FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 1234

Date Filmed 7/24/80 Camera No. --- 2

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 11, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert F. Bauer, Esquire
Dechert Price and Rhoads
888 17th Street, N.W.
Washington, D.C. 20006

Re: MUR 1234

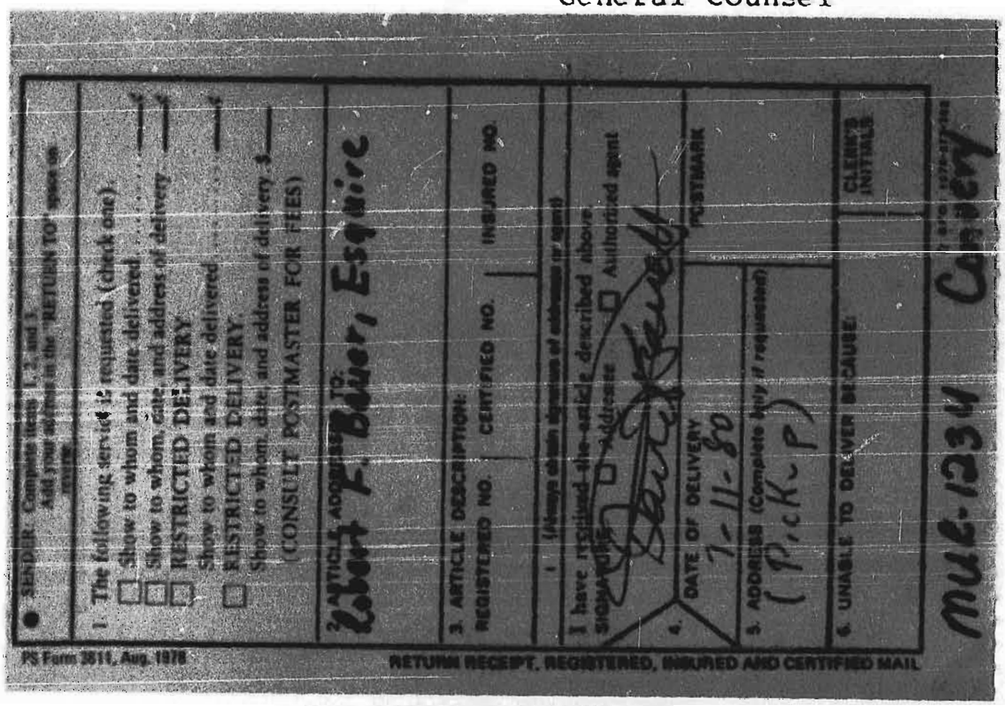
Dear Mr. Bauer:

The Federal Election Commission has reviewed the allegations set out in your complaint dated May 9, 1980. On the basis of information contained in that complaint, and information provided by the Respondent, National Republican Senatorial Committee, the Commission determined that there is no reason to believe that a violation of the Federal Election Campaign Act has been committed.

Accordingly, the Commission has closed its file in this matter.

Sincerely,

Charles N. Steele
General Counsel


PS Form 3811, Aug. 1978
RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL
ARTICLE ADDRESSED TO: Robert F. Bauer, Esquire
DATE OF DELIVERY 7-11-80
ADDRESS (Pick-P)
MUR 1234

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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Sincerely,

UJC
7-11-80

Charles N. Steele
General Counsel

8 0 0 4 1 2 0 2 3 5 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 11, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James F. Schoener, Esquire
Jenkins, Nystrom and Sterlacci, P.C.
2033 M Street, N.W.
Washington, D.C. 20036

Re: MUR 1234

Dear Mr. Schoener:

This will acknowledge receipt of the letter dated May 30, 1980, by which you responded to allegations made in a complaint filed by the Democratic Senatorial Campaign Committee that your client, the National Republican Senatorial Committee, had violated, and is about to violate, the Federal Election Campaign Act.

On July 10, 1980, the Commission determined that there is no reason to believe that NRSC violated the Act, and voted to close its file in this matter. The file in this case will become a part of the public record within thirty days.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James F. Schoener, Esquire
Jenkins, Nystrom and Sterlacci, P.C.
2033 M Street, N.W.
Washington, D.C. 20036

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Sincerely,

Charles N. Steele
General Counsel

VJC
7-11-80

80040202354

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1234
National Republican Senatorial Committee	)	
	)	

CERTIFICATION

I, Marjorie W. Emmons, Sectetary to the Federal Election Commission, do hereby certify that on July 10, 1980, the Commission decided by a vote of 6-0 to take the following actions regarding MUR 1234:

1. Find NO REASON TO BELIEVE that the National Republican Senatorial Committee violated the Act in making expenditures, under 2 U.S.C. §441a(d)(3), as agent of both the Republican National Committee and of a Republican State Committee.

2. CLOSE THE FILE in this matter.

3. Send the letters of notification as attached to the First General Counsel's Report dated July 8, 1980.

Voting for this determination were Commissioners Aikens, Friedersdorf, Harris, McGarry, Reiche, and Tiernan.

Attest:

7/11/80
Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Received in Office of the Commission Secretary: 7-8-80, 10:00
Circulated on 48 hour vote basis: 7-8-80, 4:00

July 8, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Jane Colgrove

SUBJECT: MUR 1234

Please have the attached Memo to the Commission distributed on an informational basis. The original should be returned to the Docket.

Thank you.

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

80 JUL 8 A10: 46

July 8, 1980

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: Additional Information - MUR 1234

Attached for your consideration are two letters dated July 3, 1980, received in this office on July 7, 1980, from Robert F. Bauer, General Counsel to the Democratic Senatorial Campaign Committee, regarding MUR 1234.

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RECEIVED

80 JUL 3 PM 2:30

LAW OFFICES
ROBERT F. BAUER
SUITE 406
1101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 296-0555

80 JUL 7 P 4: 59

908942

July 3, 1980

Mr. Charles Steele
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: DSCC Complaint of May 9, 1980

Dear Sir:

In your letter of May 13, 1980, you acknowledged receipt of the Democratic Senatorial Campaign Committee's (DSCC) complaint filed May 9, 1980 against the National Republican Senatorial Committee (NRSC). As you know, the DSCC complaint alleges that the NRSC has violated in the past -- and will violate once again this year -- section 441a of the Act by making hundreds of thousands of illegal expenditures pursuant to "delegations" by state party committees of their section 441a(d) spending authority. In your acknowledgement, you invited the DSCC to submit, at any time, any additional evidence bearing on the issues raised in that Complaint. Accordingly, the DSCC herewith brings to your attention, and to the attention of the Commission, additional and conclusive evidence on the basic factual question of whether the NRSC intends to procure and use this year, as it did last year, unlawfully "delegated" state party committee section 441a(d) authority.

In it's Complaint and Affidavit, the DSCC asserted its "reason to believe that, once again in this election year, the NRSC will expend considerable funds in excess of the applicable limit pursuant to such unauthorized delegations from the State committees ...". See pp. 4-5 of the Complaint. The DSCC "reason to believe" has since been converted into absolute certainty that the NRSC will proceed with these unauthorized delegations. The DSCC's certainty on this point stems from the NRSC's announcement of a "1980 Target Democrat program", which it describes for its contributors in the attached fund raising mailing.* You will note that, below each photograph of a "targeted" Democratic Senator, there appears a statement of the "maximum NRSC contribution to defeat ..." that Senator. In each instance, the "maximum contribution" is extremely large -- considerably larger than the $17,500 direct cash contribution which the Committee is authorized to make under section 441a(h). Moreover, and most strikingly, the "maximum contribution" also exceeds the $17,500 contribution when combined with the full 2 cent per voter limit available to the NRSC in each state as "agent" of the Republican National Committee (RNC). The additional funding in each instance comes, of course, from an additional 2 cent per voter limit which the NRSC expects, once again, to secure through "delegation" from the state party committees in each of the states where targeted Democrats are running.

*Only relevant portions are attached.

LAW OFFICES
ROBERT F. BAUER

To illustrate this point, the DSCC has prepared a chart comparing, for certain of the targeted Senators, the NRSC's announced "maximum contribution" with the monies available to the NRSC through 1) an agency arrangement with the RNC for the national party's 2 cent limit plus the $17,500 direct contribution, and 2) an agency arrangement with both the RNC and each state party committee, for a combined 4 cent limit. You will note that in each case, the "maximum contribution" exceeds the 441a(d) national party limit combined with the $17,500. The chart establishes clearly that only by combining the national and state party 441a(d) limits, will the NRSC be able to make its "maximum contributions" against the various targeted Senators.

	NRSC Declared "Maximum Contribution"	National Party 441a(d) (2¢ v. VAP) plus $17,500 Direct Contributions	Combined National and State Party 441a(d) Limit (4¢ v. VAP)
Indiana (Bayh)	$217,500	$129,578.08	$224,156.16
California (Cranston)	861,500	502,524.00	970,048.00
Colorado (Hart)	115,500	75,555.68	116,111.36
Idaho (Church)	71,500	46,940.00	58,880.00*

*It appears that in Idaho, only the combined national and state 441a(d) limits ($58,880) plus the $17,500 direct contribution would be sufficient to enable the NRSC to spend its announced goal of $71,500.

The NRSC mailing leaves no room for doubt about the NRSC's intention to spend large sums pursuant to delegated state party committee 441a(d) authority. In fact, the use of that authority is central to the NRSC's "1980 target program"; in no case will the NRSC even approach its "maximum contribution" unless additional funds are spent pursuant to the state party committee 441a(d) limit. The Commission should also note that the expenditure of funds, pursuant to this delegated authority, is not characterized as a gift or contribution from the state party committees. Rather, these delegated state committee limits are neatly folded into, and become part of, the NRSC's own "maximum contribution". As the DSCC has argued at length in its Complaint, the NRSC's assumption of this limit -- and the state committees' corresponding surrender of responsibility for the raising and expenditure of 441a(d) funds -- renders hollow and useless section 441a(d)'s intended purpose -- an incentive to the involvement and development of state party committee organizations in the federal election process.

Very truly yours,

Robert F. Bauer

Robert F. Bauer
General Counsel
Democratice Senatorial Campaign
Committee

RFB:peg

Enclosure

Registered Document Number: 4579

National Republican Senatorial Committee

1980 Target Democrat Program

Update Report on the Defense Voting Records
of the Ten Targeted Democrat Senators

Prepared for Senatorial Club Members Only,
by the Campaign Staff of the
National Republican Senatorial Committee

8 0 0 4 1 2 0 2 3 6 2

1980 Target Democrat Program

The 10 Democrat Senators listed below are targeted for defeat in 1980 by the Senatorial Committee because of their extremely liberal voting records and because public opinion polls show that they are all vulnerable to defeat based on their anti-defense voting records.

Our campaign staff has picked four representative, and crucial, defense votes (analyzed at the bottom of the page) which show how these targeted liberal Democrats have voted regularly in favor of disarm-and-retreat foreign and defense policies.

BIRCH BAYH
Indiana
Garcia — Absent
B-1 — Against
Vietnam — Against
Spending — Against
Maximum NRSC Contribution to defeat Senator Bayh $217,500

FRANK CHURCH
Idaho
Garcia — Against
B-1 — Against
Vietnam — Against
Spending — Against
Maximum NRSC Contribution to defeat Senator Church $71,500

ALAN CRANSTON
California
Garcia — Against
B-1 — For
Vietnam — Against
Spending — Against
Maximum NRSC Contribution to defeat Senator Cranston $861,500

JOHN C. CULVER
Iowa
Garcia — Against
B-1 — Against
Vietnam — Against
Spending — Against
Maximum NRSC Contribution to defeat Senator Culver $127,500

JOHN A. DURKIN
New Hampshire
Garcia — Against
B-1 — Against
Vietnam — Against
Spending — For
Maximum NRSC Contribution to defeat Senator Durkin $71,500

MIKE GRAVEL
Alaska
Garcia — Against
B-1 — For
Vietnam — Against
Spending — Against
Maximum NRSC Contribution to defeat Senator Gravel $71,500

GARY HART
Colorado
Garcia — Against
B-1 — Against
Vietnam — Against
Spending — Against
Maximum NRSC Contribution to defeat Senator Hart $115,500

PATRICK LEAHY
Vermont
Garcia — Against
B-1 — Against
Vietnam — Against
Spending — Against
Maximum NRSC Contribution to defeat Senator Leahy $71,500

GEORGE McGOVERN
South Dakota
Garcia — Against
B-1 — Against
Vietnam — Against
Spending — Against
Maximum NRSC Contribution to defeat Senator McGovern $123,500

GAYLORD NELSON
Wisconsin
Garcia — Against
B-1 — Against
Vietnam — Against
Spending — Against
Maximum NRSC Contribution to defeat Senator Nelson $192,500

The key defense votes analyzed by the Committee are as follows:

1) GARCIA — (1975) Funding for an urgently needed U.S. base on the island of Diego Garcia to counter Soviet naval expansion into Indian Ocean and Persian Gulf.

2) B-1 — (1977) Funding for the B-1 Bomber.

3) VIETNAM — (1978) Motion to prohibit "reparations" aid to Communist Vietnam.

4) SPENDING — (1979) Amendment to increase defense spending in Fiscal Year 1981 by $12.5 billion.

Pro-disarmament, liberal and labor lobbies have already poured nearly $6.5 million into the campaign coffers of the targeted Democrat Senators.

These figures, taken from the most recent Federal Election Commission report, show the money raised to date by the 10 Targeted Democrats.

1.	Sen. Birch Bayh	$ 880,071
2.	Sen. Frank Church	$1,064,559
3.	Sen. Alan Cranston	$1,687,380
4.	Sen. John C. Culver	$ 704,546
5.	Sen. John A. Durkin	$ 98,429
6.	Sen. Mike Gravel	$ 432,570
7.	Sen. Gary Hart	$ 240,110
8.	Sen. Patrick Leahy	$ 153,135
9.	Sen. George McGovern	$ 930,452
10.	Sen. Gaylord Nelson	$ 255,899

RECEIVED

'80 JUL 3 PM 2 : 00

LAW OFFICES
ROBERT F. BAUER
SUITE 406
1101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

(202) 296-0555

July 3, 1980

Mr. Charles Steele
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Sir:

In response to the Democratic Senatorial Campaign Committee's (DSCC) complaint dated May 9, 1980, the NRSC's General Counsel, Mr. Jim Schoener, forwarded to your office a letter attacking certain "deficiencies" in that Complaint. Specifically, Mr. Schoener referred to the absence of any notarization on the document separately styled "Complaint", which was also accompanied by a separate Affidavit and Memorandum of Points and Authorities. As I understand it, you pointed out to Mr. Schoener that the accompanying, notarized Affidavit, executed by DSCC's Executive Director, Mr. Tom Baker, states at page 2 that "the factual allegations contained in the foregoing complaint and this affidavit are true and correct to the best of my knowledge and belief." It was your conclusion, which you communicated to Mr. Schoener, that this notarized statement in the Affidavit -- which expressly swears to the allegations in the Complaint -- was sufficient to satisfy the requirements of section 111.4(b)(2) of the FEC regulations.

As I informed you in response to Mr. Schoener's letter, a copy of which Mr. Schoener forwarded to me, I concur fully with your position. Section 111.4(b)(2) simply does not support the reading imposed upon it by the NRSC. As you know, that section sets forth the requirement that the <u>contents</u> of the complaint be sworn to and notarized; it does not add a requirement that the notary's stamp, for this purpose, must appear on one of the pages of the Complaint itself, and not in an attached affidavit or verification. Such a requirement would be a simple case of placing form ahead of substance. Nor would the NRSC's position be consistent with any prior Commission interpretation of this section, for there have been numerous instances where complainants -- without Commission objection -- have elected to attest to the Complaint in an attached affidavit or verification. <u>See</u>, for example, the Verification made out by attorney for the Baker for President Committee, and attached to the Committee's Complaint in MURs 1167, 1168, 1170 (involving the <u>Nashua Telegraph</u> Debate).

LAW OFFICES
ROBERT F. BAUER

In preparing this letter, the DSCC does not wish or expect to reopen this issue in any way. Instead, it is the DSCC's sole purpose to place on record, in writing, it's position as already known to you.

Very truly yours,

Robert F. Bauer
General Counsel
Democratic Senatorial Campaign Committee

RFB:peg

July 8, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Jane Colgrove
S
SUBJECT: MUR 1234

Please have the attached First General Counsel's Report on MUR 1234 distributed to the Commission on a 48 hour tally basis.

Thank you.

