the disclosure requirements of the Act were upheld by the Supreme Court as "the least restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist." 44 U.S.L.W. at 4147 (footnote omitted). They were upheld even though serious First Amendment rights of privacy were at stake. Certainly they should not now be defeated when no privacy interest of the government is involved, and public corruption is afoot.

Disclosure was seen to promote a compelling governmental interest because it provides the electorate with information "as to where political campaign money comes from and how it is spent by the candidate." H.R. Rep. No. 564, 92d Cong., 2d Sess. 4 (1971), as quoted in Buckley v. Valeo, 44 U.S.L.W. at 4147. By improving the flow of information to the voter, the disclosure provisions enable the voter to more accurately evaluate the candidate and more intelligently exercise the franchise. Certainly there is no rational reason why the electorate should know about all campaign financing except that which the President obtains by benefit of his incumbency. To the contrary, the political use which a President makes of his incumbency would seem to be of special concern to every voter.

In addition, the disclosure requirements deter corruption by exposing it to the public at large. As Justice Brandeis wrote:

> Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman. Other Peoples Money, 92 (1914), quoted in Buckley v. Valeo, 44 U.S.L.W. at 4147.

The other candidates must report the origin and use of all resources which are intended to influence an election, so that the public may make judgments on questionable campaign practices. It would be in keeping with this notion for the government's contributions to the Ford campaign to be made public so that the public may judge them also.

Finally, the disclosure requirements were meant to prevent even the appearance of corruption. This purpose will be entirely defeated if the Act is applied to private contributions but not to government expenditures on behalf of a candidate. By shielding from public scrutiny the President's use of government resources to further his own re-election, the Act would fail to dispell one of the basic sources of the public's cynicism about elections, that is, the well-documented political use of the incumbency by Richard Nixon in the 1972 election.

III. Excepting Government Expenditures From The Scope Of The Act Would Raise Serious Questions About The Constitutionality Of The Public Funding Provisions Of The Act And The Act Should Be Interpreted So As To Avoid These Constitutional Infirmities.

In Buckley v. Valeo, the Supreme Court upheld the constitutionality of the public funding provisions of the Campaign Act, including the use of expenditure limits as a condition of public funding. 44 U.S.L.W. at 4154-4159. An interpretation of the Act which would effectively remove expenditure limits from the President while leaving them on other candidates would again put these provisions in Constitutional jeopardy. Interpreted to exclude government expenditures, the Act would deny equal protection by discriminating in favor of an incumbent with no conceivable rationale for limiting the expenditures of others, but not those of the President. 7/

The Supreme Court made it clear that the expenditure limitations of the 1974 Act represent the restriction of fundamental rights of expression and association protected by the First Amendment:

> A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed,

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7/ The identical equal protection arguments would apply to the disparities in the reporting requirements as well, but we will not address them separately. In addition, these government contributions should also reduce the matching funds made available to qualifying candidates for the same reasons.

> the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money . . . .
>
> The expenditure limitations contained in the Act represent substantial rather than merely theoretical restraints on the quantity and diversity of political speech. Buckley v. Valeo, 44 U.S.L.W. at 4132 (footnote omitted).

The substantial restraints on First Amendment rights which the expenditure limits represent, were declared unconstitutional except where integral to a scheme to replace private funding with public funding in order to eliminate corruption. Although the restraints are justified to further this "substantial interest," they cannot be unevenly applied. A provision which would discriminatorily restrict the "quantity and diversity" of speech of all candidates but not the President, is in no way justified.[8/]

The Supreme Court has consistently held the discriminatory restriction of such fundamental rights to be unconstitutional unless found "necessary to a compelling state interest." American Party v. White, 415 U.S. 771, 779 (1974) and cases cited therein. Thus, filing fees which discriminatorily limit access to the ballot on the basis of wealth are unconstitutional

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8/ The Supreme Court in Buckley v. Valeo recognized the Constitutional problems posed by provisions which discriminatorily permit incumbents to use their offices for campaign purposes. Speaking of the exemption for photographic services furnished to Congressmen, 2 U.S.C. § 434(e), the Court was "troubled by the considerable advantages that this exception appears to give incumbents." The Court upheld this provision only because "in the absence of record evidence of misuse or undue discrimination," it served the permissible purpose of enabling legislators to serve their constituents. 44 U.S.L.W. at 4152 n. 112.

even though the state has a legitimate interest in limiting access to the ballot. Lubin v. Parish, 415 U.S. 709 (1974); Bullock v. Carter, 405 U.S. 134 (1972). And in Buckley v. Valeo, the Supreme Court invalidated the expenditure limits of the Act, noting that the government's interest in equalizing the financial resources of candidates, preventing corruption, and reducing the skyrocketing costs of political campaigns were all insufficient to justify governmental restriction on campaign expenditures. 44 U.S.L.W. at 4143-44. " It is not the government but the people . . . who must retain control over the quantity and range of debate on public issues in a political campaign." 44 U.S.L.W. at 4144 (footnote omitted). An exemption for government contributions stands this statement on its head by permitting the government to limit the spending of some candidates while contributing to the President's cause.

Discriminatory restrictions have been upheld only when significant State interests were involved. For instance, in Storer v. Brown, 415 U.S. 724 (1974), the Court upheld a California Election Law restriction that independent candidates could not be members of political parties for 12 months prior to the election. It upheld the restriction only because it furthered the "compelling" goal of preventing the election from becoming a refuge for primary losers rather than a forum for major political struggles. 415 U.S. at 736. See also American Party v. White, 415 U.S. 767 (1974). In the instant case there is no comparable "compelling" interest being served by the discrimination; indeed, there is a noticeable lack of legitimate government interest in allowing the President more speech than other candidates.