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

80 JUL 8 A10: 00

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 7-8-80

MUR # 1234
DATE COMPLAINT RECEIVED
BY OGC May 9, 1980

STAFF MEMBER Convery

COMPLAINANT'S NAME: Democratic Senatorial Campaign Committee

RESPONDENT'S NAME: National Republican Senatorial Committee

RELEVANT STATUTE: 2 U.S.C. § 441a(d); 11 C.F.R. § 110.7(a)(4)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

In its complaint and in the documents attached thereto (see discussion re: The Filing of the Complaint, below), the Democratic Senatorial Campaign Committee (DSCC) alleged that the National Republican Senatorial Committee (NRSC), violated the Act in connection with several 1978 general elections for the Senate, and is about to violate the Act with regard to 1980 general elections for the Senate, as follows:

> 2 U.S.C. § 441a(d) provides that the national committee of a poltical party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connecton with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds -
>
> (A) in the case of a candidate for election to the Office of Senator ... the greater of -
>
> (i) 2 cents multiplied by the voting age population (V.A.P.) of the State (as certified under subsection (e) of this section; or
>
> (ii) $20,000.

Complainant has no argument against NRSC, as agent for the Republican National Committee, making expenditures on behalf of Senate candidates; 1/ and has no problem with State committees 2/ making such expenditures on behalf of Senate candidates in their particular States.

Complainant does object to, and alleges as a violation of § 441a(d), the practice followed by certain Republican State Committees, whereby they delegate NRSC as their "agent" for the purpose of making § 441a(d) expenditures to Senate candidates in those States.

DSCC claims that such action, which in effect gives NRSC the opportunity to spend 4 cents x V.A.P. in each State in which it has been "delegated," is contrary both to the letter and the spirit of § 441a(d).

In tables attached to its complaint, DSCC purports to show that, by using such delegations from State committees, NRSC overspent their § 441a(d) expenditure limitation in 22 of the 36 general election campaigns of Republican candidates for Senate in 1978. Further, DSCC stated that it believes that the "practice employed by NRSC during the 1978 Senatorial campaigns will be repeated this year ...".

Complainant DSCC requested that the Commission a) determine the merits of its complaint on an expedited basis; b) find probable cause to believe that NRSC has committed, and is about to commit, violations of § 441a of the Act; and either c) within 30 days of that finding, seek to obtain agreement from NRSC that it, and all entities acting on its behalf 1) will not make expenditures in excess of limitations imposed on national party committees, and 2) will not transfer funds to State committees for the purpose of making § 441a(d) expenditures pursuant to their authority under the Act; or d) in the event that conciliation efforts do not yield, such an agreement within 30 days, immediately institute an action in U.S. District Court seeking the imposition of a temporary and permanent injunction to halt [alleged] violations of § 441a(d), and seeking civil penalties.

Following discussion of a procedural issue raised in the filing of the complaint, we will discuss the arguments raised by DSCC; note responses made by NRSC in its brief dated May 30, 1980; and state our conclusions with regard to each issue.

1/ Complainant concedes that such activity is specifically authorized by 11 C.F.R. § 110.7(a)(4).

2/ To include any district, local or subordinate committees thereof.

I. THE FILING OF THE COMPLAINT

On May 9, 1980, this office received a communication from the complainant which included the following: a) cover letter, dated May 9, signed by Robert F. Bauer, General Counsel to DSCC; b) Complaint and Request for Expedited Consideration, signed by Mr. Bauer; c) the affidavit of Tom Baker, Executive Director and Secretary-Treasurer of DSCC; and, d) Memorandum of Points and Authorities, also signed by Mr. Bauer.

After receiving our letter of notification, with the above-named documents attached, James F. Schoener, counsel to NRSC, notified us of his objection to the adequacy of the complaint. Specifically, he contended that the complaint filed by Mr. Bauer had not been sworn to as required by 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4(b)(2).

We reviewed the entire package submitted by complainant and found that Mr. Schoener is technically correct in his allegation that the nine page document designated the "Complaint and Request for Expedited Consideration" is not sworn to or notarized.

However, at paragraph 2 of his affidavit, which was sworn to and notarized, Mr. Baker the Executive Director and Secretary-Treasurer of the DSCC stated the following:

> I have read and authorized the filing of the foregoing Complaint and Request for Expedited Consideration. The DSCC files this Complaint to prevent the National Republican Senatorial Committee ("NRSC") from making expenditures in connection with the impending general elections for the Senate that exceed the explicit limitations applicable to national committees of political parties under § 441a(d) of the Federal Election Campaign Act ("Act"). The factual allegations contained in the foregoing Complaint and this affidavit are true and correct to the best of my knowledge and belief.

We advised Mr. Schoener that, in view of the above recitation, this office would consider the DSCC's complaint as having been properly filed. However, we also indicated that he could raise the objection again in his response to the Commission. He has done so.

In his submission, Mr. Schoener maintains that Tom Baker swore only that he had read and had authorized the filing of _a_ complaint, but that there is no showing that the complaint attached to the affidavit is _the_ complaint which Mr. Baker had read and authorized.

The requirement that complaints be signed and sworn to was added to the Act by the 1976 Amendments. House debate tends to indicate that the principal reason for the requirement was to eliminate the filing of anonymous complaints. 3/ (See 122 Cong. Rec. H2533 (daily ed. March 30, 1976) (remarks of Mr. Hays)).

Further, the Commission's Regulations, at Section 111.4(b)(2) require that the contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized. (Emphasis added). We submit that Mr. Baker has done exactly that.

Considering both the complaint and the affidavit in their entireties, we perceive little danger that the complaint Mr. Baker certified he had read was not the same complaint that was filed with the Commission.

Therefore, we recommend that the Commission overrule Mr. Schoener's objection and proceed to a consideration of the merits of this matter.

II. DISCUSSION

By way of background, we note that the Commission has, on two occasions, considered precisely the same issue as is raised here. In both those cases, MUR's 780 and 820, the Commission determined that the NRSC's making § 441a(d) expenditures as agent of both RNC and a State Committee did not violate the Act, even though the expenditures were in excess of what NRSC could have made had it been delegated only by RNC.

In MUR 780, we based our recommendation of no RTB on two factors: 1) there is no specific statutory or regulatory prohibition against a State Committee designating NRSC as its § 441a(d) agent (this argument was subject to some discussion at the Commission table, and, in retrospect, it probably is the weaker of the two); and 2) the Act allows for unlimited transfers of money between and among political committees of the same party. In this regard, the Commission had earlier issued an Advisory Opinion dealing with the question of whether a § 441a(d) agency arrangement requires the agent to expend funds owned by the principal, or whether the agent may be authorized to expend funds owned by the agent. The Commission determined that, if both principal and agent were committees of the same national party, funds could be transferred between them without limitation. Therefore, it was immaterial as to which committee's funds were being expended under 2 U.S.C. § 441a(d)(3).

3/ In order to prevent the filing of false complaints, the 1976 Amendments also added the language "Any person filing ... a complaint shall be subject to the provisions of secton 1001 of Title 18, United States Code."

In MUR 820, it was stated that:

> Although FEC's regulations refer only to ... an agency agreement between a national committee of a political party and any designated agent, the stated purpose of the regulation was to allow "the national committee and the state and subordinate State committees of a political party to make coordinated expenditures in the general election ..." <u>See</u> <u>Explanation</u> <u>and</u> <u>Justification</u> <u>of</u> <u>Regulations</u> at 16 (July 1978). It would seem that the goal of coordinated party expenditures could be achieved by allowing the State Party to designate a national committee of the Party as its agent as well as by allowing the National Party to designate a State committee as its agent.
>
> In addition, the fact that FECA permits unlimited transfers between national and State political committees would indicate that such an agency agreement would be permissible between the State committees and the National Committee. <u>See</u> 2 U.S.C. § 441(a)(4). In other words, if 11 C.F.R. § 110.7(a)(4) is read to allow such agency agreements for national committees but not for state committees, the Republican National Committee could merely transfer the maximum in allowable § 441a(d) expenditures ... to the State Committee. Such a requirement would seem to place form over substance since the national and state party committees could be presumed to be working toward the same goal and probably even coordinating campaign strategy in connection with the Senatorial campaigns.

See First General Counsel's Report at 3

The complainant in the instant matter would have the Commission reverse its determination in MUR 780 (complaint, page 7); find that delegations of § 441a(d) authority by State committees to NRSC are illegal; and seek to enjoin NRSC from acting as the § 441a(d) agent for any State Committee.

III. POINTS MADE BY COMPLAINANT, AND DISCUSSION THEREOF

A. THE DELEGATION OF STATE PARTY COMMITTEE § 441a(d) LIMITS TO THE NRSC IS NOT CONSISTENT WITH THE ACT.

The complainant states that Section 441a(d)(3), by its very terms, confers a "special spending authority" in general election campaigns for Senate on two specific committees: 1) the national committee of a political party and 2) the state committee of a political party. They argue that since § 441a(d) represents a "carefully defined exception" to the contribution limits that would otherwise be applicable to these committees, the provision must be read restrictively.

Accordingly, DSCC concludes that, unless the Act provides "specific authority for," or its "policies otherwise justify," the delegaton of a State Committee's limitation to a third party or an "agent" for § 441a(d) purposes, such a delegaton must be rejected as unlawful.

We are not convinced that an argument as to the "delegability" of § 441a(d) expenditure authority may properly be fashioned from the terms of that statute. However, if such an argument may be made, we would not read § 441a(d)(3) as narrowly as DSCC would have us.

Their argument treats § 441a(d)(3) as if it exists independently; it ignores the prefatory language contained in § 441a(d)(1), as follows:

> Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

(Emphasis added). This language would suggest that § 441a(d) is not a "narrowly drawn exception" as complainant would have us believe, but is a broad grant of authority to national committees and State committees to make expenditures in amounts in excess of those allowed to any other entity, subject only to the limitations specifically established in 2 U.S.C. §§ 441a(d)(2) and (3).

This interpretation is consistent with the early legislative history of the provision which ultimately was to emerge as § 441a(d). (In order to appreciate the early history of this provision, it must be remembered that the 1974 Amendments, as first written, contemplated public financing of all campaigns for Federal office. See, e.g., S.3044, 93d. Cong., 2d Session). Political parties were envisioned as the source, and the only source, for additional "private" financing, and as a "legitimate pooling mechanism" 4/ for "substantial private funding." 5/ Nowhere in this legislative history is there any suggestion that the national committee of a political party and the State committee of the same party were to function as separate "pooling mechanisms."

4/ See Senate Report 93-689 to accompany S.3044 at 3.

5/ Id at 7.

B. SECTION 441a(d) SPENDING AUTHORITY FOR STATE PARTY COMMITTEES WAS INTENDED TO BOLSTER THE ROLE OF STATE COMMITTEES UNDER THE NEW CAMPAIGN REFORMS, BUT THE NSRC's USE OF "DELEGATED" STATE COMMITTEE § 441a(d) AUTHORITY CONTRAVENES THOSE PURPOSES.

The complainant argues that the legislative history of § 441a(d) "establishes ... that the provision is designed to bolster and enhance the role of political parties at both national and state levels." (Emphasis is complainant's) In support of this argument, they assert that Senate Report 93-689 constitutes the "best available authority on the purposes of this provision." Memorandum of Points and Authorities at 3.

DSCC then proceeds to cite a single passage from the Senate Report:

> Under the Committee bill parties would retain their essential non-financial responsibilities in electoral politics. More important, the bill retains the role of political parties in private financing for a Federal candidate.

We do not agree that this passage in any way supports the argument set out above. It speaks only of "parties" and "political parties;" it does not mention, and draws absolutely no distinction between, "national parties" and "State parties."

Next, the complainant quotes a passage from remarks made by Senator Kennedy during floor debate:

> "By conferring independent spending authority on party committees at the national and state level, over and above the candidate's own spending limits, the bill establishes a specific rule for the parties in their own right, free of the candidates control." Congressional Record, March 26, 1974, p.8210, (Emphasis added by complainant)

Whatever value this passage might have had in supporting DSCC's argument is, we believe, negated by the fact that is quoted out of context. A review of the Congressional Record demonstrates that Senator Kennedy was specifically addressing his remarks to the role of political parties under public financing and was attempting to demonstrate that that form of financing would "not diminish the role of political parties in the Nation." See Cong. Rec., daily ed. March 26, 1974 at S. 4465 (remarks of Senator Kennedy).

Finally, complainant cites a portion of an "Outline of S. 3044" as supplied by Senator Kennedy and printed in the Congressional Record:

"In order to assure the continuity of normal functions of political parties, to provide an independent role for the parties in general elections, and to offer an additional opportunity for private contributions, the national committee of a political party is entitled to spend a total of 2 cents per voter of its own funds, collected from private contributions, on behalf of candidates for Federal office in general elections; and a State committee of a political party is entitled to spend a total of 2 cents per voter of its own funds on behalf of such candidates within the State. Congressional Record, March 26, 1974, p. 8213 (emphasis added by complainant).

Once again, a review of the context within which this passage appeared indicates that the reference to a state committee using "its own funds" was to distinguish those funds (" private funds") from "public funds" and not to distinguish them from funds raised by another party committee, most particularly, the national party committee.

In concluding the discussion of this section, we comment that it appears that complainant is attempting to draw an artificial distinction between the national committee of a party and the State committee of the same party. By way of 2 U.S.C. § 441a(a)(4), which was added to the Act as part of the 1976 Amendments, Congress rejected such a distinction. This provision allows for unlimited transfer of funds between political committees of the same party. As was stated by respondent in its submission "Congress [thus] left it to each party and its committees to decide on how to best support party candidates within specified dollar limitations and minimal restrictions."

IV. COMPLAINANT WOULD HAVE THE COMMISSION ACCOMPLISH THROUGH THE ENFORCEMENT PROCESS WHAT CONGRESS HAS DECLINED TO ACCOMPLISH THROUGH LEGISLATION

As was discussed above, the Commission has, on two prior occasions, agreed that RNSC may make § 441a(d) expenditures as agent of both RNC and a particular State committee. Complainant would have the Commission cut back on RNSC's authority to make such expenditures and would have the Commission abolish NRSC's authority under § 441a(a)(4) to make unlimited inter-committee transfers.

H.R. 11315, reported out of the Committee on House Administration on March 16, 1978, would have had the same effect.

Section 113 of that bill would have continued to permit political committees of the same political party to make unlimited transfers between and among each other except that "no movement of funds" would have been permitted "between the political committees of a national political party (including the House and Senate congressional campaign committees of such party) and the political committees of a State political party (including district, local, or subordinate committees of such party) for the purpose of making contributions to, or expenditures on behalf of any candidate for Federal office."

That same section of H.R. 11315 also would have reduced the § 441a(d) expenditures which a national committee of a political party or the state committee of a political party could make in connection with the general election campaign of a candidate for Senate. Under H.R. 11315, the permissible level of § 441a(d) expenditures would have been 1 cent x V.A.P. or $20,000, whichever was greater (as compared with the already existing 2 cents x V.A.P. or $20,000, whichever was greater).

Amid considerable controversy, the House Rules Committee sought a rule by which H.R. 11315 would be considered by the Committee of the Whole House on the State of the Union. The Congressional Record for March 21, 1978, is replete with comments attacking that Rule, and attacking H.R. 11315, as follows:

> ... why reduce the ability of the political parties to support its candidates? How can the Republican Party unduly influence a Republican candidate? How can the Democratic party unduly influence a Democratic candidate? On what basis should the ability of the two political parties to support their candidates be prevented? And what is improper about a national party committee transferring funds to a State committee for use in Federal campaigns. This bill will prevent that, too.

124 Cong. Rec. H. 2261 (daily ed., Mar. 21, 1978) (remarks of Mr. Quillen).

> [The amendments proposed by the Chairman of the House Administration Committee] ... ignore transferability between party committees, and would seem not to uncouple the authorities of national and congressional committees which have been combined in H.R. 11315.
>
> The amendment of the gentleman from Illinois (Mr. Mikva) does restore transferability between party committees, but lacks the guarantee of the majority leadership. The minority would be foolhardy, indeed, to trust to agreements between ad hoc groups.
>
> The history of this bill indicates a majority attempt to disadvantage the minority at every turn.

Id. at H. 2263 (remarks of Mr. Frenzel).

... [I]f there is anything more important, more fundamental, to the very integrity of our political system and our government process, it is the continued viability of our political parties. ...

The fact is in the last two weeks we have been faced with a fundamental assault on the very integrity, the continued viability, the continued meaningful role of our political parties ... I would urge that the rule be defeated and that it be defeated so that we can, once and for all, send a very firm message to the Committee on House Administration to improve the campaign and election process, yes; but leave the political parties alone, and design the reforms and changes in a manner that will strengthen them and not weaken them.

Id. at H. 2264 (remarks of Mr. Stockman).

Assurances have not been forthcoming from the leadership on the other side that the Republican party will be put in the status quo it enjoyed before this whole unfortunate affair came up, the issue of transferability specifically being an issue on which assurances have not been given by any member except the gentleman from Illinois (Mr. Mikva) ...

Id. at H. 2265 (remarks of Mr. Conable).

... I deeply regret that the committee in its wisdom saw fit to change the party financing. I can assure my colleagues on the Republican side that I and my colleagues will do all we can - and it represents a lot of votes - to restore the Republican Party financing to what it was before the change in the law.

Id. at H. 2265 (remarks of Mr. Mikva).

[H.R. 11315] says that our [Democratic] party has not done its job in fulfilling its obligation to raise money. So what do we do? We come in and try to place limitations on it.

...

The problem is that our party did not do the job, so we changed the rules in the middle of the ball game.

Id. at H. 2266 (remarks of Mr. Davis).

> ... when we passed the bill in 1972 which created the Federal Election Commission, a lot of people thought that the Republican Party's ability to raise money had been done in. Actually, we took that law and did a better job of it than the Democrats did ...
>
> We went out and started mailing appeals to people, very frankly, and we were able to get 1,300,000 people to contribute to the Republican party an average of $25 or less.
>
> Now, what the House Administration Committee has done here is to keep these people - and they are little people - from having their money, which they contributed freely, spent to elect Congressmen to represent them. ...

Id. at H. 2267 (remarks of Mr. Rhodes).

Despite a late offer by the Majority Leader which would have allowed the Republican Party to continue making expenditures on behalf of its candidates at the then - existing levels, 6/ the Rule by which H.R. 11315 would have been considered was defeated by a vote of 209-198.

V. SUMMARY

For the third time, the Commission is asked to rule that the National Republican Senatorial Committee has violated (and, in this case, is about to violate) 7/ the Act by making Section 441a

---

6/ [The Chairman of House Administration] has agreed ... to drop that provision from the bill which is most distasteful to the gentleman from Arizona. Really and truly, we ought not craft a bill deliberately in a way that would predetermine the outcome of an election as between one party and another. I will join this pledge ... We will continue to allow the Republican Party to give just as much money as it has been giving directly to its candidates under existing law. We will make no change that denies them that right... 124 Cong. Rec. H. 2268 (daily ed., March 21, 1978) (remarks of Mr. Wright).

7/ If the Commission were to reverse its former determination and find that NRSC's past practice of making § 441a(d) expenditures pursuant to a "dual" agency was in violation of the Act, we still would perceive some difficulty in seeking to enjoin NRSC from so acting with regard to the 1980 general elections.

In order for a party to obtain the drastic remedy of injunction it must demonstrate that the injury it fears is imminent; that it is presently threatened; or that it will occur immediately. It is not enough to show an abstract or nebulous plan to possibly commit a wrong

(d) expenditures as the agent of a Republican State Committee and, consequently, making such expenditures in an amount in excess of those permitted in acting only as the agent of the Republican National Committee.

We believe that the principle ennunciated in AO 1976-108, as applied in MUR's 780 and 820, is sound. The fact that the House of Representatives was unable to reach the result which complainant now would have the Commission accomplish is all the more reason for declining to reverse the findings of no reason to believe in the aforementioned MUR's.

VI. RECOMMENDATIONS

1. Find no reason to believe that the National Republican Senatorial Committee violated the Act in making expenditures, under 2 U.S.C. § 441a(d)(3), as agent of both the Republican National Committee and of a Republican State Committee.

2. Close the file in this matter.

3. Send attached letters of notification.

<u>Attachments</u>

A. Complaint, dtd 9 May 80, w/attachments
B. Response of NRSC, dtd 30 May 80, w/attachments
C. Proposed ltr to J.F. Schoener, Counsel to NRSC
D. Proposed ltr to R.F. Bauer, Counsel to DSCC

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footnote 7/ continued

sometime in the future; or to show the mere apprehension of injury that is liable to occur at some indefinite time in the future.

Complainant DSCC has not demonstrated, with even the slightest degree of certainty, that NRSC will make § 441a(d) expenditures pursuant to "dual agencies" in connection with the 1980 general election.

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800 NORTH THIRD STREET
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(717) 233-7947

May 9, 1980

Charles N. Steele
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20006

037943

Dear Sir:

Attached you will find a Complaint and Request for Expedited Consideration filed today by the Democratic Senatorial Campaign Committee. You will note that the Complaint is supplemented by 1) an Affidavit signed by the Executive Director of the DSCC; and 2) a Memorandum of Points and Authorities prepared by counsel for the DSCC in support of the Complaint.

In filing this complaint, the DSCC is seeking to prevent the National Republican Senatorial Committee from continuing to make Section 441a(d) "coordinated" expenditures pursuant to illegal "delegations" of authority from state party committees. Expedited consideration of this Complaint is essential if the DSCC is to obtain a full adjudication of the merits of its position, and if it is to pursue all available remedies, prior to the late summer and early fall when the bulk of these unlawful expenditures will be made in U.S. Senate general election campaigns. The most expeditious possible resolution by the Commission is, therefore, urgently sought by the DSCC.

If you have any questions, please do not hesitate to let me know.

Very truly yours,

Robert F. Bauer

RFB:ps

Enclosures

Attachment 1

Before the
FEDERAL ELECTION COMMISSION
Washington, D.C.

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE, 400 North Capitol Street, Suite 319 Washington, D.C. 20001 Complainant v. NATIONAL REPUBLICAN SENATORIAL COMMITTEE, 227 Massachusetts Avenue, N.E. Washington, D.C. Respondent	MUR No. ____

COMPLAINT AND REQUEST FOR EXPEDITED CONSIDERATION

1. Complainant Democratic Senatorial Campaign Committee ("DSCC") files this complaint pursuant to §437g of the Federal Election Campaign Act ("Act"), alleging that certain expenditures by respondent National Republican Senatorial Committee ("NRSC") violate §441a of the Act. Specifically, the DSCC seeks Commission action to prevent the NRSC from continuing to expend funds under §441a(d), on behalf of Republican U.S. Senate nominees, in amounts well in excess of the applicable limits. Failure of the Commission to take swift and effective action to discontinue this violation will

impose severe hardship upon the DSCC and those candidates which it supports, and will undermine the carefully constructed statutory scheme of limits on contributions and expenditures by candidates and committees. For these reasons, and in the absence of material facts in dispute requiring factual investigation, expedited consideration of this complaint is urgently requested.

2. Complainant Democratic Senatorial Campaign Committee is a political committee established and maintained by the Democratic Party. See 11 C.F.R. §110.2. The DSCC contributes to the campaigns of Democratic candidates for the United States Senate, subject to the limits specified by §441a(h) of the Act, and it promotes and assists the election of Democratic candidates to the Senate. The DSCC has never made, and does not intend to make, the illegal and unauthorized payments challenged in this complaint.

3. Respondent National Republican Senatorial Committee is a political committee established and maintained by the Republican Party. See 11 C.F.R. §110.2. The NRSC contributes to and otherwise assists the campaigns of Republican candidates to the United States Senate.

4. Section 441a(d) grants limited authority to a "... national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee ..." to make

expenditures, inter alia, in connection with the general election campaigns of candidates for the United States Senate, and that section prescribes specific, absolute limitations applicable to that authority. Subsection 441a(d)(3) provides in relevant part:

> "The national committee of a political party ... may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds -
>
> (A) in the case of a candidate to the office of Senator ... the greater of -
>
> (i) 2 cents multiplied by the voting age population of the State ...; or
>
> (ii) $20,000 ...."

Subsection 441a(c) provides for an increase in these measures of limitation based upon increases in the Consumer Price Index.

5. State committees of a political party, including any subordinate committee of a State committee, are subject to the same dollar limits as national committees in making expenditures in connection with U.S. Senate general elections.

6. The Act, in clear and unambiguous language, precludes any national or state committee from making expenditures in U.S. Senate general election campaigns in excess of the specific limitations imposed upon each such committee by §441a(d)(3).

7. The regulations of this Commission at 11 C.F.R. §§110.7(a)(4) authorize the national committee of a political party to delegate its authority to make expenditures under §441a(d) to "... any designated agent, including State or subordinate party committees." There is no statutory or regulatory provision which permits a State committee to delegate to the national committee of the political party its separate and independent authority to make §441a(d) expenditures.

8. In past U.S. Senate general election campaigns, the NRSC has made §441a(d) expenditures under delegated authority of the Republican National Committee. In the 1978 U.S. Senate general election campaigns, the NRSC also arranged for delegations from State party committees of their separate and independent expenditure authority under §441a(d). The NRSC used these state committee delegations as a basis for spending its own funds on behalf of Republican Senate candidates in amounts that exceeded the statutory limitations applicable to national party committees or their agents, in 21 of 33 states holding U.S. Senate elections in 1978. Those expenditures violated the provisions of §441a.

9. Complainant has reason to believe that, once again in this election year, the NRSC will expend considerable funds in excess of the applicable limits pursuant to such

unauthorized delegations from the State committees of their separate §441a(d) expenditure authority. The magnitude of these illegal expenditures, based upon the 1978 expenditures and present resources of the NRSC, is likely to be substantial. These expenditures will severely disadvantage Democratic Senate candidates; and if the Commission fails to take immediate and decisive action to halt this practice, these candidates could suffer irreparable injury.

10. The provisions of §441a(d) authorizing State party committees to make expenditures on behalf of U.S. Senate candidates are intended by Congress to stimulate and strengthen State party organizations and to encourage the growth of "grass roots" fund raising and decision making in senatorial campaigns. The NRSC's practice of spending pursuant to "delegations" of State party §441a(d) authority is not only contrary to the express language of the Act and regulations, but also undermines the very purposes for which Congress created independent spending authority for State committees in U.S. Senate elections.

11. The effect of this unauthorized delegation is to double the expenditure limitations applicable to the NRSC while undermining the Congressional purpose of revitalizing State political party organizations. These expenditures in excess of the statutory limitations severely disadvantage the candidates receiving the support of the

DSCC, which does not make payments in excess of those limitations.

12. The §441a(d) expenditure limitations also cannot be subverted through transfer of funds from national committees to State committees. Unlike §441a(a)(4) of the Act, which provides that limitations upon contributions to candidates shall not apply to transfers of funds among party committees, §441a(d) contains no similar exemption for transfers made for the purposes of national or State party expenditures under §441a(d). It is clear that Congress did not intend to permit transfers for §441a(d) purposes, since the policy of encouraging fund raising and other grass roots activities by State party committees can be fostered only by requiring such committees to raise their own funds for purposes of making §441a(d) expenditures.

13. In response to an administrative complaint filed in October 1978 by the National Committee for an Effective Congress (MUR No. 780), the Commission's Office of General Counsel issued a preliminary report approving the state committee delegations to the NRSC challenged here. The General Counsel concluded that, notwithstanding the absence of language authorizing these delegations, such authority could be implied. As set forth in the accompanying Memorandum of Points and Authorities the DSCC asserts that there is no basis consistent with the express language of the Act, the Commission's regulations, or the legislative history for implying any authority of a

State party committee to delegate its spending authority under §441a(d) to the national committee or any of its agents, including NRSC. The report in MUR No. 780 is cursory and offers no persuasive reason for implying such authority, and Complainant maintains that it should be reversed after de novo review of this Complaint by this Commission. However, should that report either represent the Commission's final determination on this issue, or constitute binding precedent, Complainant requests immediate notice to that effect through prompt issuance of a final order.

14. The facts material to this case are not in dispute. The factual allegations contained herein and in the attached affidavit of Mr. Tom Baker, Executive Director and Secretary-Treasurer of the DSCC, are based, with but one exception, exclusively upon public reports and documents on file with the Commission. The one exception is the allegation that the NRSC will make §441a(d) expenditures in excess of the limitation specifically applicable to the national committee and its agents during the 1980 campaign. Respondent can moot this case by stipulating that it will neither make expenditures in excess of these limits, nor transfer funds to the State Republican committees permitting them to make expenditures pursuant to §441a(d) that they would not otherwise make from their own funds. Therefore, there is no need for any factual investigation of this Complaint, and

DSCC is entitled to expedited consideration and swift resolution of its grievances under the Act.

WHEREFORE, Complainant DSCC prays that this Commission:

A. Determine the legal merits and vote on the disposition of this Complaint on an expedited basis; and

B. Make a finding that there is probable cause that respondent NRSC has committed, and is about to commit violations of §441a of the Act; and either

C. Seek to obtain within 30 days of that finding an agreement from NRSC that it and all committees or individuals acting on its behalf will 1) not make expenditures in excess of limitations imposed on national party committees under §441a(d) of the Act, and 2) not transfer funds to State committees for the purpose of making §441a(d) expenditures pursuant to their authority under the Act; or

D. In the event that conciliation efforts do not yield such an agreement within 30 days, immediately institute in an appropriate District Court a civil action seeking the imposition of a temporary and permanent injunction to halt violations of §441a(d), and of civil penalties.

ROBERT F. BAUER
General Counsel
Democratic Senatorial
Campaign Committee
888 17th Street, N.W.
Washington, D.C. 20006
202-872-8600

OF COUNSEL

William A. White
Robert P. vom Eigen
DECHERT PRICE & RHOADS
888 17th Street, N.W.
Washington, D.C. 20006
202-872-8600

Before the
FEDERAL ELECTION COMMISSION
Washington, D.C.

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE, 400 North Capitol Street, Suite 319 Washington, D.C. 20001, Complainant, v. NATIONAL REPUBLICAN SENATORIAL COMMITTEE, 227 Massachusetts Avenue, N.E. Washington, D.C., Respondent.	Docket No. ____

AFFIDAVIT OF TOM BAKER

Tom Baker, first being duly sworn, deposes and says:

1. I am Executive Director and Secretary-Treasurer of the Democratic Senatorial Campaign Committee ("DSCC"). The DSCC is a political committee established and maintained by the Democratic party for the purposes, inter alia, of contributing to the campaigns of Democratic candidates for the United States Senate and of promoting and otherwise assisting the election of Democratic candidates to the Senate. The membership of the DSCC is comprised of twenty-one incumbent Democratic Senators.

2. I have read and authorized the filing of the foregoing Complaint and Request for Expedited Consideration. The DSCC files this Complaint to prevent the National Republican Senatorial Committee ("NRSC") from making expenditures in connection with the impending general elections for the Senate that exceed the explicit limitations applicable to national committees of political parties under §441a(d) of the Federal Election Campaign Act ("Act"). The factual allegations contained in the foregoing Complaint and this affidavit are true and correct to the best of my knowledge and belief.

3. Pursuant to a delegation of authority from the Republican National Committee on file with the Commission, the NRSC has made §441a(d) expenditures in connection with previous Senatorial campaigns.

4. In making expenditures during 1978 in connection with the general election campaigns of Republican candidates for Senate, the NRSC exceeded the §441a(d) limitations for national committees in 21 of the 33 states in which elections were conducted and in 22 of the 36 general election campaigns of various Republican candidates for Senate (including States where two Senate seats were contested). Table I to this affidavit depicts the amount of §441a(d) expenditures permitted for State or national party committees in connection with each 1978 Republican senatorial campaign

and the amount actually expended by the NRSC in each campaign. The data are compiled from the Commission's Interim Report, No. 5.

5. Table I shows that even though the NRSC expended nothing, or only nominal amounts, pursuant to §441a(d) in several states, the total §441a(d) expenditures exceeded the sum of the allowable §441a(d) limits for national committees in all states by $751,629.65. Those excess expenditures were concentrated in key states where the elections were hotly contested and the results determined by a small margin of voters. In twelve of those key campaigns,[1/] the NRSC expended a total of $2,133,441. The amount allowable for a national committee -- whether by the Republican National Committee itself or by the NRSC through delegation of authority from the RNC -- in those states was only $1,106,286.60. These expenditures exceeded allowable limits by 92.8 per cent.

6. NRSC has filed with the Commission letters from various State party committees which purport to delegate to NRSC the expenditure authority of those State committees pursuant to §441a(d). Based upon these letters, NRSC has made §441a(d) expenditures in excess of the limitations applicable to national party committees. Pursuant to these letters or letters like them, I am confident that NRSC will make expenditures

1/ Those States include: Alabama, Colorado, Delaware, Iowa, Kansas, Maine, Massachusetts, Michigan, Mississippi, Montana, New Hampshire, New Jersey, Oklahoma, Texas, Virginia and West Virginia.

in excess of §441a(d) limits in connection with this year's election campaigns unless this Commission takes action pursuant to this Complaint. Table II shows for each state in which a campaign for the Senate will be conducted during 1980 the potential expenditures that the NRSC could make in connection with election campaign of Republican senatorial candidates, if it is permitted to expend up to the combined total allowable for both state and national committees.

7. The present NRSC practice of utilizing expenditure authority delegated from State party committees undermines the purposes for which separate §441a(d) spending limits were created for national and State party committees, i.e., to build strong party organizations and to encourage grass root fund raising and decision making in senatorial campaigns.

8. This is shown by reference to periodic financial reports submitted in advance of the 1978 election by State party committees. Six states were studied. Three states (Colorado, New Jersey and Illinois) involved campaigns that were hotly contested and where Republican candidates prior to the election were generally perceived to have a good prospect of victory. NRSC expenditures were heavy in these states, and were made in amounts exceeding the §441a(d) limit applicable to the national committee. (See Table I.) The remaining three

states (Arkansas, Nebraska and Rhode Island) involved campaigns where Republican candidates were not generally perceived as having a significant chance for victory. Predictably, the NRSC made only nominal §441a(d) expenditures in these campaigns, and in only one (Nebraska) did the NRSC come close to spending half of even the national committee's §441a(d) limit. (See Table I.)