Finally, the expenditure limits which are presently circumvented by the political use of government employees were a major reason for upholding the public funding provisions of the Act against an equal protection challenge. In upholding the provisions which make available more money to major parties than to minor parties, the Court said:

> Any disadvantages suffered by operation of the eligibility formulae under Subtitle H is thus limited to the claimed denial of the enhancement of opportunity to communicate with the electorate that the formula affords eligible candidates. But eligible candidates suffer a countervailing denial . . . [A]cceptance of public financing entails voluntary acceptance of an expenditure ceiling. Non-eligible candidates are not subject to that limitation. Accordingly, we conclude that public financing is generally less restrictive of access to the electoral process than the ballot-access regulations dealt with in prior cases. 44 U.S.L.W. at 4155 (footnotes omitted).

The expenditure ceilings were significant because the overall effect of public funding was to enable minority candidates to increase their spending relative to those who traditionally raised great amounts of money. 44 U.S.L.W. at 4159. This line of reasoning is invalidated when the law is applied in a way which permits the President to spend far beyond the limits. Without an effective expenditure ceiling on the President, the rationale for upholding the public funding provisions of the Act is removed.

To exempt the President's use of government resources from the scope of the Act would raise again in practice the Constitutional problem solved in theory in Buckley v. Valeo. It would also raise the question of discrimination against other major party candidates who must report all of their resources and who must charge all of their expenditures to the spending limits. The Act should be read to encompass the use of government resources so that it can be construed to avoid these Constitutional infirmities. See Buckley v. Valeo, 519 F.2d at 874.

CONCLUSION

The Federal Campaign Election Act of 1971 as amended should be read to embrace the use of government resources for campaign purposes for three reasons. First, the broad language of the Act indicates that it was meant to include every type of campaign funding. Second, such an interpretation is necessary to fulfill the purposes of the Act. Third, any other interpretation would make the Act unconstitutional. Thus, we ask that government paid salaries for employees working to influence the election be declared campaign contributions and expenditures. As such they should be reported and attributed to the candidate's expenditure limit.

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May 14 , 1976

* The extensive assistance of David Galbraith, a third year law student at American University, is gratefully acknowledged.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN AND RALPH NADER,)
)
Plaintiffs.)
)
v.) Civil Action No. 2280-72
)
GEORGE P. SHULTZ,)
)
Secretary of Treasury,)
)
Defendant.)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

This action seeks to recover for the benefit of the United States Treasury improperly expended federal tax monies that were utilized during the 1972 Presidential campaign to pay salaries of various government officials who were devoting substantial portions of their working time to that campaign rather than to public matters. The complaint seeks a declaration that the monies paid as salaries in such circumstances may be recovered by the United States Government since there was no lawful appropriation of funds for campaign purposes. The complaint also asks for an order requiring the defendant to take appropriate action to recover such unlawfully paid salaries, but at this time plaintiffs seek only a declaration that various payments made in the form of salaries were unauthorized and that the defendant has an obligation to take further steps to attempt to recover those unauthorized payments. We do not at this time seek injunctive relief compelling the defendant to take any specific action since we believe that defendant will, once so advised by the Court, take appropriate steps to effectuate the recovery.

We believe that, based on the five depositions, the two sets of answers to interrogatories, and the submitted testimony from the Senate Watergate Committee, it is clear that significant federal salaries were paid to White House personnel who were actively engaged in a political campaign and that plaintiffs are entitled to summary judgment. Under our view of the law, we have no obligation to establish that specific individuals received specific dollar amounts of unlawful salaries because they were engaged in specific campaign-related activities at specific times, although our proof establishes those facts in many instances. We believe that our obligation is simply to establish that significant unauthorized salary payments were made; the exact amount of these payments is a matter for further examination by defendant or other responsible federal officials, at least in the first instance. The legal inferences to be drawn from a number of the facts may be disputed by defendant and others, and there may be factual disputes as to the correct amount of salary repayments due on account of the activities of certain individuals. These disputes do not relate to material facts, however, since we are presently seeking only a declaration that there were "salary" payments made that were unauthorized and that defendant has a duty to investigate and determine the exact amounts of such payments under the rule that "doubts as to accountability may well be resolved against the one having the duty to account." United States v. Bowen, 290 F.2d 40, 45 (5th Cir. 1961).[1]

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[1]The determination here is similar to that in an action for an accounting in which the first question to be determined is whether an accounting should be ordered, Irving Trust Co. v. McKeever, 2 F.R.D. 1 (E.D.N.Y. 1941), and only then are the precise amounts to be repaid of relevance. Under that analogy, we are at the stage where the propriety of entering such an accounting order is to be determined.

STATEMENT OF THE CASE[2]

Beginning at least as early as 1971, various members of the White House staff began to work on the 1972 Presidential campaign in which it was expected that President Nixon would run for re-election. Because of a specific exemption in the Hatch Act, 5 U.S.C. § 7324(d)(1), members of the White House staff are permitted to "take an active part in political management or in political campaigns" without violating section 7324(a)(2) and subjecting themselves to removal from their positions under section 7325. That exception is, in our view, a license to engage in some incidental political activities, but does not constitute a congressional sanction that individuals employed on the federal payroll can devote a substantial portion of their working time to political activities and still continue to draw their federal salaries. As we shall demonstrate in considerable detail below in Part II of our argument, the incidental time spent on political activities in 1971 rapidly accelerated so that many individuals on the White House staff were devoting substantial portions of their time to political activities and some persons were devoting virtually full time to those activities for various segments of time.

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[2]The facts are taken from the depositions of Charles Colson, Robert Finch, Herbert Klein, Ronald Walker, and William Timmons; the defendant's answers to plaintiffs' interrogatories (including the affidavit of John K. Carlock attached thereto), the answers of Gordon Strachan to plaintiffs' interrogatories, and the sworn testimony of Gordon Strachan and Patrick Buchanan, along with their accompanying exhibits, before the Senate Watergate Committee. Reference to the depositions will be by the last name of the deponent and the page number: e.g., (Finch 17). Because the deposition of Mr. Colson was taken on two days and the pages on the second day do not follow the first day's numbers, the Colson deposition will also include a "I" or "II" to designate the appropriate day's transcript. References to the Senate testimony will indicate the last name of the witness and the page; exhibits will be referenced by exhibit number and the page on which the exhibit starts, except where special attention is called to one part of the exhibit. For the convenience of the Court, copies of Volumes 6 and 10 of these Watergate hearings, which contain the testimony of Messrs. Strachan and Buchanan, are being provided.

On October 10, 1972, and again on October 24, 1972, plaintiffs called this situation to the attention of defendant and asked him to take appropriate action to prevent the continued payment of salaries to personnel who were devoting substantially all of their time to re-election matters as opposed to the public matters for which their positions were established. Defendant made no reply to either letter, and thus on November 16th after the election, plaintiffs filed this action seeking declaratory and injunctive relief with respect to the unauthorized salaries.[3]

After obtaining a thirty-day extension of time within which to answer the complaint, defendant chose not to answer but filed a motion to dismiss, alleging that the plaintiffs lacked standing, that the case was non-justiciable because it presented a "political question," and that the complaint failed to state a claim upon which relief could be granted. In opposition, plaintiffs filed a detailed memorandum, and on March 8, 1973, this Court entered its order denying the defendant's motion to dismiss. Thereafter, discovery took place, and while it was in progress, defendant moved for summary judgment on essentially the same grounds as previously rejected by this Court in denying defendant's motion to dismiss. That motion was ordered to be held in abeyance until discovery was completed and until plaintiffs made their motion for summary judgment, which was to take place no later than January 28, 1974.

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[3]The complaint also sought relief with respect to unauthorized uses made of government supplies, telephones, etc. Since it is clear that White House personnel who were working on the campaign used such materials and equipment, declaratory relief with respect to that aspect of the complaint is also required.

The argument below is divided into four sections. The first establishes the proposition that the payment of salaries from the Federal Treasury to persons engaged in substantial political campaign activities is a violation of Article I, Section 9, Clause 7 of the Constitution and of 31 U.S.C. § 628 because no appropriation has ever been authorized for such purposes. Second, we will demonstrate that in fact in the 1972 campaign there were widespread uses of White House staff members to work on the re-election campaign of President Nixon. In the third part we will establish that defendant, perhaps along with other officials, has a duty to investigate and determine the exact facts behind these serious charges and to take steps to recover the unlawfully paid monies for the benefit of the United States Treasury. Finally, we will briefly discuss defendant's claim that plaintiffs lack standing, notwithstanding this Court's earlier determination to the contrary.

RELEVANT AUTHORITIES

Article I, Section 9, Clause, 7, United States Constitution: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; . . ."

Section 628, Title 31, United States Code: "Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others."

ARGUMENT

I. THE USE OF FEDERAL FUNDS TO PAY SALARIES OF FEDERAL EMPLOYEES ENGAGED IN SUBSTANTIAL POLITICAL CAMPAIGN ACTIVITIES VIOLATES ARTICLE I, § 9, CLAUSE 7, UNITED STATES CONSTITUTION AND 31 U.S.C. § 628.

Article I, Section 9, Clause 7 of the Constitution and 31 U.S.C. § 628 together provide that monies shall not be drawn from the Treasury except pursuant to lawful appropriations, and then only for the purposes for which they are made and no others. It is undisputed that there were no appropriations lawfully made by the Congress to be used for the purpose of paying salaries for the campaigns of either President Nixon, Senator McGovern, or any other candidate in the 1972 Presidential election. Thus, if a federal official had written a check to the Committee to Re-elect the President in the amount of $100,000 "to be used to pay the salaries of the Director and Deputy Director of the Campaign and the Director of the Finance Committee for the Re-election of the President," there can be no doubt that that check would be unauthorized and the payment of it would violate the above provisions of law. Plaintiffs' position is, quite simply, that what is forbidden to be done directly by means of a check to the Committee to Re-elect the President, is equally forbidden when done indirectly by means of paying the salaries of persons who are nominally employed by the federal government, but who are actually working on an election campaign.

In fact, with respect to a closely related area of expenditures, many of the persons whose salaries plaintiffs contend should be recovered in whole or in part readily acknowledged that Government funds should not be expended for campaign purposes. Thus, when questioned about whether the Committee to Re-elect or the taxpayers should pay for the travel expenses, hotel rooms, etc. of federal employees on political trips, every witness stated that the Committee to Re-elect should and did pay. They all emphasized the scrupulousness with which the entire White House staff viewed the matter and stated that there was a rule that when in doubt, the charge was to be made to the Committee to Re-elect rather than to the Government.[4] Thus, those very persons involved in the campaigns themselves have acknowledged that taxpayers should not be required to bear certain costs associated with the campaign even when incurred by persons on the Federal payroll, yet it is contended that the salaries paid to these persons while on avowedly political trips are perfectly proper.