9. The survey showed that the State party committees played no role whatsoever in any of these campaigns. In the states where the NRSC expenditures were heavy (Colorado, Illinois and New Jersey), the July 10 and pre-election reports show that the State party committees did not have the funds adequate to equal the NRSC expenditures made on their behalf. However, perhaps most striking is the fact that none of the six State party committees made any §441a(d) expenditures on behalf of the candidate for Senate in their state with the exception of a $42.00 expenditure made in Illinois. This is true notwithstanding significant cash balances reported by several of the State committees. For instance, the Illinois Republican State Central Committee reported nearly $30,000.00 of available cash on October 23, 1978, yet there was over $100,000.00 of unused §441a(d) authority available to it.

10. The significance of these findings is that the State party committees in those states surveyed play no role pursuant to their §441a(d) authority. While they may have made contributions to the senatorial campaigns, they

clearly took a side line position with respect to coordinated expenditures under §441a(d) and permitted the NRSC to run the show if it wished. The expenditures which were made did not reflect the judgment or sentiment of the State party organization. This is not the result intended by Congress when it enacted the separate limits for State party committees.

11. My conviction that this practice employed by NRSC during the 1978 senatorial campaigns will be repeated this year is buttressed by activities already undertaken on behalf of NRSC. In AOR 1979-45, presented to the Commission for decision early this year, NRSC petitioned this Commission to issue an advisory opinion permitting the NRSC to make extensive, coordinated expenditures on behalf of Republican senatorial candidates prior to their designation in party primaries. This action indicates a disposition on behalf of NRSC to make substantial §441a(d) expenditures, and periodic reports filed on behalf of NRSC show that it presently has at its disposal funds adequate to make expenditures in execess of the §44a(d) limits applicable to it.

12. A prompt Commission disposition of this complaint is essential to avoid irreparable harm to the candidates for Senate that receive DSCC support. The DSCC has never made and will not make expenditures pursuant to §441a(d) in excess of the limitations applicable to national party committees. However, the unauthorized expenditures by NRSC, once made, could affect voter attitudes to the disadvantage of Democractic candidates who do not have access to funds that exceed the §441a(d) limitations. Delaying imposition of penalties or other possible remedies until the election, or afterwards, will not help a Democratic U.S. Senate candidate whose opponent for Senate benefits from the avalanche of campaign advertising financed by the NRSC. Immediate action to halt this threatened result before it happens is the only effective remedy for the DSCC.

Tom Baker

Tom Baker

Subscribed to and sworn before me this 9th day of May 1980.

Notary

My Commission Expires March 31, 1984

TABLE I

SECTION 441a(d) SPENDING LIMITATIONS AND ACTUAL NRSC EXPENDITURES
IN CONNECTION WITH 1978 SENATORIAL CAMPAIGNS

STATE/CANDIDATE	ACTUAL NRSC §441a(d) EXPENDITURES	ALLOWABLE §441a(d) EXPENDITURES*	% OF ALLOWABLE §441a(d) EXPENDED
ALA/Martin**	$201,022.00	62,506.94	324
ALASKA/Stevens	0	24,580.00	0
ARK/Kelly	192.00	36,772.52	1
COLO/Armstrong	85,528.00	44,927.24	190
DEL/Baxter	44,708.00	24,580.00	182
DEL/Venema	0	24,580.00	0
GA/Stokes	0	84,801.00	0
IDAHO/McClure	0	24,580.00	0
IL/Percy	211,227.00	193,518.34	109
IOWA/Jepsen	85,558.00	49,774.50	172
KS/Kassenbaum	79,957.00	40,601.12	197
KENTUCKY/Guenther	0	59,041.16	0
LOUISIANA	0	64,129.22	0
MAINE/Cohen	48,001.00	24,580.00	195
MASS/Brooke	198,177.00	102,400.28	194
MICH/Griffin	284,498.00	154,460.72	184
MINN/Boschwitz	86,835.00	67,963.70	128
MINN/Durenberger	71,975.00	67,963.70	106
MISS/Cochran	67,982.00	38,713.50	176
MONTANA/Williams	47,438.00	24,580.00	193
NEB/Shasteen	12,143.00	26,915.10	45
NEW HAMP/Humphrey	45,797.00	24,580.00	186
NEW HAMP/Masiello	1,316.00	24,580.00	5
NEW JERSEY/Bell	206,075.00	128,405.92	160
NEW MEX/Domenici	3,674.00	24,580.00	15
N. CAROLINA/Helms	94,045.00	94,977.12	99
OKLA/Kamm	98,333.00	49,012.52	201
OREGON/Hatfield	0	41,663.10	0
RHODE ISL/Reynolds	350.00	24,580.00	1
S. CARO/Thurmond	35,006.00	48,004.74	73
S. DAK/Pressler	37,709.00	24,580.00	153
TENN/Baker	15,573.00	74,428.24	21
TEXAS/Tower	431,145.00	215,640.34	200
VA/Warner	146,310.00	89,249.98	164
VA/Obenshain	45,772.00	89,249.98	51
WEST VA/Moore	62,882.00	32,273.54	195
WYO/Simpson	21,767.00	24,580.00	89
TOTALS	2,770,995.00	2,019,356.32	137

* The Federal Election Campaign Act specifies in §441a(d)(3) that the limit for each party committee (national or state) is two cents times the voting population or, $20,000 (both subject to an adjustment reflecting the increase in the Consumer Price Increase since 1976), whichever is greater.

** Separate campaigns for two Senate vacancies.

SOURCE: Federal Election Commission, Interim Report No. 5.

TABLE II

PARTY CONTRIBUTION LIMITATIONS & §441a(d) EXPENDITURE LIMITATIONS FOR THE 34 1980 SENATORIAL ELECTIONS

STATE	ALLOWABLE §441a(d) EXPENDITURES	COMBINED TOTAL OF ALLOWABLE NATIONAL AND STATE EXPENDITURES	REP. SEN. CAMPAIGN COMM. CONT.	REP. STATE PARTY CONTR.*	TOTAL
ALABAMA	$77,839.36	$155,678.72	$17,500.00	$10,000.00	$183,178.72
ALASKA	29,440.00	58,880.00	"	"	86,380.00
ARIZONA	49,959.68	99,919.00	"	"	127,419.36
ARKANSAS	45,396.48	90,792.96	"	"	118,292.96
CALIFORNIA	485,024.00	970,048.00	"	"	997,548.00
COLORADO	58,055.68	116,111.36	"	"	143,611.36
CONNECTICUT	67,564.80	135,129.60	"	"	162,629.60
FLORIDA	195,275.52	390,551.04	"	"	418,051.04
GEORGIA	104,835.84	209,671.68	"	"	237,171.68
HAWAII	29,440.00	58,880.00	"	"	86,380.00
IDAHO	29,440.00	58,880.00	"	"	86,380.00
ILLINOIS	235,431.68	470,863.36	"	"	498,363.36
INDIANA	112,078.08	224,156.16	"	"	251,656.16
IOWA	61,235.20	122,470.40	"	"	149,970.40
KANSAS	50,754.56	101,509.12	"	"	129,009.12
KENTUCKY	73,158.40	146,316.80	"	"	173,816.80
LOUISIANA	80,165.12	160,330.24	"	"	187,830.24
MARYLAND	88,320.00	176,640.00	"	"	204,140.00
MISSOURI	103,746.56	207,493.12	"	"	234,993.12
NEVADA	29,440.00	58,880.00	"	"	86,380.00
NEW HAMP.	29,440.00	58,880.00	"	"	86,380.00
NEW YORK	379,717.12	759,434.24	"	"	786,934.24
N. CAROLINA	117,524.48	235,048.96	"	"	262,548.96
N. DAKOTA	29,440.00	58,880.00	"	"	86,380.00
OHIO	225,068.80	450,137.60	"	"	477,637.60
OKLAHOMA	61,117.44	122,234.88	"	"	149,734.88
OREGON	53,816.32	107,632.64	"	"	135,132.64
PENNSYLVANIA	253,772.80	507,545.60	"	"	535,045.60
S. CAROLINA	59,645.44	119,290.88	"	"	146,790.88
S. DAKOTA	29,440.00	58,880.00	"	"	86,380.00
UTAH	29,440.00	58,880.00	"	"	86,380.00
VERMONT	29,440.00	58,880.00	"	"	86,380.00
WASHINGTON	83,285.76	166,571.52	"	"	194,071.52
WISCONSIN	99,271.68	198,543.36	"	"	226,043.36
TOTAL	3,487,020.80	6,974,041.60	$595,000.00	$340,000.00	7,909,041.60

* Does not include an additional $5,000 for those states with run-off provisions.

Before the
FEDERAL ELECTION COMMISSION
Washington, D.C.

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE, 400 North Capitol Street, Suite 319 Washington, D.C. 20001 Complainant v. NATIONAL REPUBLICAN SENATORIAL COMMITTEE, 227 Massachusetts Avenue, N.E. Washington, D.C. Respondent	)	MUR No. ____

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF THE DSCC COMPLAINT

I. INTRODUCTION

The DSCC submits this Memorandum in support of its complaint, which seeks immediate Commission action to prevent the NRSC from making expenditures in connection with the 1980 election campaigns of Republican Senate candidates pursuant to "delegations" of state party committee spending authority under §441a(d). With these "delegations", which are supplemented by additional delegations of 441a(d) authority from the national party committee, the NRSC has emerged as the most potent spending power in U.S. Senate elections in the American political system today. The attached affidavit of Tom Baker, Executive Director of the DSCC, refers to and attaches tables setting forth the scope of NRSC spending in Senate elections in the past.

This Memorandum will show that state delegations to the NRSC of their spending authority under §441a(d) violates the provisions of the Act, both in contradicting the plain letter terms of the statute and regulations, but also in undermining the very purposes underlying the Congress' decision in §441a(d) to provide national and state party committees with extraordinary spending power in Congressional elections.

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II. THE DELEGATION OF STATE PARTY COMMITTEE §441a(d) LIMITS TO THE NRSC IS NOT CONSISTENT WITH THE ACT

1. Neither the Act nor Regulations Confer Authority Upon State Party Committees (or any of their Subordinate Committees) to Delegate their §441a(d) Limits to the NRSC

Section 441a(d)(3) states as follows:

> (3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds -
>
> (A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of -
>
> (i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e)); or
> (ii) $20,000....

Section 441a(d)(3), by its terms, confers special spending authority in general election campaigns for the United States Senate on only two, designated committees: 1) "the national committee of a political party," <u>and</u> 2) "a state committee of a political party, including <u>any</u> subordinate committee of a state committee."1/ The provision is precise not only in designating the committees which may spend §441a(d) funds, but also in specifying <u>how much</u> each of these committees may spend. It should be emphasized that §441a(d) represents a carefully defined exception to the contribution limits that would otherwise be applicable to these committees, and it must, therefore, be read restrictively.

1/ For the purpose of the §441a(d) limit, the State Committee, together with its various subordinate committees, are treated as a single committee. <u>See</u> §110.7(c) of the FEC Regulations.

Accordingly, unless the Act provides specific authority for, or its policies otherwise justify, the delegation of either of these committee's limits to a third party, or an "agent", such a delegation must be rejected as unlawful. Such a delegation has been authorized in the case of the national party committee, which is empowered under §110.7(a)(4) of the FEC Regulations to effectively "donate its" limit to any agent. In addition, Commission Advisory Opinions 1976-108 has specifically addressed the question of whether an agent may spend only the funds of the national committee under this delegated authority, and has concluded that the agent's own funds may also be used.

No such authority -- in the Act, Regulations or Commission Advisory Opinions -- exists to justify the delegation of the state party committee limit to any "agent", including the NRSC. Moreover, unlike the case of the national committee's delegation of its §441a(d) limit, the policies underlying §441a(d) would not support, but would, in fact, run counter to, any attempt to authorize or justify such a delegation.

2. Section 441a(d) Spending Authority for State Party Committees was Intended to Bolster the Role of State Committees Under the New Campaign Reforms, But the NRSC's Use of "Delegated" State Committee §441a(d) Authority Contravenes Those Purposes

The legislative history of §441a(d) establishes with clarity that the provision is designed to bolster and enhance the role of political parties, at both national and state levels, in the reformed and newly regulated political process. Section 441a(d) was added to the FEC amendments of 1974, P.L. 93-443, by the Senate, and adopted in Conference. The Senate Report (No. 93-689) constitutes, therefore, the best available authority on the purposes of this provision, and it brings into sharp focus the "party-building" function envisioned for §441a(d) by its drafters. In a subsection entitled "Strengthening Political Parties," the Report notes that "several witnesses" had urged an examination of "the relationship between campaign finance legislation and political parties." The Report concurs with those witnesses' conclusions that "a vigorous party system is vital to American politics," and concludes that, in adding §441a(d) to the 1974 amendments, the Senate took the steps necessary to protect this system as follows:2/

2/ In its 1974 original version §441a(d) was located at 18 USC §608(f). The provision was transferred to its current position in the Code in the 1976 amendments.

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> "Under the committee bill, parties would retain their essential non-financial responsibilities in electoral politics. More important, the bill retains the role of political parties in private financing for a federal candidate." Congressional & Administrative News, p.5593, (emphasis added).

As the Senate Report further states, the private financing role established for political parties in §441a(d) was designed "... to preserve the place of political parties in the elective process ...." The policies at stake were elaborated in further detail, and with unmistakeable clarity, by Senator Kennedy, one of the co-sponsors of the legislation, in remarks on the floor:

> "By conferring independent spending authority on party committees at the national and state level, over and above the candidate's own spending limits, the bill establishes establishes a specific rule for the parties in their own right, free of the candidates control." Congressional Record, March 26, 1974, p.8210, (emphasis added).

Of especial relevance to this matter, the Senator's remarks make clear that the benefits of §441a(d) were conferred separately on the national committee, on the one hand, and on state party committees, on the other, so that both the national and state party structures would have the means to strengthen their respective positions in the process. Thus, in an outline which he introduced, without objection,into the record for the benefit of his colleagues, Senator Kennedy defined the function and effect of §441a(d) as follows:

> In order to assure the continuity of normal fuctions of political parties, to provide an independent role for the parties in general elections, and to offer an additional opportunity for private contributions, the national committee of a political party is entitled to spend a total of 2¢ per voter of its own funds, collected from private contributions, on behalf of candidates for Federal office in

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> general elections; and a State committee of a political party is entitled to spend a total of 2¢ per voter of its own funds on behalf of such candidates within the State. Congressional Record, March 26, 1974, p.8213 (emphasis added).

The purposes of §441a(d), i.e., a continuing, independent role for the political parties, were to be effected by parallel and independent §441a(d) spending by the national and the state committees, with each state committee strengthening the state party structure by spending "a total of 2¢ per voter of its own funds on behalf of [Congressional] candidates within the State." Id.(emphasis added).

It should be clear, from the foregoing, that a "delegation" of the state party committees limits to the NRSC undermines entirely the expressed purposes of this extraordinary spending provision. As the attached Complaint and Affidavit establish, the NRSC uses state party committees' §441a(d) authority, but makes decisions on an exclusively national level on how these funds generated at the national level should be spent in congressional elections around the country. This program leaves no room whatsoever for state committee activity, whether in raising the funds, in determining how they should be spent, or in spending them. What was intended as a party-building provision, has been converted into an additional spending limit for a national party committee -- without express statutory or regulatory authority, and in the face of the clear policies underlying enactment of §441a(d) in the first instance.

It should be emphasized that the considerations militating against delegation of state party committee limits to the NRSC, are not applicable to the practice of the national committee delegating its authority to other national party committees. Currently, in §110.7(a)(4) of the FEC Regulations, the national committee is specifically authorized to designate an "agent" for the purpose of making §441a(d) expenditures, and the Commission has held that the agent so designated may spend its own funds, and not only the funds of the principal, in making these expenditures. This result, however, is consistent with the purposes of §441a(d), for it does not in any way disturb the party-building function of that provision as it affects national political parties. It should be noted, first of all, that §110.2(a)(2)(ii) of the FEC Regulations specifically defines the national committee, on the one hand, and the congressional and senatorial campaign committees (including NRSC),on the other, as committees "established and maintained by a national political party." (emphasis supplied.) The Republican National Committee (RNC) and the NRSC are arms,

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therefore, of the same national political party. To the degree that §441a(d) seeks to bolster the position of the national party in Congressional elections, it is not adversely affected by close cooperation between these two national party committees. In fact, in allowing for this cooperation between committees of the same national party, the FEC Regulations and applicable advisory opinions are simply providing for a useful measure of flexibility in implementing the provision, and in doing so, they are contributing to its ultimate effectiveness.

The same cannot be said for the decision, without any supporting authority whatever, to allow the NRSC to assume the state party committee limits under §441a(d). In providing a separate and independent limit under that provision for state party committees, it was clearly the Congress' intent to give the state parties as well as national parties, an opportunity to maintain their vitality under the reformed system. This purpose can hardly be served by allowing state party committees to delegate their limits to a national party committee which will proceed to raise and spend monies pursuant to this limit as it chooses. As set forth in further detail below, the various limits specified for different candidates and committees under the Act have been drawn by the Congress with care, and cannot be varied, traded or "delegated" at will. Moreover, in the case of the state party committee limits conferred by §441a(d) the delegation of the limit to the NRSC has unquestionable harmful effects on the statutory scheme including, *inter alia*, the loss by state party committees of any incentive to raise their own funds and to participate actively in Congressional races at the state level. *See* below at p. 8.

It should be noted, in conclusion, that the Act and Regulations intended without question that §441a(d) authority be exercised only by the state committees and their subordinate committees. To this end, the Regulations include an elaborate procedure for each state party committee and its subordinate committees to share the §441a(d) limit applicable to them in any given Senate race. *See* §110.7(c) of the FEC Regulations. The practice of the NRSC, in assuming the limit of the state party committees, renders moot this concern with sharing. As shown by the Baker affidavit, the Republican state parties simply do not exercise their §441a(d) authority to a significant degree.

III EFFECT OF THE UNLAWFUL NRSC ASSUMPTION OF STATE PARTY SECTION 441a(d) AUTHORITY

1. The NRSC's Use of State Party Committee Section 441a(d) Authority Contravenes the Act's Scheme of Dollar Limits on Contributions and Expenditures

The Federal Election Campaign Act sets forth a carefully constructed scheme of dollar limits applicable

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to contributions and expenditures made by individuals, political action committees, party committees, and all other "political committees." Each individual or committee is subject to specified limits when spending in a Federal election, and these limits must be strictly observed if the integrity of the Act is to be maintained. It is for this reason that the NRSC's practice of assuming the limit of another, i.e., that of the state party committees under §441a(d), poses the most serious danger to the Act and its purposes. While other political committees are limited in their spending to specified amounts, the NRSC has been able, through its 441a(d) "delegations", to fashion for itself an extraordinary limit amounting to 4 cents time the voting age population in each state in which a Senate election is held.

The effect of this enormous spending power can be shown by reference to striking examples from the 1978 campaign for Senate. While other "political committees" were limited to $1,000 or $5,000 contributions to the general election campaign of Robert Krueger, the U.S. Democratic candidate in Texas, the NRSC was able to spend in excess of $400,000 on behalf of his Republican opponent, Senator John Tower. Individual and political committee donations to the general election campaign of Carl Levin, U.S. Senate candidate from Michigan, were similarly overwhelmed by the NRSC's §441a(d) expenditures on behalf of his opponent, Senator Robert Griffin, in amounts exceeding $280,000. These examples are simply a few among many which could be cited in this same vein.

The issue here, once again, is not whether §441a(d) confers authority on national and state party committees to spend significant amounts on behalf of Senate candidates, because it clearly does so. The issue, instead, is whether each committee authorized to spend §441a(d) funds is respecting its own limits, and not usurping the limits of another. The NRSC may legitimately expend its own §441a(d) funds as the "agent" of the Republican national committee. It does not have the authority to spend funds under the §441a(d) authority of state committees, for in doing so, it subverts the scheme of limits applicable under the Act to contributions and expenditures by all other committees, and by individuals. This disproportionate spending power by a single committee, located here in Washington, D.C. and raising its funds nationally, was not envisioned by the Congress, is not sanctioned by the Act, and cannot be justified in light of §441a(d)'s emphasis on these expenditures as an incentive to national and state party-building.

2. The NRSC's Use of State Party Committees Section 441a(d) Authority Deprives the State Party Committees of any Incentive Whatever to Raise and Spend Funds in Connection with General Election Campaigns for the United States Senate

As stated previously, the NRSC's use of "delegated" state party committee §441a(d) authority is at variance with the purposes underlying the provision -- the encouragement of party-building activities at the state party level. In fact, apart from its inconsistency with the congressional purposes of §441a(d), these NRSC's "delegations" could have, in the end, an inhibitive effect on the growth and vitality of state party activity. The state party committees may rely on these "delegations" -- and may indeed be encouraged to rely on them -- in eschewing serious involvement in fund raising and planning for U.S. Senate elections in their own states. In lieu of the "party-building" clearly envisioned by the drafters of §441a(d), these state party committees may well leave the entire process of supporting U.S. Senate candidates to the NRSC, a result which merely instils in state party committees and in U.S. Senate candidates a deepening sense of the declining role of the state party structure in the federal elections process. It is precisely this decline that §441a(d) sought to avoid.

IV. THE GENERAL COUNSEL'S REPORT IN MUR 780 IS WHOLLY LACKING IN THE REASONING AND AUTHORITY NECESSARY TO SUPPORT ITS CONCLUSION THAT NRSC'S USE OF THESE "DELEGATIONS" IS LAWFUL

In November 1978, in MUR 780, the General Counsel issued an analysis of NRSC's use of §441a(d) delegations from state party committees. This MUR arose out of a complaint filed by the National Committee for an Effective Congress (NCEC), which challenged the use by the NRSC of such a delegation in spending 4 cents per voter in the state of Montana in 1978 on behalf of the U.S. Senate candidacy of Larry Williams. The General Counsel recommended that the Commission find no "reason to believe" that this delegation violated the Act. In reaching this recommendation, the General Counsel relied on two arguments: 1) that the in the absence of any prohibition in the Act or Regulations on such delegation, it could not be considered unlawful; and 2) that it did not matter that NRSC was expending its own funds, and not the funds of the state party committee, since transfers between party committees were, in any event, unlimited, and the question of which committee's funds were being expended "would appear to be immaterial."

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A fair examination of both of these arguments reveal that they constituted insufficient bases for finding the NRSC's state committee "delegation" practices lawful.3/ In the first instance, the absence of any prohibition on such "delegations" can hardly be held a sufficient ground for upholding this practice. In fact, under the usual canons of construction, the opposite conclusion must be reached upon review of the FEC Regulations. Those Regulations expressly confer the authority upon the national committee to delegate its limit, but omit any mention of such authority for state party committees. Since the Commission chose to address this delegation issue directly, and since it chose to confer delegation authority on national committees but not on state committees, it must be concluded that the failure to provide the state committees with that authority was not accidental. Rather, the Commission's actions suggests that §441a(d) state committee "delegations" were not deemed justified or appropriate.4/

Second, the Act's authorization of transfers between party committees simply does not speak to the question at issue here. The general provision for transfers between party committees, see §441a(a)(4), must not be confused with the key question here, that is, whether one party committee may transfer funds to another for the purpose of making §441a(d) expenditures. In the first instance, the transfer provision, §441a(a)(4) exempts by its terms such transfers only from the contribution limits, but not from the limits on §441a(d) expenditures. Moreover, as stated previously, §441a(d) was designed as a party-building provision, one which would encourage state parties to raise and expend funds up to the special limit. By allowing transfers from the NRSC or any other committee to state party committees for §441a(d) purposes, the party-building function is clearly undermined, and the purposes of the section entirely vitiated. Such a transfer would make it unnecessary for the party to engage in the very activities that §441a(d) was expected to encourage, since such committees would need simply to seek, and

3/ It should be noted that since the Complaint was received on October 30, 1978, and the Commission "no reason to believe" determination was reached only three days later on November 2, 1978, there is reason to believe that the issues addressed in the MUR 780 report did not receive the careful attention that the issue warrants.

4/ In any event, authority for such delegations was not included in the regulations submitted to Congress for review, and should not be casually added now, after the fact, without appropriate rulemaking.

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receive, a check in the desired amount from a national committee, such as the NRSC, which would raise the funds nationally.

The weakness of both of the General Counsel's arguments can be seen even more clearly when they are developed further and applied to other areas of the Act. It cannot be contended, certainly, that in the absence of a specific prohibition to the contrary, the state party committees may also delegate their contributions limits to the NRSC, for a combined NRSC contribution limit in each state of $22,500 ($17,500 & $5,000). Nor can it fairly be argued that, since transfers between party committees are unlimited, the NRSC may use its own funds for this delegated contributions limit, and need not use the funds of the State committees. These arguments cannot be sustained under a reasonable reading of with the Act, but they are consistent with the position taken by the General Counsel in MUR 780.

Conclusion

It is in light of the foregoing that the DSCC requests that the Commission grant the relief requested in its attached Complaint, and prevent the NRSC from expending §441a(d) funds in U.S. Senate elections pursuant to delegated authority from state party committees.

Respectfully submitted,

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Before the
FEDERAL ELECTION COMMISSION
Washington, D.C.

In the Matter of NATIONAL REPUBLICAN SENATORIAL COMMITTEE	))))	MUR 1234

RESPONDENT'S SUBMISSION PURSUANT TO 2 U.S.C. § 437g(a)(1)

I. INTRODUCTION

This document is submitted on behalf of the National Republic Senatorial Committee ("NRSC") pursuant to 2 U.S.C. § 437g(a)(1) and Federal Election Commission ("FEC" or "Commission") regulation section 111.6(a), title 11, Code of Federal Regulations in connection with Matter Under Review ("MUR) 1234. This document should not be viewed in any way as a waiver of any statutory or constitutional rights which may be asserted by the NRSC.

II. STATEMENT OF THE FACTS

In a letter dated May 13, 1980, FEC General Counsel, Charles N. Steele, notified the NRSC that a complaint had been filed which alleged that the NRSC had violated provisions of the Federal Election Campaign Act, as amended ("Act").

Attachment 2

Enclosed with Mr. Steele's letter were a copy of the Commission's procedure for handling complaints and four documents which had been filed with the FEC on behalf of the complainant, the Democratic Senatorial Campaign Committee ("DSCC"). The four documents include: (1) a letter to Mr. Steele signed by DSCC counsel Robert F. Bauer; (2) a complaint signed by Mr. Bauer; (3) a notarized affidavit signed and sworn to by Tom Baker, Executive Director and Secretary-Treasurer of DSCC; and (4) a memorandum of points and authorities in support of the complaint, signed by Mr. Bauer.

The complaint, signed by Mr. Bauer, alleges that the NRSC violated 2 U.S.C. § 441a(d) "in 21 of 33 states holding U.S. Senate elections in 1978." (Complaint ¶ 8). The complaint further alleges that "NRSC will expend considerable funds in excess of the applicable [§ 441a(d)] limits." (Complaint ¶ 9). The complaint requests the Commission to find probable cause that "NRSC has committed, and is about to commit violations of § 441a" and to obtain a conciliation agreement with NRSC enjoining certain activity or alternatively to institute civil action in federal district court.

The DSCC submitted Mr. Baker's affidavit which contains a listing of various NRSC expenditures on behalf of 1978 Repulican candidates for the Senate. The list combines all § 441a(d) expenditures that the NRSC was authorized to make, and purports to demonstrate a violation of that subsection by the NRSC. Because of the time restrictions contained in the Act's enforcement procedures, 2 U.S.C. § 437g(a)(1), the NRSC has not had the time or opportunity to verify complainant's figures and specifically reserves the right to challenge them at any time. Respondent notes, however, that there is no assertion in this list, the complaint, the affidavit, or in the memorandum, that the sum of section 441a(d) expenditures by the NRSC exceeds the sum which a state and national committee may spend on behalf of any individual Senate candidate.

The gravaman of DSCC's complaint is a challenge to the practice of some state committees of the Republican party whereby the state committee designates the NRSC as the committee's agent for purposes of making limited expenditures on behalf of specified candidates for election to the United States Senate.* (Complaint ¶¶ 8 & 10). The complaint does not challenge an identical practice by the Republican National Committee which at times designates the NRSC as its agent

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*Certain Republican state committees in the past have designated the NRSC in writing as an agent for purposes of making expenditures on behalf of specified candidates for the Senate pursuant to section 441a(d). (See Exhibit A, sample authorization agreement between NRSC and the Alabama Republican Executive Committee.) Agency agreements are revocable at any time. The state committee must decide whether to designate NRSC or any other committe as its agent. Contrary to DSCC's representations, the NRSC cannot and does not unilaterally, make section 441a(d) expenditures in the absence of express written authorization from a state committee or the Republican National Committee. (Memorandum, p. 7). The issues is not, as DSCC suggests, whether NRSC is "usurping" a state committee's limit. Id.

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pursuant to the same subsection of the Act. (Memorandum, p. 5).

The NRSC denies having violated any provision of the Act, and specifically denies committing a violation of 2 U.S.C. § 441a(d) with respect to any 1978 Republican Senate candidate. As to the 1980 general elections, the NRSC has not finalized its plans as to how it will support Republican Senate candidates. Complainant's comments in that regard constitute sheer speculation. The NRSC will continue to conduct all its activities in accordance with the Act in all respects.

III. THE FEC SHOULD TAKE NO ACTION BECAUSE DSCC'S COMPLAINT IS TECHNICALLY INADEQUATE

Under the Act a "complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be under penalty of perjury and subject to the provisions of section 1001 of title 18, United States Code." 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.4(b) and (c). NRSC counsel informed the Office of General Counsel by letter of May 22, 1980, that DSCC's complaint is technically insufficient and fails to meet the requirements of the Act. Specifically, the complaint is signed by Mr. Bauer on behalf of the DSCC, but is neither sworn to by him nor notarized. The FEC General Counsel has

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rejected this objection. General Counsel maintains that Mr. Baker should be regarded as the complainant on the basis that his affidavit fulfills the Act's requirements because it refers to a complaint which Mr. Baker swears he has read and has authorized to be filed on behalf of DSCC. (Baker Aff. ¶ 2). The NRSC submits that the complaint itself does not bear Mr. Baker's signature or any notation that it is the document which, in his affidavit, he swears he read and which factual allegations he swears are true and correct.

The technical requirements of the Act regarding complaints are exact in order to avoid precisely the type of ambiguity which is present in DSCC's complaint. Because Mr. Baker has failed to sign the complaint, as required by the Act, the Commission cannot be certain that this is the document to which he has sworn by reference. From all appearances it is Mr. Bauer who is filing the complaint on behalf of DSCC. But he cannot be regarded as the person filing the complaint because he has not sworn to its contents nor has the complaint been notarized.

With respect to either Mr. Baker or Mr. Bauer, the DSCC complaint fails to meet various technical requirements of the Act. The FEC's own regulations state that "no action shall be taken" with respect to a complaint that is technically inadequate. 11 C.F.R. §§ 111.5(b) and 111.4. Therefore, the NRSC respectfully requests that the Commission take no

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action on the basis of the technically inadequate complaint filed by DSCC.*

IV. ASSUMING ARGUENDO THAT THE COMPLAINT SATISFIES ALL TECHNICAL REQUIREMENTS, IT DOES NOT PROVIDE ANY REASON TO BELIEVE THAT NRSC VIOLATED OR INTENDS TO VIOLATE THE ACT

DSCC's complaint is more a challenge to the Act and past Commission rulings, than a sincere claim that respondent has in any way violated the Act. Complainant contends that the Act prohibits the state committees of a political party from designating certain other committees of the same party as agents for purposes of making limited expenditures on behalf of candidates for the Senate pursuant to section 441a(d). The interpretation suggested by DSCC is not consistent with the Act, nor with the legislative history of the Act and its amendments. The interpretation suggested by complainant is not consistent with FEC rulings regarding section 441a(d). Finally, DSCC's interpretation is totally undermined by an unsuccessful legislative effort to amend the Act so as to prohibit precisely the type of activity which complainant maintains the Act already prohibits.

A. Section 441a(d) and Legislative History

DSCC is requesting the Commission to reverse itself and interpret section 441a(d) in an extremely narrow,

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*In the event that DSCC ultimately files a complaint in accordance with the Act, the procedures guaranteed to respondents in section 437g(a)(1) would commence *de novo*.

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restrictive and, we submit, artificial, manner. Complainant emphasizes "that § 441a(d) represents a carefully defined exception to the contribution limits that would otherwise be applicable to these [State and National] committees, and it must, therefore, be read restrictively." (Memorandum p. 2). However, the very language of that subsection suggests just the contrary. The full text of section 441a(d)(1) is as follows:

> Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the National committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in [441(a)(d)(2) and (3)]. (Emphasis added).

The above emphasized prefatory language, which was ommitted from DSCC's complaint and memorandum, is sweeping not restrictive. This is consistent with the special and substantial role which Congress intended that all political parties have under the campaign financing system created by the Act. In the early stages of the 1974 Amendments to the Act, which ultimately produced current section 441a(d), the Senate Committee on Rules and Administration specifically stated that one "essential tenet" of the planned financing system was--

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> Provisions of a role for political parties which would allow them to serve as a legitimate pooling mechanism for private contributions to candidates in general elections.