We cannot agree that the law permits to be done by the backdoor of salary payments, that which it concededly prohibits via the front door of direct payments to the Committee to Re-elect. This is not a situation in which form can be permitted to prevail over substance, and where taxpayers can be made to bear a cost simply because it is disguised in the form of a salary payment rather than a direct subsidy to a political committee. These salary costs should properly have been borne by the Committee to Re-elect the President and not by the taxpayers at large, many of whom supported other candidates, and others of whom simply preferred to support no one at all. There is nothing to suggest that Congress ever intended to appropriate a single penny for the payment of salaries for the persons working on political campaigns.[5]

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[4]Klein 31, 40-41; Finch 27-29; Timmons 12; and Walker 27-28.

[5]To the extent that there is a congressional indication on the use of funds paid as salaries, we call the Court's attention to the various provisions of Title 5, U.S. Code, which although not directly related in all instances to White House personnel, are indicative of (continued)

The defendant nonetheless contends that the Constitutional proscription does not apply (Br. pp. 11-12) because Article I, Section 9, Clause 7 provides only that "no money shall be drawn from the Treasury but in consequence of appropriations made by law; . . .", and there have been appropriations by law made here.[6] Thus, according to defendant, Article I, Section 9, Clause 7 of the Constitution is not violated where monies appropriated for one purpose, are applied to a wholly different purpose. We submit that there is no rational basis for a distinction under which the Framers would have permitted misuse of appropriated funds provided that there was some appropriation, but would have been sufficiently concerned about the general problem to include a prohibition against the use of Federal funds where there was no appropriation. Similarly, defendant's argument (Br. p. 16 and note 4) that section 628 has not been violated because it applies only to transfers between agencies is without basis in reason or authority. The authorities and reasons given in our brief of March 5, 1973, at pages 11-18, however, fully support the proposition that both the Constitution and section 628 have been breached in this case.[7]

(continued) congressional intent to narrowly limit the purposes for which salary monies are to be spent. For instance, § 3103 limits payments to employees for services rendered at the seat of government and only for the purposes within the appropriation; § 3107 prohibits the use of federal funds for the payment of salaries of publicity experts unless there is a specific appropriation for that purpose; and §§ 3373 and 3374 establish highly complex rules placing restrictions on the loaning of Federal officials for use by state or local governmental units. Finally, § 5502(a) prohibits the payment of salaries for unauthorized offices.

[6] He makes the Constitutional point primarily in connection with his standing defense as a means to distinguish cases such as Flast v. Cohen, 392 U.S. 83 (1968), which sustain taxpayer standing based on violations of the rights of taxpayers secured by a specific Constitutional provision.

[7] See also § 627 of Title 31 which provides further proof that Congress intended appropriations to be narrowly construed.

Accordingly, it is plain that if Federal monies were utilized to pay salaries of White House personnel while such persons were engaged in substantial campaign activities, there were violations of the Constitution and section 628 since there was no lawful appropriation covering such expenditures.

II. THE EVIDENCE DEMONSTRATES THAT PERSONS ON FEDERAL PAYROLLS WERE ENGAGED IN EXTENSIVE ACTIVITIES RELATING TO THE RE-ELECTION CAMPAIGN OF PRESIDENT NIXON WHILE CONTINUING TO DRAW THEIR FEDERAL SALARIES.

Beginning no later than mid-1971, various members of the White House staff while still on the Federal payroll began taking active roles in the upcoming 1972 campaign. (See Buchanan Tr. 3914 and Strachan Tr. 2492).[8] The type of campaign work done by the individual staff member varied according to his general duties and in some cases involved primarily work in the White House and in other cases involved extensive on the road campaigning or other campaign related work outside of Washington. Many of these activities, such as planning the 1972 convention for the Republican Party and making frankly partisan speeches, were campaign related under any view of the law. Others such as "information dissemination" and general liaison with special interest groups became clearly political in the context of the post-convention period.

The evidence in this case demonstrates the massive use of White House personnel to aid the re-election campaign of President Nixon. But as the location of the campaign work varied, so did the nature and extent of the work. Insofar as we have learned, the campaign work patterns broke down into four general categories.

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[8] There is no dispute that all of the persons described herein were on the Federal payroll while engaging in campaign activities.

First, there were those who were working essentially full-time on the campaign such as Gordon Strachan, Pat O'Donnell, and Ken Khachigian. A second group were persons who, for blocks of time, did work that was unequivocally campaign related, but appeared to have done normal work the rest of the time. Included in such group are William Timmons, Ron Walker, and members of their staffs. The third general category is comprised of those persons who devoted large portions of their time over an extended period to the campaign although also continuing to perform other non-campaign related functions. Included in this group are Charles Colson, Robert Finch, and Patrick Buchanan. Finally, there are those persons who activities are at least arguably properly classified as governmental when performed by the staff of the President in normal times, but because of the fact that the campaign was on, those seemingly routine functions were clearly political acts in direct aid of the candidate. Included in this group are Herbert Klein and members of the staff of Charles Colson.

The list of persons involved in political activities on behalf of the reelection campaign of President Nixon contained in this memorandum is bv no means exhaustive. For instance, the testimony of Gordon Strachan and Patrick Buchanan make it clear that both H.R. Halderman and John Mitchell (while he was Attorney General) were engaged in detailed and extensive planning activities in relation to the 1972 campaign. (Strachan Tr. 2492 and Buchanan Tr. 3910, 3940 and Exhibits 175, 176, and 179, pp. 4174, 4185, and 4197, respectively). Limitations of time and money, as well as a belief that the proper persons to make a complete, detailed examination are government employees and not private parties, led plaintiffs to conclude that the evidence presented here is sufficient to show a widespread pattern of misuse of taxpayers' mone, to aid the reelection campaign of a single candidate. There are many more witnesses to examine and documents to consider, as well as a need to place dollar figures on the recoverable salaries. But the pattern is clear and unmistakable; it demonstrates that the taxpayers paid the salaries of many significant assistants on the 1972 reelection campaign staff of Richard Nixon.

A. Full-time Campaign Workers.

One of the prime examples of a White House employee working on the campaign on a full-time basis is Gordon Strachan. He explained his duties to the Watergate committee as follows:

> I was a staff assistant to Mr. Haldeman. My office was located in the basement of the White House. One of my responsibilities during the President's reelection campaign was to serve as liaison with the Committee To Re-elect the President. It was my job to accumulate all the information I could obtain from members of the White House staff, personnel at 1701 [the Committee to Re-elect], the Republican National Committee and from the campaign personnel in key States and cities.
>
> Periodically, I was to report important political matters to Mr. Haldeman. I wrote him many long reports, entitled political matters memos, describing the current status of pending political matters. He relied on me as the member of his personal staff who would obtain information on campaign matters. Either I would have the answer, or I would get it. (Strachan Tr. 2439).

As Mr. Strachan later noted, " . . . from January 1 [1972] through the election my primary duties were in the area of polling and in the area of political data bank." (Strachan Tr. 2440). He referred to himself as the "White House conduit for reporting the activities of 1701, including the activities of Mr. Magruder . . ."

the Deputy Campaign Director, a former White House staffer, and a man with whom Mr. Strachan was in daily contact (Strachan Tr. 2440, 2894). He testified that there were "very substantial contacts between all members of the White House staff and the campaign organization" (Strachan Tr. 2446), and in fact the contacts were so great that there was a regular messenger service established to handle the flow of papers (Strachan Tr. 2469).

Beyond his liaison functions, Strachan was concerned early in the campaign with political intelligence plans (Strachan Tr. 2492), and he had extensive involvement with the political polls which Mr. Haldeman requested be taken by the White House itself (Strachan Tr. 2461, 2466, and 2494). Strachan also maintained the master White House campaign files (Strachan Tr. 2491).

The answers given by Mr. Strachan to plaintiffs' interrogatories spell out clearly the extent of his involvement in the election campaign. His answer to interrogatory 3 indicated that in late 1971 he was spending 20% of his time on polling matters and 40% on the campaign. According to his answer to the fourth interrogatory, he became substantially involved in the campaign in mid-1971, with the amount of time increasing as the election approached. "During the late Summer and Fall of 1972 there were many weeks when virtually all of Mr. Strachan's time was devoted to the campaign and particularly to polling and advertising matters. During August, 1972, Mr. Strachan spent a major portion of his time on matters relating to the Republican National Convention and attending the Convention." Answer to interrogatory 4. These candid answers given by Mr. Strachan demonstrate that we have come a full circle: the Hatch Act's exception in 5 U.S.C. § 7324(d)(1) to permit incidential campaigning by White House staff personnel has been turned on its end, as the performing of governmental duties became "incidental" and the waging of a political campaign became the principal work of a significant number of highly paid Federal employees. It is clear that the candidate and the committees supporting him were unjustly enriched by having the taxpayers support Gordon Strachan while he was working on the campaign, and those payments must now be returned to the Treasury by the responsible persons.

Another White House staffer who was primarily involved in campaign activities at least for the post-convention period was Pat O'Donnell of Mr. Colson's office. According to Mr. Colson, O'Donnell had been scheduling the speeches of Administration personnel, primarily Cabinet officers, for approximately two years, he continued to do this through the campaign, and in fact this was his "primary responsibility." (Colson II, 19-20). These speakers, of which there were approximately thirty during the campaign, participated in what was referred to as the surrogate program. As Robert Finch related it, they were "literally orchestrated around the country in behalf of the President." (Finch 36). Insofar as that orchestration was performed for Cabinet officials, the responsibility was that of Pat O'Donnell, the full-time government employee on the staff of Charles Colson.

A third example of a Government employee working full-time on campaign matters is Ken Khachigian, whom Patrick Buchanan referred to as his "political assistant" (Buchanan Tr. 3914, 3933). He was engaged in extensive political research activities directly related to assessing the strengths and weaknesses of various Democratic candidates who might be opposing President Nixon in 1972 (see, e.g., Exhibit 183 p. 4225). In addition, he served as Mr. Buchanan's liaison to the Committee to Re-elect the President

(Buchanan Tr. 3924). Mr. Buchanan's duties are discussed in Part C of this Point II in much greater detail, and from them it is apparent that if Mr. Khachigian was Mr. Buchanan's "political assistant," he was deeply involved in the many facets of the campaign with which Mr. Buchanan concerned himself. While it is possible that he may have had other duties, the testimony of Mr. Buchanan strongly suggests that Mr. Khachigian was devoting substantially all of his time to political matters related to the 1972 campaign.

B. Full-time for Blocks of Time.

Others on the White House staff worked essentially full-time on matters relating to the campaign, but did so for fairly limited periods of time after which they resumed normal White House duties. For example, William Timmons, the White House congressional liaison, had played an important role in the 1968 Republican National Convention while he was a legislative assistant to then-Congressman William Brock (Timmons 17). Beginning in May of 1971, Mr. Timmons began working what he described as a few hours a week (Timmons 9) or about half a day a week (Timmons 23) in connection with the planning of the Republican National Convention which took place in August of 1972. Beginning in May 1972 his efforts sped up, and he spent a few hours a day working on the convention (Timmons 23). Moreover, prior to it he made four trips of about three days each to the convention site in Miami (Timmons 12). At the time of the convention itself, he went down for an extended stay of three weeks and brought with him five members of his staff who stayed and worked for about a week (Timmons 12-13).