S. Rep. 689, 93d Cong., 2d Sess., at 3.

As this language suggests, the Senate version of the 1974 Amendments contemplated total public funding for all qualified federal candidates in the general election. Id. at 12. The original version of section 441a(d) was in the Senate bill and was described as follows:

> [Section 441a(d) is] a special provision for private funding by political parties. In a general election, candidates may not accept direct contributions if they accept the full level of public assistance. But they may receive substantial private funding, in addition to the public grant, in the form of expenditures by state and national party committees.

Id. at 7.

It is apparent that Congress treated parties as institutions, and was sensitive to the role parties would play in a system that included public financing. In this respect Congress was very expansive in its treatment of parties by fashioning a "special provision" which would implement a "legitimate pooling mechanism" and result in "substantial private funding" for party candidates. Even complainant concedes that this is "an extraordinary spending provision." (Memorandum, p. 5). Section 441a(d) is restrictive in only two general ways. It limits the amount which may be spent, 2 U.S.C. § 441a(d)(2) and (3), and it pinpoints

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the authorizing committees within the party structure who are responsible for ensuring that these limits are not exceeded. Those committees are the national committee and each state committee.

The DSCC suggests that section 441a(d) is further restrictive by requiring the state committees to raise money separately from sources other than other party committees in order to make section 441a(d) expenditures. DSCC cites floor statements by Senator Edward Kennedy in support of this proposition. (Memorandum, pp. 4-5). Senator Kennedy's statements do not support this theory. The Senator's references to a national committee or state committee using "its own funds" to make section 441a(d) expenditures must be read in the context of the bill under Senate consideration at that time. That bill, as stated above, included general election public financing for Senate and House candidates. The reference to a state committee using "its own funds" (which were private) is in contradistinction to the candidates' funds (which were going to be federal funds) and not to funds raised by other party committees.

Furthermore, the proposition that funds must be "bottled up" in a state committee or a national committee is wholly at odds with another provision of the Act which grants all committees of the same party a blanket exemption from the Act's contribution limits with respect to party

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inter-committee transfers. 2 U.S.C. § 441a(a)(4). The so-called unlimited transfer clause was added to section 441a by the 1976 Amendments in order to specifically exempt party committees from newly imposed restrictions designed to limit fund transfers by special interest non-party committees. The unlimited transfer clause is consonant with the legislative policy of special allowances for parties to provide substantial (although limited) funding for their candidates with the fewest restrictions. Congress has left it to each party and its committees to decide on how to best support party candidates within specified dollar limitations and minimal restrictions.

As mentioned above, the only restrictions apparent in section 441a(d) on its face are the dollar limits and the designation of the national committee and the various state committees as the committtees which must ensure that the limits are not exceeded. Section 441a(d) exists "[n]otwithstanding any other provisions of law with respect to limitations on expenditures or limitations on contributions." When read in conjunction with section 441a(a)(4) which further supercedes the Act's limitations with respect to party inter-committee transfers, it is clear that neither subsection prohibits a Republican state committee from designating another party committee, including the NRSC, as its agent to make expenditures on behalf of a general election Senate candidate up to the section 441a(d)(3) limit.

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As long as the funds expended for this purpose are the funds of any committee of the same party, section 441a(d) has been complied with. This follows primarily because section 441a(a)(4) specifically permits unlimited transfers among committees of the same party and therefore implicitly recognizes the fungible character of private funds raised by the "national, state, district, or local committees (including any subordinate committee thereof) of the same political party."

B. Past FEC Rulings

Commission rulings have recognized that either the national committee or a state committee of the same party may designate another party committee to make limited section 441a(d) expenditures and such expenditures may be made from the funds of either the authorizing committee or the agent committee. The FEC has concluded that section 441a(d) permits the Republican National Committee ("RNC") to designate another committee of the same party, the National Republican Congressional Committee ("NRCC"), as its agent, and "it is immaterial as to which committee's funds are being expended under 2 U.S.C. § 441a(d)(3)." Advisory Opinion 1976-108, Fed. Elec. Campaign Fin. Guide (CCH) ¶ 5236 (February 15, 1977). The FEC based this conclusion on section 441a(a)(4) which permits unlimited transfers among committees of the same party. Furthermore, the Commission stated that if the

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RNC designated a non-party committee as its agent (thereby conceding that anyone can be an agent) then "the national committee would be required to provide the funding since contributions by such an agent would be limited to $20,000 or $15,000 per year." Id.

The effect of section 441a(a)(4) and (d) upon state committees is no less or different in nature than its effect upon the national committee. The state committee, like the national committee may designate any committee as an agent for section 441a(d). The source of the funds is material only if the agent is not a committee of the same party.

The ability of a state committee to designate the NRSC as its agent has been specifically accepted by the FEC. On January 19, 1979, the Commission found no reason to believe that the NRSC violated section 441a(d) as alleged by a complainant in MUR 780. (Certification of FEC Secretary, January 19, 1979).* The Commission's General Counsel Report which recommended the finding of "no reason to believe" and an earlier report both accept the proposition that a state committee may designate the NRSC as an agent. As specifically

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*Contrary to DSCC's representation, the FEC found no reason to believe against NRSC almost three months after the complaint was filed in MUR 780, and not three days. (Memorandum, p. 9). Those three months and the preceding years going back to Advisory Opinion 1975-108 allowed the Commission to give section 441a(d) "the careful attention that the issue warrants." Id.

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noted in the earlier report, dated October 30, 1978, section 441a(a)(4) and Advisory Opinion 1975-108 provide the rationale which makes it "immaterial as to which committee's funds were being expended under 2 U.S.C. § 441a(d)(3)." In addition to MUR 780, the Commission accepted the ability of a state to designate NRSC as an agent in another matter, MUR 820.

The Commission should continue to follow its past decisions and section 441a, and reaffirm that (1) a state committee may designate the NRSC as its agent under section 441a(d); and (2) it is immaterial which committee's funds are used to make the expenditures.

C. <u>Legislative Efforts to Amend section 441a</u>

In March 1978 there was an attempt to amend the Act, including section 441a. One of the most controversial aspects of this bill, H.R. 11315, were proposed changes to the section 441a(d) limits and changes to section 441a(a)(4). <u>See</u> Cong. Rec. H2261-9 (daily ed. March 21, 1978). The bill proposed to reduce the section 441a(d) limits in half with respect to Senate candidates and by three-fourths with respect to House candidates. The bill also deleted the section's prefatory language, i.e., "notwithstanding any other provision of law, . . ." Just as significantly, H.R. 11315 would have amended section 441a(a)(4), which grants unlimited party inter-committee transfers, by adding the following restriction:

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> . . . no movements of funds may be made between the political committees of a national political party (including the House and Senate congressional campaign committees of such party) and the political committees of a State committee of a political party (including district, local or subordinate committees of such party) for the purpose of making contributions to, or expenditures on behalf of, any candidate for Federal office.

H.R. 11315, 95th Cong., 2d Sess., § 113.

The bill was passed by the Committee on House Administration. It was highly controversial. The House of Representatives on March 21, 1978, voted not to consider the bill. The debate on that day is replete with references to the proposed changes to party spending limits and transferability. Cong. Rec. H2262-3 (remarks of Rep. Thompson); H2263 (remarks of Rep. Frenzel); H2265 (remarks of Rep. Conable and Rep. Mikva); H2266 (remarks of Rep. Davis); H2267 (remarks of Rep. Vander Jagt) (daily ed. March 31, 1978).

Is there any doubt that DSCC is now asking the FEC to do that which the House of Representatives refused to do, i.e., amend section 441a? The NRSC submits there is no doubt. The interpretation suggested by the DSCC would have merit if H.R. 11315 had been enacted. Under the Act as it exists and as interpretated by the FEC, DSCC's view of section 441a(d) is not valid and cannot be valid unless and until the Congress chooses to amend the law accordingly.

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V. CONCLUSION

For the above stated reasons, the NRSC respectfully requests that the Federal Election Commission take no action on DSCC's complaint on the ground that it is technically inadequate. Assuming arguendo, however, that DSCC ultimately files a technically sufficient complaint, the Commission should find no reason to believe that the NRSC has violated section 441a(d).

Respectfully submitted,

James F. Schoener

James F. Schoener

Dated at Washington, D.C.
30 May 1980

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Republican
National
Committee

William D. Harris, State Chairman
Member for Alabama
P.O. Box 3315
Birmingham, Alabama 35205
(205) 322-5733

AGREEMENT BETWEEN
THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE
AND THE ALABAMA REPUBLICAN EXECUTIVE COMMITTEE

The National Republican Senatorial Committee, hereinafter known as "Senatorial", agree with the Alabama Republican Executive Committee, hereinafter known as "State"; as follows:

1. Under the provision of 441 a(d)(3) of Title 2 of the United States Code, State (and its subordinate committees) may make certain expenditures in connection with the general election campaign of the candidate for the office United States Senator for the State of Alabama.

2. Such amount of allowed expenditures under said provision has been computed tentatively by the Federal Election Commission as the amount of $62,507.00.

3. That State wishes to designate Senatorial its agent for the purpose of making such expenditures up to the amount of $60,000.00.

4. State agrees to file an allocation statement concerning the amount not assigned to Senatorial as required by the Federal Election Commission Regulation 110.7(c).

5. State agrees to carry out the provisions of such allocation statement and will promptly advise Senatorial at any time that State and its subordinate committees reach 80% of the amount retained by State and a review of this agreement will occur at such time.

6. Senatorial agrees to make such expenditures in behalf of candidate, or if it is any manner unable to make such expenditures, to promptly release and cancel said agency and reassign such allocated amount to State.

This agreement signed the date opposite the respective parties' name to be effective when signed by both parties.

National Republican Senatorial Committee

Dated Aug 22, 1978 1978 at Washington, D. C.

By Robert M. Smith

Title Treasurer

Alabama Republican Executive Committee

Dated 17 August 1978 1978 at Birmingham, Alabama.

By William D. Harris
William D. Harris

Title Chairman

2

Before the

FEDERAL ELECTION COMMISSION

In: Matters involving the National Republican Senatorial Committee	Notice of Representation by Counsel

Please take notice that we do hereby designate James F. Schoener as our attorney to represent us with regard to any and all matters involving our Committee, whether as complainant or respondent, involving any and all advisory opinions, to make comments on proposed regulations, and to represent us in general in all matters before said commission.

Mr. Schoener is a member of the firm of Jenkins, Nystrom & Sterlacci, P.C. of 2033 M Street, N.W., Suite 504, Washington, D.C., telephone number 293-2505. His home telephone number is 751-6325. He is authorized to receive any and all communications from the Commission on our behalf. This authorization shall continue until rejected in writing by the undersigned or his successor.

Dated: 29 January 1980

National Republican Senatorial Committee:

by: [signature]
Rodney Smith, Treasurer

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...NYSTROM & STERLACCI, P.C.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

<u>CERTIFIED MAIL</u>
<u>RETURN RECEIPT REQUESTED</u>

James F. Schoener, Esquire
Jenkins, Nystrom and Sterlacci, P.C.
2033 M Street, N.W.
Washington, D.C. 20036

Re: MUR 1234

Dear Mr. Schoener:

This will acknowledge receipt of the letter dated May 30, 1980, by which you responded to allegations made in a complaint filed by the Democratic Senatorial Campaign Committee that your client, the National Republican Senatorial Committee, had violated, and is about to violate, the Federal Election Campaign Act.

On July , 1980, the Commission determined that there is no reason to believe that NRSC violated the Act, and voted to close its file in this matter. The file in this case will become a part of the public record within thirty days.

Sincerely,

Charles N. Steele
General Counsel

Attachment 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert F. Bauer, Esquire
Dechert Price and Rhoads
888 17th Street, N.W.
Washington, D.C. 20006

Re: MUR 1234

Dear Mr. Bauer:

The Federal Election Commission has reviewed the allegations set out in your complaint dated May 9, 1980. On the basis of information contained in that complaint, and information provided by the Respondent, National Republican Senatorial Committee, the Commission determined that there is no reason to believe that a violation of the Federal Election Campaign Act has been committed.

Accordingly, the Commission has closed its file in this matter.

Sincerely,

Charles N. Steele
General Counsel

Attachment 4

Acc #

RECEIVED
MUC 1234
'80 JUL 3 PM 2:40

LAW OFFICES
ROBERT F. BAUER
SUITE 406
1101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 296-0555

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July 3, 1980

Mr. Charles Steele
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: DSCC Complaint of May 9, 1980

Dear Sir:

In your letter of May 13, 1980, you acknowledged receipt of the Democratic Senatorial Campaign Committee's (DSCC) complaint filed May 9, 1980 against the National Republican Senatorial Committee (NRSC). As you know, the DSCC complaint alleges that the NRSC has violated in the past -- and will violate once again this year -- section 441a of the Act by making hundreds of thousands of illegal expenditures pursuant to "delegations" by state party committees of their section 441a(d) spending authority. In your acknowledgement, you invited the DSCC to submit, at any time, any additional evidence bearing on the issues raised in that Complaint. Accordingly, the DSCC herewith brings to your attention, and to the attention of the Commission, additional and conclusive evidence on the basic factual question of whether the NRSC intends to procure and use this year, as it did last year, unlawfully "delegated" state party committee section 441a(d) authority.

In it's Complaint and Affidavit, the DSCC asserted its "reason to believe that, once again in this election year, the NRSC will expend considerable funds in excess of the applicable limit pursuant to such unauthorized delegations from the State committees ...". See pp. 4-5 of the Complaint. The DSCC "reason to believe" has since been converted into absolute certainty that the NRSC will proceed with these unauthorized delegations. The DSCC's certainty on this point stems from the NRSC's announcement of a "1980 Target Democrat program", which it describes for its contributors in the attached fund raising mailing.* You will note that, below each photograph of a "targeted" Democratic Senator, there appears a statement of the "maximum NRSC contribution to defeat ..." that Senator. In each instance, the "maximum contribution" is extremely large -- considerably larger than the $17,500 direct cash contribution which the Committee is authorized to make under section 441a(h). Moreover, and most strikingly, the "maximum contribution" also exceeds the $17,500 contribution when combined with the full 2 cent per voter limit available to the NRSC in each state as "agent" of the Republican National Committee (RNC). The additional funding in each instance comes, of course, from an additional 2 cent per voter limit which the NRSC expects, once again, to secure through "delegation" from the state party committees in each of the states where targeted Democrats are running.

*Only relevant portions are attached.

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LAW OFFICES
ROBERT F. BAUER

To illustrate this point, the DSCC has prepared a chart comparing, for certain of the targeted Senators, the NRSC's announced "maximum contribution" with the monies available to the NRSC through 1) an agency arrangement with the RNC for the national party's 2 cent limit plus the $17,500 direct contribution, and 2) an agency arrangement with both the RNC and each state party committee, for a combined 4 cent limit. You will note that in each case, the "maximum contribution" exceeds the 441a(d) national party limit combined with the $17,500. The chart establishes clearly that only by combining the national and state party 441a(d) limits, will the NRSC be able to make its "maximum contributions" against the various targeted Senators.

	NRSC Declared "Maximum Contribution"	National Party 441a(d) (2¢ v. VAP) plus $17,500 Direct Contributions	Combined National and State Party 441a(d) Limit (4¢ v. VAP)
Indiana (Bayh)	$217,500	$129,578.08	$224,156.16
California (Cranston)	861,500	502,524.00	970,048.00
Colorado (Hart)	115,500	75,555.68	116,111.36
Idaho (Church)	71,500	46,940.00	58,880.00*

*It appears that in Idaho, only the combined national and state 441a(d) limits ($58,880) plus the $17,500 direct contribution would be sufficient to enable the NRSC to spend its announced goal of $71,500.

The NRSC mailing leaves no room for doubt about the NRSC's intention to spend large sums pursuant to delegated state party committee 441a(d) authority. In fact, the use of that authority is central to the NRSC's "1980 target program"; in no case will the NRSC even approach its "maximum contribution" unless additional funds are spent pursuant to the state party committee 441a(d) limit. The Commission should also note that the expenditure of funds, pursuant to this delegated authority, is not characterized as a gift or contribution from the state party committees. Rather, these delegated state committee limits are neatly folded into, and become part of, the NRSC's own "maximum contribution". As

Mr. Charles Steele
July 3, 1980
Page 2

LAW OFFICES
ROBERT F. BAUER

the DSCC has argued at length in its Complaint, the NRSC's assumption of this limit -- and the state committees' corresponding surrender of responsibility for the raising and expenditure of 441a(d) funds -- renders hollow and useless section 441a(d)'s intended purpose -- an incentive to the involvement and development of state party committee organizations in the federal election process.