At the convention he was aided by members of the staff of another White House employee, Ron Walker, as well as other White

House staffers (Timmons 14, Walker 21, 23-24). He was primarily concerned with the coordinating of the role of President Nixon's family and Vice President Agnew and his family at the convention (Timmons 15-16), although he also coordinated the roles of other White House staff personnel at the convention (Timmons 17). After it was over, he stayed around "and made certain that the materials we had rented, typewriters and cars, etc., were, in fact, returned and all the bills paid by the Committee to Re-elect." (Timmons 18). We submit that there is simply no justification for Federal employees to draw salaries from public monies while assuming responsibilities that the Committee to Reelect and/or the Republican Party should have and could have assumed themselves. Whatever conceivable justifications there might be for permitting members of the White House staff to engage in campaign related activities when those activities consist of planning and advising the President, surely do not exist when the work involved could easily be done by a person not in the White House and is identical in kind to that done by the opposing, non-incumbent party. Of course, all of the travel and other non-salary expenses of these White House convention workers were paid by the Committee to Re-elect the President" (Timmons 12-15), thus resolving all doubt as to the "political" nature of the work done by these convention workers.

The office of Ron Walker, the chief of advance work for the President, also provided significant assistance to the re-election campaign beyond the work that the staff members did at the convention. Mr. Walker first became associated with President Nixon during the 1968 campaign when he did volunteer work as an advance man (Walker 5-6).[9] The duties of an advance man, which are set forth in detail in the Walker deposition pages 11-19, are generally to handle the logistics for the candidate, who in this case happened to be the President. Mr. Walker did that for the President at the convention where he remained for approximately two to three weeks (Walker 20). Thereafter, the President made approximately 15 to 20 trips before election day, for which Mr. Walker's office assumed the over-all responsibility (Walker 25). The President made a number of trips which were "purely political" such as the one to Atlanta for a motorcade (Walker 25, 29). In a typical trip a member of the advance staff of Mr. Walker would spend approximately 3 to 5 days in the city preparing for the Presidential visit (Walker 29-30). During these political trips all of the expenses, including travel, were paid by the Committee to Re-elect the President (Walker 27), except, of course, the salaries of the members of Mr. Walker's staff. While he used staff for some of these trips, he also utilized the services of more than 50 volunteers for Presidential, and apparently other visits as well (Walker 26, 34). It appears that the only determining factor on whether to utilize staff or volunteers was simply the availability of staff to do the job.

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9 Mr. Walker testified that he continued to draw his salary from his company during the 1968 campaign (Walker 6). Thus, it appears likely that the company made an indirect illegal political contribution in violation of 18 U.S.C. § 610, by loaning the Nixon campaign an employee whose salary it continued to pay. In our view the indirect contribution of a paid employee is equally prohibited by section 610, and such prohibition is analogous to the prohibition underlying the complaint here.

C. Large Portions of Time on a Continuous Basis.

The third general category into which the campaign work of White House staff personnel fell was that of persons who devoted portions of their time to the political campaign, but did so over a long period of time and in that way the time became substantial in total. Charles Colson, for instance, estimated that beginning in mid-July he devoted approximately 20% of his time to political matters (Colson I 48,50).[10] His chief admittedly political duty was his responsibility as chairman of a group which met six days a week at the White House at 9:15 (Colson I 36, 38). The members of this group included representatives from the Republican National Committee, the Committee to Re-elect the President and the White House (Colson I 37-38), and its primary purpose was to organize the replies to answer the opponents' charges and to make material available for the campaign speeches of the surrogates (Colson I 36, 41). These replies, which were obviously a central part of the strategy since the President campaigned very little, were prepared in part by the use of White House speech writers who were on the public payroll (43-44). Beyond his responsibilities as chairman of the 9:15 group and the necessary work that had to be done to prepare himself for those daily meetings and to implement the decisions reached at them, Mr. Colson also acknowledged that he helped decide in some instances who should reply, where the reply should take place (Colson II 18-19) and consulted with regard to political ads (Colson II 22-24). It is apparent that Gordon Strachan's description of Charles Colson as a member of the White House staff

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[10] He indicated a far lesser percentage of time when asked about "campaign" work which he defined in the narrowest sense of the word (Colson I 53-54).

who was "politically active" (Strachan Tr. 2494) was an accurate one.

Another high-level White House staff member who was significantly involved in the 1972 campaign was Robert Finch, counsellor to the President and in charge of a number of special projects. For the post-September period he admitted to spending at least one-third and perhaps one-half of his time on partisan political campaign activities (Finch 26, 37-38). In this one-third he did not include "non-partisan" talks at which he gave the Administration's position to such groups as farmers and the DAR (Finch 26-27, 37-38). When these "non-partisan" appearances are added in, it is apparent that Mr. Finch was devoting well over half of his time to speechmaking "as a spokesman for the administration" (Finch 44-45). When the fact that he had already decided to leave the White House and was then making plans to return to California in a new job in a private law firm is taken into account (Finch 40), it is clear that the amount of time Mr. Finch was then devoting to finishing the various projects which he had started was quite small compared to his basic duty in the post-September period--to go out and campaign for the reelection of President Nixon.