Very truly yours,

Robert F. Bauer

Robert F. Bauer
General Counsel
Democratice Senatorial Campaign
Committee

RFB:peg

Enclosure

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Registered Document Number: 4579

National Republican Senatorial Committee

1980 Target Democrat Program

Update Report on the Defense Voting Records
of the Ten Targeted Democrat Senators

Prepared for Senatorial Club Members Only,
by the Campaign Staff of the
National Republican Senatorial Committee

80040202430

1980 Target Democrat Program

The 10 Democrat Senators listed below are targeted for defeat in 1980 by the Senatorial Committee because of their extremely liberal voting records and because public opinion polls show that they are all vulnerable to defeat based on their anti-defense voting records.

Our campaign staff has picked four representative, and crucial, defense votes (analyzed at the bottom of the page) which show how these targeted liberal Democrats have voted regularly in favor of disarm-and-retreat foreign and defense policies.

BIRCH BAYH
Indiana

Garcia	Absent
B-1	Against
Vietnam	Against
Spending	Against

Maximum NRSC Contribution to defeat Senator Bayh $217,500

FRANK CHURCH
Idaho

Garcia	Against
B-1	Against
Vietnam	Against
Spending	Against

Maximum NRSC Contribution to defeat Senator Church $71,500

ALAN CRANSTON
California

Garcia	Against
B-1	For
Vietnam	Against
Spending	Against

Maximum NRSC Contribution to defeat Senator Cranston $861,500

JOHN C. CULVER
Iowa

Garcia	Against
B-1	Against
Vietnam	Against
Spending	Against

Maximum NRSC Contribution to defeat Senator Culver $127,500

JOHN A. DURKIN
New Hampshire

Garcia	Against
B-1	Against
Vietnam	Against
Spending	For

Maximum NRSC Contribution to defeat Senator Durkin $71,500

MIKE GRAVEL
Alaska

Garcia	Against
B-1	For
Vietnam	Against
Spending	Against

Maximum NRSC Contribution to defeat Senator Gravel $71,500

GARY HART
Colorado

Garcia	Against
B-1	Against
Vietnam	Against
Spending	Against

Maximum NRSC Contribution to defeat Senator Hart $115,500

PATRICK LEAHY
Vermont

Garcia	Against
B-1	Against
Vietnam	Against
Spending	Against

Maximum NRSC Contribution to defeat Senator Leahy $71,500

GEORGE McGOVERN
South Dakota

Garcia	Against
B-1	Against
Vietnam	Against
Spending	Against

Maximum NRSC Contribution to defeat Senator McGovern $123,500

GAYLORD NELSON
Wisconsin

Garcia	Against
B-1	Against
Vietnam	Against
Spending	Against

Maximum NRSC Contribution to defeat Senator Nelson $192,500

The key defense votes analyzed by the Committee are as follows:

1) GARCIA — (1975) Funding for an urgently needed U.S. base on the island of Diego Garcia to counter Soviet naval expansion into Indian Ocean and Persian Gulf.

2) B-1 — (1977) Funding for the B-1 Bomber.

3) VIETNAM —(1978) Motion to prohibit "reparations" aid to Communist Vietnam.

4) SPENDING —(1979) Amendment to increase defense spending in Fiscal Year 1981 by $12.5 billion.

Pro-disarmament, liberal and labor lobbies have already poured nearly $6.5 million into the campaign coffers of the targeted Democrat Senators.

These figures, taken from the most recent Federal Election Commission report, show the money raised to date by the 10 Targeted Democrats.

1.	Sen. Birch Bayh	$ 880,071
2.	Sen. Frank Church	$1,064,559
3.	Sen. Alan Cranston	$1,687,380
4.	Sen. John C. Culver	$ 704,546
5.	Sen. John A. Durkin	$ 98,429
6.	Sen. Mike Gravel	$ 432,570
7.	Sen. Gary Hart	$ 240,110
8.	Sen. Patrick Leahy	$ 153,135
9.	Sen. George McGovern	$ 930,452
10.	Sen. Gaylord Nelson	$ 255,899

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LAW OFFICES
ROBERT F. BAUER
SUITE 406
1101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

(202) 296-0555

July 3, 1980

Mr. Charles Steele
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Sir:

In response to the Democratic Senatorial Campaign Committee's (DSCC) complaint dated May 9, 1980, the NRSC's General Counsel, Mr. Jim Schoener, forwarded to your office a letter attacking certain "deficiencies" in that Complaint. Specifically, Mr. Schoener referred to the absence of any notarization on the document separately styled "Complaint", which was also accompanied by a separate Affidavit and Memorandum of Points and Authorities. As I understand it, you pointed out to Mr. Schoener that the accompanying, notarized Affidavit, executed by DSCC's Executive Director, Mr. Tom Baker, states at page 2 that "the factual allegations contained in the foregoing complaint and this affidavit are true and correct to the best of my knowledge and belief." It was your conclusion, which you communicated to Mr. Schoener, that this notarized statement in the Affidavit -- which expressly swears to the allegations in the Complaint -- was sufficient to satisfy the requirements of section 111.4(b)(2) of the FEC regulations.

As I informed you in response to Mr. Schoener's letter, a copy of which Mr. Schoener forwarded to me, I concur fully with your position. Section 111.4(b)(2) simply does not support the reading imposed upon it by the NRSC. As you know, that section sets forth the requirement that the contents of the complaint be sworn to and notarized; it does not add a requirement that the notary's stamp, for this purpose, must appear on one of the pages of the Complaint itself, and not in an attached affidavit or verification. Such a requirement would be a simple case of placing form ahead of substance. Nor would the NRSC's position be consistent with any prior Commission interpretation of this section, for there have been numerous instances where complainants -- without Commission objection -- have elected to attest to the Complaint in an attached affidavit or verification. See, for example, the Verification made out by attorney for the Baker for President Committee, and attached to the Committee's Complaint in MURs 1167, 1168, 1170 (involving the Nashua Telegraph Debate).

Mr. Charles Steele
July 3, 1980
Page 2

LAW OFFICES
ROBERT F. BAUER

In preparing this letter, the DSCC does not wish or expect to reopen this issue in any way. Instead, it is the DSCC's sole purpose to place on record, in writing, it's position as already known to you.

Very truly yours,

Robert F. Bauer
General Counsel
Democratic Senatorial Campaign
Committee

RFB:peg

ROBERT F. BAUER
SUITE 406
1101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

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Mr. Charles Steele
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C.   20463

MESSENGER

ROBERT F. BAUER
SUITE 406
101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

'80 JUL 3 PM

IMPORTANT

MESSENGER

Mr. Charles Steele
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

From The Desk of

JAMES F. SCHOENER

2 June 80

Vince, —

The copy of the Notice was sent by the Treasurer on January 29, 1980. Here is a duplicate.

Schoener

JENKINS, NYSTOM & STERLACCI, P.C.
2033 M Street, N.W. • Suite 504 • Washington, D.C. 20036 • 202 293-2505

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OFFICE OF THE
GENERAL COUNSEL

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GCC #1552
'80 JUN 3 AM 11:43

United States of America

Before the

'80 JUN 3 P12:41

FEDERAL ELECTION COMMISSION

In: Matters involving the National Republican Senatorial Committee

Notice of Representation by Counsel

Please take notice that we do hereby designate James F. Schoener as our attorney to represent us with regard to any and all matters involving our Committee, whether as complainant or respondent, involving any and all advisory opinions, to make comments on proposed regulations, and to represent us in general in all matters before said commission.

Mr. Schoener is a member of the firm of Jenkins, Nystrom & Sterlacci, P.C. of 2033 M Street, N.W., Suite 504, Washington, D.C., telephone number 293-2505. His home telephone number is 751-6325. He is authorized to receive any and all communications from the Commission on our behalf. This authorization shall continue until rejected in writing by the undersigned or his successor.

Dated: 25 January 1980

National Republican Senatorial Committee:

by: Rodney K. Smith
Rodney Smith, Treasurer

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LAW OFFICES
JENKINS, NYSTROM & STERLACCI, P.C.
2033 M STREET, N.W.
WASHINGTON, D. C. 20036

WASHINGTON, DC 200
PM
2 JUN
1980

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Attention Vincent Convery

RECEIVED
OFFICE OF THE
GENERAL COUNSEL
GCC#1541
80 JUN 2 P5:29

Before the
FEDERAL ELECTION COMMISSION
Washington, D.C.

In the Matter of	)	
	)	MUR 1234
NATIONAL REPUBLICAN SENATORIAL	)	
COMMITTEE	)	

RESPONDENT'S SUBMISSION PURSUANT TO 2 U.S.C. § 437g(a)(1)

I. INTRODUCTION

This document is submitted on behalf of the National Republic Senatorial Committee ("NRSC") pursuant to 2 U.S.C. § 437g(a)(1) and Federal Election Commission ("FEC" or "Commission") regulation section 111.6(a), title 11, Code of Federal Regulations in connection with Matter Under Review ("MUR) 1234. This document should not be viewed in any way as a waiver of any statutory or constitutional rights which may be asserted by the NRSC.

II. STATEMENT OF THE FACTS

In a letter dated May 13, 1980, FEC General Counsel, Charles N. Steele, notified the NRSC that a complaint had been filed which alleged that the NRSC had violated provisions of the Federal Election Campaign Act, as amended ("Act").

Enclosed with Mr. Steele's letter were a copy of the Commission's procedure for handling complaints and four documents which had been filed with the FEC on behalf of the complainant, the Democratic Senatorial Campaign Committee ("DSCC"). The four documents include: (1) a letter to Mr. Steele signed by DSCC counsel Robert F. Bauer; (2) a complaint signed by Mr. Bauer; (3) a notarized affidavit signed and sworn to by Tom Baker, Executive Director and Secretary-Treasurer of DSCC; and (4) a memorandum of points and authorities in support of the complaint, signed by Mr. Bauer.

The complaint, signed by Mr. Bauer, alleges that the NRSC violated 2 U.S.C. § 441a(d) "in 21 of 33 states holding U.S. Senate elections in 1978." (Complaint ¶ 8). The complaint further alleges that "NRSC will expend considerable funds in excess of the applicable [§ 441a(d)] limits." (Complaint ¶ 9). The complaint requests the Commission to find probable cause that "NRSC has committed, and is about to commit violations of § 441a" and to obtain a conciliation agreement with NRSC enjoining certain activity or alternatively to institute civil action in federal district court.

The DSCC submitted Mr. Baker's affidavit which contains a listing of various NRSC expenditures on behalf of 1978 Repulican candidates for the Senate. The list combines all § 441a(d) expenditures that the NRSC was authorized to make, and purports to demonstrate a violation of that subsection by the NRSC. Because of the time restrictions contained in the Act's enforcement procedures, 2 U.S.C. § 437g(a)(1), the NRSC has not had the time or opportunity to verify complainant's figures and specifically reserves the right to challenge them at any time. Respondent notes, however, that there is no assertion in this list, the complaint, the affidavit, or in the memorandum, that the sum of section 441a(d) expenditures by the NRSC exceeds the sum which a state and national committee may spend on behalf of any individual Senate candidate.

The gravaman of DSCC's complaint is a challenge to the practice of some state committees of the Republican party whereby the state committee designates the NRSC as the committee's agent for purposes of making limited expenditures on behalf of specified candidates for election to the United States Senate.* (Complaint ¶¶ 8 & 10). The complaint does not challenge an identical practice by the Republican National Committee which at times designates the NRSC as its agent

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*Certain Republican state committees in the past have designated the NRSC in writing as an agent for purposes of making expenditures on behalf of specified candidates for the Senate pursuant to section 441a(d). (See Exhibit A, sample authorization agreement between NRSC and the Alabama Republican Executive Committee.) Agency agreements are revocable at any time. The state committee must decide whether to designate NRSC or any other committe as its agent. Contrary to DSCC's representations, the NRSC cannot and does not unilaterally, make section 441a(d) expenditures in the absence of express written authorization from a state committee or the Republican National Committee. (Memorandum, p. 7). The issues is not, as DSCC suggests, whether NRSC is "usurping" a state committee's limit. Id.

pursuant to the same subsection of the Act. (Memorandum, p. 5).

The NRSC denies having violated any provision of the Act, and specifically denies committing a violation of 2 U.S.C. § 441a(d) with respect to any 1978 Republican Senate candidate. As to the 1980 general elections, the NRSC has not finalized its plans as to how it will support Republican Senate candidates. Complainant's comments in that regard constitute sheer speculation. The NRSC will continue to conduct all its activities in accordance with the Act in all respects.

III. THE FEC SHOULD TAKE NO ACTION BECAUSE DSCC'S COMPLAINT IS TECHNICALLY INADEQUATE

Under the Act a "complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be under penalty of perjury and subject to the provisions of section 1001 of title 18, United States Code." 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.4(b) and (c). NRSC counsel informed the Office of General Counsel by letter of May 22, 1980, that DSCC's complaint is technically insufficient and fails to meet the requirements of the Act. Specifically, the complaint is signed by Mr. Bauer on behalf of the DSCC, but is neither sworn to by him nor notarized. The FEC General Counsel has rejected this objection. General Counsel maintains that Mr. Baker should be regarded as the complainant on the basis that his affidavit fulfills the Act's requirements because it refers to a complaint which Mr. Baker swears he has read and has authorized to be filed on behalf of DSCC. (Baker Aff. ¶ 2). The NRSC submits that the complaint itself does not bear Mr. Baker's signature or any notation that it is the document which, in his affidavit, he swears he read and which factual allegations he swears are true and correct.

The technical requirements of the Act regarding complaints are exact in order to avoid precisely the type of ambiguity which is present in DSCC's complaint. Because Mr. Baker has failed to sign the complaint, as required by the Act, the Commission cannot be certain that this is the document to which he has sworn by reference. From all appearances it is Mr. Bauer who is filing the complaint on behalf of DSCC. But he cannot be regarded as the person filing the complaint because he has not sworn to its contents nor has the complaint been notarized.

With respect to either Mr. Baker or Mr. Bauer, the DSCC complaint fails to meet various technical requirements of the Act. The FEC's own regulations state that "no action shall be taken" with respect to a complaint that is technically inadequate. 11 C.F.R. §§ 111.5(b) and 111.4. Therefore, the NRSC respectfully requests that the Commission take no action on the basis of the technically inadequate complaint filed by DSCC.*

IV. <u>ASSUMING ARGUENDO THAT THE COMPLAINT SATISFIES ALL TECHNICAL REQUIREMENTS, IT DOES NOT PROVIDE ANY REASON TO BELIEVE THAT NRSC VIOLATED OR INTENDS TO VIOLATE THE ACT</u>

DSCC's complaint is more a challenge to the Act and past Commission rulings, than a sincere claim that respondent has in any way violated the Act. Complainant contends that the Act prohibits the state committees of a political party from designating certain other committees of the same party as agents for purposes of making limited expenditures on behalf of candidates for the Senate pursuant to section 441a(d). The interpretation suggested by DSCC is not consistent with the Act, nor with the legislative history of the Act and its amendments. The interpretation suggested by complainant is not consistent with FEC rulings regarding section 441a(d). Finally, DSCC's interpretation is totally undermined by an unsuccessful legislative effort to amend the Act so as to prohibit precisely the type of activity which complainant maintains the Act already prohibits.

A. <u>Section 441a(d) and Legislative History</u>

DSCC is requesting the Commission to reverse itself and interpret section 441a(d) in an extremely narrow,

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*In the event that DSCC ultimately files a complaint in accordance with the Act, the procedures guaranteed to respondents in section 437g(a)(1) would commence <u>de novo</u>.

restrictive and, we submit, artificial, manner. Complainant emphasizes "that § 441a(d) represents a carefully defined exception to the contribution limits that would otherwise be applicable to these [State and National] committees, and it must, therefore, be read restrictively." (Memorandum p. 2). However, the very language of that subsection suggests just the contrary. The full text of section 441a(d)(1) is as follows:

> Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the National committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in [441(a)(d)(2) and (3)]. (Emphasis added).

The above emphasized prefatory language, which was ommitted from DSCC's complaint and memorandum, is sweeping not restrictive. This is consistent with the special and substantial role which Congress intended that all political parties have under the campaign financing system created by the Act. In the early stages of the 1974 Amendments to the Act, which ultimately produced current section 441a(d), the Senate Committee on Rules and Administration specifically stated that one "essential tenet" of the planned financing system was--

> Provisions of a role for political parties which would allow them to serve as a legitimate pooling mechanism for private contributions to candidates in general elections.

S. Rep. 689, 93d Cong., 2d Sess., at 3.

As this language suggests, the Senate version of the 1974 Amendments contemplated total public funding for all qualified federal candidates in the general election. Id. at 12. The original version of section 441a(d) was in the Senate bill and was described as follows:

> [Section 441a(d) is] a special provision for private funding by political parties. In a general election, candidates may not accept direct contributions if they accept the full level of public assistance. But they may receive substantial private funding, in addition to the public grant, in the form of expenditures by state and national party committees.

Id. at 7.