During this time he continued to make use of the White House staff to get the facts that he needed for his speeches (Finch 31). Finch also testified that the other members of the Cabinet played similar parts in the 1972 campaign, speaking out with comparable frequency in a partisan effort on behalf of the Administration (Finch 27). Finally, during the last week of the campaign, Mr. Finch was fully available and working to do whatever he could to ensure the reelection of President Nixon (Finch 38-39). In short, although Robert Finch was continuing to serve in a position as counsellor to the President, he in fact was serving primarily as campaigner for the President for at least the last two months of the 1972 campaign.

Patrick Buchanan's assignment in the 1972 presidential campaign began in mid-1971 when he was "named chairman of the opposition research, opposition tracking, opposition analysis group which would be one task force within the campaign." (Buchanan Tr. 3914). His responsibilities in the campaign included those of political strategist (Buchanan Tr. 3921, 3940). In these capacities he wrote "political strategy memos," examples of which are produced in Exhibits 170-194 which are part of the Buchanan testimony. Many of them, it should be noted, were written on White House stationary.[11]

Mr. Buchanan recommended the establishment of a task force to monitor the activities of candidate Edward Muskie known as the "Muskie watch." But as he testified, "the Muskie watch amounted to actually little more than the research files of Buchanan and Khachigian." (Buchanan Tr. 3936). However, as Exhibit 170 (p. 4146) demonstrates, the watch was a detailed and careful one and was a coordinated part of a strategy to ensure that Senator Muskie, who was viewed to be the most difficult opponent for President Nixon and the most likely person to unify his party, would not win the nomination (Buchanan Tr. 3933-3934). In addition to the Muskie watch, similar analyses were made of Senator Humphrey (see Exhibit 171, p. 4154) and Senator Kennedy (see Exhibit 173,

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11 E.g., Exhibit 170, p. 4146; Exhibit 171, p. 4154; Exhibit 179, p. 4197. The attached memo from Robert C. Odle, Jr. (p. 4204) makes it clear that the authors of Exhibit 179, noted only as "Research" were Messrs. Buchanan and Khachigian.

p. 4167). The campaign activities with which Mr. Buchanan was dealing as early as the middle of 1971 are nicely summarized by a memo he wrote to eight members of the White House staff concerning an upcoming meeting (Exhibit 174, p. 4173). Mr. Buchanan suggested that some of the questions that ought to be considered at the meeting would be, who is the likely Democratic nominee and how should he be dealt with? Who is the likely opposition within the Republican Party and how should the McCloskey movement be handled? What is the best strategy to defend against the attacks of potential Democratic nominees, as well as other thoughts on tactics to be used to highlight the weaknesses in the other party and other candidates between now and this coming [1971] November. One can hardly conceive of a more politically oriented meeting than that one, and yet all of the participants were then on government salaries.

Beyond the political strategy function, Mr. Buchanan was involved in the hiring of pranksters to disrupt the opposition party (Buchanan Tr. 3923), he participated in the preparation of political ads (Buchanan Tr. 3929-3930), and he prepared letters and telegrams to be sent in the name of private citizens supporting the Administration's position on a variety of matters (Buchanan Tr. 3976-77 and Exhibit 169, p. 4130). In addition, he had the specific campaign duty after September 1 of preparing a daily political analysis for the President (Buchanan Tr. 3947). And for all of this work he relied very heavily upon White House sources, particularly the daily news summary prepared by White House staffer Mort Allen for the use of the President and other members of the staff (Buchanan Tr. 3937). From these hearings alone it is clear that Patrick Buchanan spent considerable time on the campaign and that he was a key strategist beginning as early as the middle of 1971.

D. Facially Neutral Activities Which Become Campaign Activities During a Campaign.

Many of the witnesses exclaimed that they were simply doing during the campaign that which they had always done while on the White House staff. It is not the intention of plaintiffs in this proceeding to challenge the propriety of taxpayers paying for many of the activities to be discussed below during the normal, non-campaign portions of a President's term. But we do contend that activities which may be facially neutral or non-political during non-election years change their character and become campaign activities during periods such as the post-convention time when the President was running for reelection.

Herbert Klein was, throughout the four and a half years that he served in the White House, a disseminator of information for the entire executive branch of the government and for the Administration (Klein 13). He had no day-to-day responsibilities for briefing the press as did the press secretary but was concerned with acting as a liaison with members of the national media (Klein 14-15). Thus, when the election campaign began to become active after the convention, Mr. Klein did very little that he did not do before although he was outside Washington more than he was there and his travels increased above normal as he continued to tell the Administration's side of the story (Klein 26-28).

Mr. Klein claimed that the 1972 campaign was a different kind of campaign because he was doing the same things that he had done since January 1969. When asked about his contribution to the President's reelection, he stated "I thought I [sic] would be best served by carrying out the duties of my own office to the fullest extent possible and in an intensified fashion." (Klein 24). As he put it " . . . with the American people, part of the process in any election is that they understand what the issues are at the particular time" and it was essential in his view that "you do the best you can in at least answering questions regarding those issues." (Klein 25).

Although Mr. Klein in prior Nixon campaigns had taken leaves of absence from his positions (Klein 5, 7, 9, and 10), he did not do so this time. He traveled around the country, and on many of his trips the expenses were paid by the Committee to Re-elect the President (Klein 40). He made speeches (Klein 34) and kept himself generally available to the press (Klein 33), including servicing the needs of the National Press Corps at the Republican National Convention (Klein 19). Herbert Klein was spreading the word about the Administration, what it was doing and where it stood on issues. In his own mind he was making an important contribution to the reelection of the President, and yet it was equally clear that the taxpayers were shouldering the burden of paying his salary during this time. Whatever right the President may have to disseminate general information about his policies at the public's expense during non-election periods does not extend to have the taxpayers support publicity agents when he is actively seeking reelection.[12] For if Herbert Klein had not been receiving a White House salary while working on the campaign, either the Committee to Re-elect would have paid him or he would have worked on a voluntary basis. That is the way that campaigns are supposed to operate, but that is not what happened in 1972.

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12 Of course, the President is entitled, if not required to have a Press Secretary and supporting staff during a campaign, but that was not Mr. Klein's function.

The situation with Charles Colson and his staff is very similar to that of Herbert Klein since they were doing during the campaign that which they had done before (Colson I 46). Their regular duties were to cater to the various organized special interest groups in the country, ranging from ethnic groups to labor unions to business groups, and to ensure that these groups had a friendly ear in the White House when policy decisions were of concern to them (Colson I 8; Colson II 27-28). Although the Colson staff duplicated in some ways the substantive responsibilities of the various agencies, it was in effect a last chance for these groups to be heard before policy was to be decided in the White House. Whether those activities can fairly be characterized as governmental as opposed to political during non-election times is a matter of some debate. However, it seems clear that once the campaign was under way those workers were every bit as much campaign workers as the employee of the Committee to Re-elect.

The best evidence of the way in which Mr. Colson viewed the responsibilities of his staff is a memo he wrote to them on August 25, 1972, the Friday after he returned from the Republican National Convention (Colson I 29). This remarkable document, which is exhibit 1 to the Colson deposition, places in perspective all of the Colson testimony about the duties performed by him and his staff during the post-convention period. It is of particular significance in light of Mr. Colson's role as chairman of the 9:15 group which was concerned with devising reply strategies to the positions taken by the opposition. The memo begins by noting that there are "71 days left between now and the election. Every single one of these is a campaign day . . . ." Later on Mr. Colson observes, "[m]any of you have been through political campaigns before.

For those of you who have not, a campaign is a 24-hour a day, 7-day a week job . . . . Think to yourself at the beginning of each day. 'What am I going to do to help the President's reelection today?' and then at the end of each day think what you did in fact do to help the President's reelection." After stating his expectation of maximum staff output, he noted that if he bruised any feelings or injured anyone's morale, "I will be happy to make amends on the morning of November 8 when we have done our job and the results are evident."

Notwithstanding Mr. Colson's explanations as to his intentions in writing this memo, (Colson I 32), it is apparent that each member of his staff, which grew from a single secretary in 1969 (Colson I 21) to 15 professional and a like number of clerical personnel by the time of the election (Colson I 30-31), was told to devote himself to the reelection of President Nixon for the rest of the campaign and to focus entirely on campaign and campaign-related matters until that reelection was accomplished. Seen in this light it is apparent that everything that was done by the Colson staff was with that purpose in mind and that each of those thirty individuals was a campaign worker and not a servant of the government and the people as a whole.

Other facts support this conclusion. Each of the members of Mr. Colson's staff had a "counterpart" at the Committee to Re-elect who dealt with a specific area just as each of the members of the staff had a specific interest group to handle (Colson II 29). The White House counterpart provided substantive help to his colleague at the Committee to Re-elect (Colson II 30), and of course was available to the special interest group for direct White House access on any problem that might arise. It is apparent that during a campaign access of that kind is of the great importance and provides the candidate with key input as to how his policies are being received by the groups most directly affected by them.

Finally, the work of Colson s staff member Desmond Barker in coordinating the efforts of the Public Information Offices of the various agencies, as he had been doing before the campaign, took on an increasingly important role as election day neared (Colson II 58-60). The ability to manage or coordinate the release of information by executive departments during a political campaign cannot be underestimated, and the political impact of it is obvious when the person managing the news effort is on the staff of the chairman of the daily 9:15 political strategy meeting. The timing of the releases of news--both good and bad--is an important campaign tool, and one which is inevitable that the incumbent will be able to have. That does not mean, however, that the taxpayers should pay the salary of the staff member who is doing the coordinating of the release of such information, as was the case in 1972.

* * *

During the course of his testimony before the Senate Watergate Committee, while obviously not considering his remarks in the context of this litigation, Patrick Buchanan made a statement which, coupled with the Colson memorandum, summarized plaintiffs' case very nicely. In replying to a question as to whether the dirty tricks department played any significant role in the 1972 campaign, Mr. Buchanan stated that he agreed with the assessment of Theodore White that "these really had the weight of a feather in the campaign of 1972." He then continued with the statement:

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> I think what was unprecedented for us, Senator, was the fact that we were--that we controlled the Office of the Presidency, and this was the, frankly, some of the, innovations in terms of the offensive strategy in media ads, the attack group which has gotten, the 9:15 group which has gotten a bad name, the use of surrogates, and the orchestration of our political offensive, these had nothing to do with dirty tricks. It was one of the most effective operations and one of the most enjoyable operations I have been involved in. (Buchanan Tr. 3956).

The evidence in this case demonstrates that Mr. Buchanan was entirely correct in his assessment that the uses of the Office of the President, and in particular the paying of large numbers of White House staff members from public funds while they were working on political campaign, was a major factor in the ability of the President to successfully mount his campaign and obtain his reelection. The evidence demonstrates massive misuses of government funds, and plaintiffs have established that which the complaint alleges--that government paid employees were devoting substantial portions of their time to a political campaign.

FEDERAL ELECTION COMMISSION

August 11, 1976 - Spiegel to Murphy

Aug 10, 1976 Robert to Comm

Aug 5, 1976 Stabler to Comm

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____ (1) Classified Information

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____ (6) Personal privacy

____ (7) Investigatory files

____ (8) Banking Information

____ (9) Well Information (geographic or geophysical)

Signed ____

date ____

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