It is apparent that Congress treated parties as institutions, and was sensitive to the role parties would play in a system that included public financing. In this respect Congress was very expansive in its treatment of parties by fashioning a "special provision" which would implement a "legitimate pooling mechanism" and result in "substantial private funding" for party candidates. Even complainant concedes that this is "an extraordinary spending provision." (Memorandum, p. 5). Section 441a(d) is restrictive in only two general ways. It limits the amount which may be spent, 2 U.S.C. § 441a(d)(2) and (3), and it pinpoints the authorizing committees within the party structure who are responsible for ensuring that these limits are not exceeded. Those committees are the national committee and each state committee.

The DSCC suggests that section 441a(d) is further restrictive by requiring the state committees to raise money separately from sources other than other party committees in order to make section 441a(d) expenditures. DSCC cites floor statements by Senator Edward Kennedy in support of this proposition. (Memorandum, pp. 4-5). Senator Kennedy's statements do not support this theory. The Senator's references to a national committee or state committee using "its own funds" to make section 441a(d) expenditures must be read in the context of the bill under Senate consideration at that time. That bill, as stated above, included general election public financing for Senate and House candidates. The reference to a state committee using "its own funds" (which were private) is in contradistinction to the candidates' funds (which were going to be federal funds) and not to funds raised by other party committees.

Furthermore, the proposition that funds must be "bottled up" in a state committee or a national committee is wholly at odds with another provision of the Act which grants all committees of the same party a blanket exemption from the Act's contribution limits with respect to party inter-committee transfers. 2 U.S.C. § 441a(a)(4). The so-called unlimited transfer clause was added to section 441a by the 1976 Amendments in order to specifically exempt party committees from newly imposed restrictions designed to limit fund transfers by special interest non-party committees. The unlimited transfer clause is consonant with the legislative policy of special allowances for parties to provide substantial (although limited) funding for their candidates with the fewest restrictions. Congress has left it to each party and its committees to decide on how to best support party candidates within specified dollar limitations and minimal restrictions.

As mentioned above, the only restrictions apparent in section 441a(d) on its face are the dollar limits and the designation of the national committee and the various state committees as the committtees which must ensure that the limits are not exceeded. Section 441a(d) exists "[n]otwithstanding any other provisions of law with respect to limitations on expenditures or limitations on contributions." When read in conjunction with section 441a(a)(4) which further supercedes the Act's limitations with respect to party inter-committee transfers, it is clear that neither subsection prohibits a Republican state committee from designating another party committee, including the NRSC, as its agent to make expenditures on behalf of a general election Senate candidate up to the section 441a(d)(3) limit.

As long as the funds expended for this purpose are the funds of any committee of the same party, section 441a(d) has been complied with. This follows primarily because section 441a(a)(4) specifically permits unlimited transfers among committees of the same party and therefore implicitly recognizes the fungible character of private funds raised by the "national, state, district, or local committees (including any subordinate committee thereof) of the same political party."

B. Past FEC Rulings

Commission rulings have recognized that either the national committee or a state committee of the same party may designate another party committee to make limited section 441a(d) expenditures and such expenditures may be made from the funds of either the authorizing committee or the agent committee. The FEC has concluded that section 441a(d) permits the Republican National Committee ("RNC") to designate another committee of the same party, the National Republican Congressional Committee ("NRCC"), as its agent, and "it is immaterial as to which committee's funds are being expended under 2 U.S.C. § 441a(d)(3)." Advisory Opinion 1976-108, Fed. Elec. Campaign Fin. Guide (CCH) ¶ 5236 (February 15, 1977). The FEC based this conclusion on section 441a(a)(4) which permits unlimited transfers among committees of the same party. Furthermore, the Commission stated that if the

RNC designated a non-party committee as its agent (thereby conceding that anyone can be an agent) then "the national committee would be required to provide the funding since contributions by such an agent would be limited to $20,000 or $15,000 per year." Id.

The effect of section 441a(a)(4) and (d) upon state committees is no less or different in nature than its effect upon the national committee. The state committee, like the national committee may designate any committee as an agent for section 441a(d). The source of the funds is material only if the agent is not a committee of the same party.

The ability of a state committee to designate the NRSC as its agent has been specifically accepted by the FEC. On January 19, 1979, the Commission found no reason to believe that the NRSC violated section 441a(d) as alleged by a complainant in MUR 780. (Certification of FEC Secretary, January 19, 1979).* The Commission's General Counsel Report which recommended the finding of "no reason to believe" and an earlier report both accept the proposition that a state committee may designate the NRSC as an agent. As specifically

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*Contrary to DSCC's representation, the FEC found no reason to believe against NRSC almost three months after the complaint was filed in MUR 780, and not three days. (Memorandum, p. 9). Those three months and the preceding years going back to Advisory Opinion 1975-108 allowed the Commission to give section 441a(d) "the careful attention that the issue warrants." Id.

noted in the earlier report, dated October 30, 1978, section 441a(a)(4) and Advisory Opinion 1975-108 provide the rationale which makes it "immaterial as to which committee's funds were being expended under 2 U.S.C. § 441a(d)(3)." In addition to MUR 780, the Commission accepted the ability of a state to designate NRSC as an agent in another matter, MUR 820.

The Commission should continue to follow its past decisions and section 441a, and reaffirm that (1) a state committee may designate the NRSC as its agent under section 441a(d); and (2) it is immaterial which committee's funds are used to make the expenditures.

C. Legislative Efforts to Amend section 441a

In March 1978 there was an attempt to amend the Act, including section 441a. One of the most controversial aspects of this bill, H.R. 11315, were proposed changes to the section 441a(d) limits and changes to section 441a(a)(4). See Cong. Rec. H2261-9 (daily ed. March 21, 1978). The bill proposed to reduce the section 441a(d) limits in half with respect to Senate candidates and by three-fourths with respect to House candidates. The bill also deleted the section's prefatory language, i.e., "notwithstanding any other provision of law, . . ." Just as significantly, H.R. 11315 would have amended section 441a(a)(4), which grants unlimited party inter-committee transfers, by adding the following restriction:

> **. . . no movements of funds may be made between the political committees of a national political party (including the House and Senate congressional campaign committees of such party) and the political committees of a State committee of a political party (including district, local or subordinate committees of such party) for the purpose of making contributions to, or expenditures on behalf of, any candidate for Federal office.**

H.R. 11315, 95th Cong., 2d Sess., § 113.

The bill was passed by the Committee on House Administration. It was highly controversial. The House of Representatives on March 21, 1978, voted not to consider the bill. The debate on that day is replete with references to the proposed changes to party spending limits and transferability. Cong. Rec. H2262-3 (remarks of Rep. Thompson); H2263 (remarks of Rep. Frenzel); H2265 (remarks of Rep. Conable and Rep. Mikva); H2266 (remarks of Rep. Davis); H2267 (remarks of Rep. Vander Jagt) (daily ed. March 31, 1978).

Is there any doubt that DSCC is now asking the FEC to do that which the House of Representatives refused to do, i.e., amend section 441a? The NRSC submits there is no doubt. The interpretation suggested by the DSCC would have merit if H.R. 11315 had been enacted. Under the Act as it exists and as interpretated by the FEC, DSCC's view of section 441a(d) is not valid and cannot be valid unless and until the Congress chooses to amend the law accordingly.

V. <u>CONCLUSION</u>

For the above stated reasons, the NRSC respectfully requests that the Federal Election Commission take no action on DSCC's complaint on the ground that it is technically inadequate. Assuming arguendo, however, that DSCC ultimately files a technically sufficient complaint, the Commission should find no reason to believe that the NRSC has violated section 441a(d).

Respectfully submitted,

James F. Schoener

Dated at Washington, D.C.
30 May 1980

Republican
National
Committee

William D. Harris, State Chairman
Member for Alabama
P.O. Box 3315
Birmingham, Alabama 35205
(205) 322-5733

EXHIBIT "A"

**AGREEMENT BETWEEN
THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE
AND THE ALABAMA REPUBLICAN EXECUTIVE COMMITTEE**

The National Republican Senatorial Committee, hereinafter known as "Senatorial", agrees with the Alabama Republican Executive Committee, hereinafter known as "State"; as follows:

1. Under the provision of 441 a(d)(3) of Title 2 of the United States Code, State (and its subordinate committees) may make certain expenditures in connection with the general election campaign of the candidate for the office United States Senator for the State of Alabama.

2. Such amount of allowed expenditures under said provision has been computed tentatively by the Federal Election Commission as the amount of $62,507.00.

3. That State wishes to designate Senatorial its agent for the purpose of making such expenditures up to the amount of $60,000.00.

4. State agrees to file an allocation statement concerning the amount not assigned to Senatorial as required by the Federal Election Commission Regulation 110.7(c).

5. State agrees to carry out the provisions of such allocation statement and will promptly advise Senatorial at any time that State and its subordinate committees reach 80% of the amount retained by State and a review of this agreement will occur at such time.

6. Senatorial agrees to make such expenditures in behalf of candidate, or if it is any manner unable to make such expenditures, to promptly release and cancel said agency and reassign such allocated amount to State.

This agreement signed the date opposite the respective parties' name to be effective when signed by both parties.

National Republican Senatorial Committee

Dated Aug 22, 1978 1978 at Washington, D. C.

By Rodney A. Smith

Title Treasurer

Alabama Republican Executive Committee

Dated 16 August 1978 1978 at Birmingham, Alabama.

By William D. Harris
William D. Harris

Title Chairman

United States of America

Before the

FEDERAL ELECTION COMMISSION

In: Matters involving the National Republican Senatorial Committee

Notice of Representation by Counsel

Please take notice that we do hereby designate James F. Schoener as our attorney to represent us with regard to any and all matters involving our Committee, whether as complainant or respondent, involving any and all advisory opinions, to make comments on proposed regulations, and to represent us in general in all matters before said commission.

Mr. Schoener is a member of the firm of Jenkins, Nystrom & Sterlacci, P.C. of 2033 M Street, N.W., Suite 504, Washington, D.C., telephone number 293-2505. His home telephone number is 751-6325. He is authorized to receive any and all communications from the Commission on our behalf. This authorization shall continue until rejected in writing by the undersigned or his successor.

Dated: 29 January 1980

National Republican Senatorial Committee:

by: Rodney R. Smith

Rodney Smith, Treasurer

HOENER

JENKINS, NYSTROM & STERLACCI, P.C.

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GERARD P. PANARO*+
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THOMAS H. KOHN*Δ

OF COUNSEL
JOHN B. CONLAN*
JOHN F. GOETZ

MICHIGAN OFFICE
15999 WEST TWELVE MILE ROAD
SOUTHFIELD, MICHIGAN 48076
(313) 559-2828

*ADMITTED IN D.C.
ΔADMITTED IN VA.
+ADMITTED IN MD.

May 28, 1980

Vincent Convery, Jr. Esquire
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1234

Dear Mr. Convery:

Pursuant to our telephone conversation of today I wish to confirm that I desire to file a memorandum in opposition to the complaint filed in this matter. I regret that there may be a short delay in finishing my response which probably would have been avoided if a complaint had been served on me rather than on my client. Sometime ago I filed a general and continuing appearance in behalf of the National Republican Senatorial Committee and I assumed matters such as this complaint would be served on me. As it was,two days and a week-end were lost due to service on the committee.

Unfortunately, a previous business engagement requires that I be out of the city from May 29th through June 2nd and then from June 3rd to the end of the week. I will work on the response as time permits while I am out of town and file it as soon as possible.

Very truly yours,

James F. Schoener

James F. Schoener

C08222

JFS:cel

LAW OFFICES
JENKINS, NYSTROM & STERLACCI, P.C.
2033 M STREET, N.W.
WASHINGTON, D. C. 20036

WASHINGTON, D.C.
PM
28 MAY
1980

LWAYS USE
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Vincent Convery, Jr., Esquire
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 29, 1980

HAND DELIVERED

James F. Schoener, Esquire
Jenkins, Nystrom & Sterlacci, P.C.
2033 M Street, N.W.
Washington, D.C. 20036

Re: MUR 1234

Dear Mr. Schoener:

This will acknowledge receipt of your letter dated May 22, 1980, to Attorney Vincent J. Convery, Jr., of this office.

Mr. Convery indicated to me that you may have misinterpreted certain of the remarks he made during your telephone conversation of May 21, 1980. You stated that he advised that "the affidavit of Tom Baker [in MUR 1234] and his recitals on page 2 could be considered a complaint under oath." Mr. Convery informed me that he did not equate the affidavit to a complaint, but instead quoted the following language from Mr. Baker's affidavit: "I have read and authorized the filing of the foregoing Complaint and Request for Expedited Consideration ... The factual allegations contained in the foregoing Complaint and this affidavit are true to the best of my knowledge and belief." Mr. Convery then concluded that this office would consider such language as effecting compliance with the statutory requirement that a complaint be sworn to by the person making such complaint.

This office will continue to treat the complaint filed by the Democratic Senatorial Campaign Committee as proper. Consequently, your "no action memorandum" should be filed within fifteen days of respondent's receipt of copy of the complaint, i.e., not later than May 30, 1980.

Very truly yours,

Charles N. Steele
Gneral Counsel

SCC 1422

RECEIVED

LAW OFFICES

JENKINS, NYSTROM & STERLACCI, P.C.

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May 22, 1980

HAND DELIVERED

Vincent Convery, Jr., Esquire
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1234

Dear Mr. Convery:

Enclosed please find my appearance as counsel for the National Republican Senatorial Committee in the above-entitled matter.

At the beginning, I wish to object to the jurisdiction of this matter for the reason that the submission by the Democratic Senatorial Campaign Committee fails to comply with the Federal Election Campaign Act and the regulations of the Federal Election Commission. The respondent does not wish to waive any defects in the procedure of complainant and will continue to press such objections unless or until these procedures are followed.

The Act [2 U.S.C. §437g(a)(1)] requires that a complaint be 1) sworn to, 2) notarized, 3) made under penalty of perjury, and 4) subject to the provisions of Section 1001 of Title 18 of the United States Code. Obviously, the filing made by complainant does not comply. Your advice by telephone that the attached affidavit of Tom Baker and his recitals on page 2 could be considered a complaint under oath really ignores the formalities placed in the Act by Congress.

The current regulations [11 C.F.R. 111.4(b)] spell out other requirements that are totally lacking in this submission. Again, we do not wish to waive such defects and will continue to assert those objections at all stages of the proceedings unless or until a submission in compliance with the Act and regulations is made by the Democratic Senatorial Campaign Committee.

If your office persists in treating this submission as a complaint, I request that you inform me, by letter, the last date on which you compute we may file a "no action memorandum" as allowed by the Act and the Regulations.

Very truly yours,

James F. Schoener

JFS:dw
Enclosure
cc: Robert Moore
Robert F. Bauer

Before the

FEDERAL ELECTION COMMISSION

Washington, D.C.

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE, 400 North Capitol Street, Suite 319 Washington, D.C. 20001 Complainant v. NATIONAL REPUBLICAN SENATORIAL COMMITTEE, 227 Massachusetts Avenue, N.E. Washington, D.C. 20002 Respondent	MUR No. 1234

APPEARANCE OF COUNSEL

Take Notice that the National Republican Senatorial Committee hereby appears by its counsel, James F. Schoener, 2033 M Street, N.W., Suite 504, Washington, D.C. 20036, telephone 293-2505.

Dated at Washington, D.C.

20 May 1980

By ______________________

Title Executive Director

LAW OFFICES
JENKINS, NYSTROM & STERLACCI, P.C.
2033 M STREET, N.W.
WASHINGTON, D. C. 20036

HAND CARRIED

Vincent Convery, Jr., Esq.
Office of the General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 13, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert F. Bauer
General Counsel
Democratic Senatorial Campaign
Committee
888 17th Street, N.W.
Washington, D.C. 20006

Dear Mr. Bauer:

This letter is to acknowledge receipt of your complaint of May 9, 1980, against the National Republican Senatorial Committee which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondent will be notified of this complaint within 5 days and a recommendation to the Federal Election Commission as to how this matter should be handled will be made 15 days after the respondent's notification. You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

30040202453

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
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  Show to whom and date delivered .... ______
- ☐ RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery. $______

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
Robert F. Bauer, Gc
Dem. Sen. Camp. Committee
888 17th St. N.W.
Washington, D.C. 20006

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	[illegible]	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☑ Addressee ☐ Authorized agent

4. L. Kuder

DATE OF DELIVERY
5/16/80

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☆ GPO: 1979-272-182

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Conway

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 13, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

National Republican Senatorial
Committee
227 Massachusetts Avenue, N.E.
Washington, D.C.

Re: MUR 1234

Dear Sir or Madam:

This letter is to notify you that on May 9, 1980, the Federal Election Commission received a complaint which alleges that your Committee may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of this complaint is enclosed. We have numbered this matter MUR 1234. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against your Committee in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remian confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by sending a letter of representation stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

Letter to: National Republican Senatorial Committee
Page Two

If you have any questions, please contact Vincent J. Convery, Jr., the attorney assigned to this matter at (202) 523-4000. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

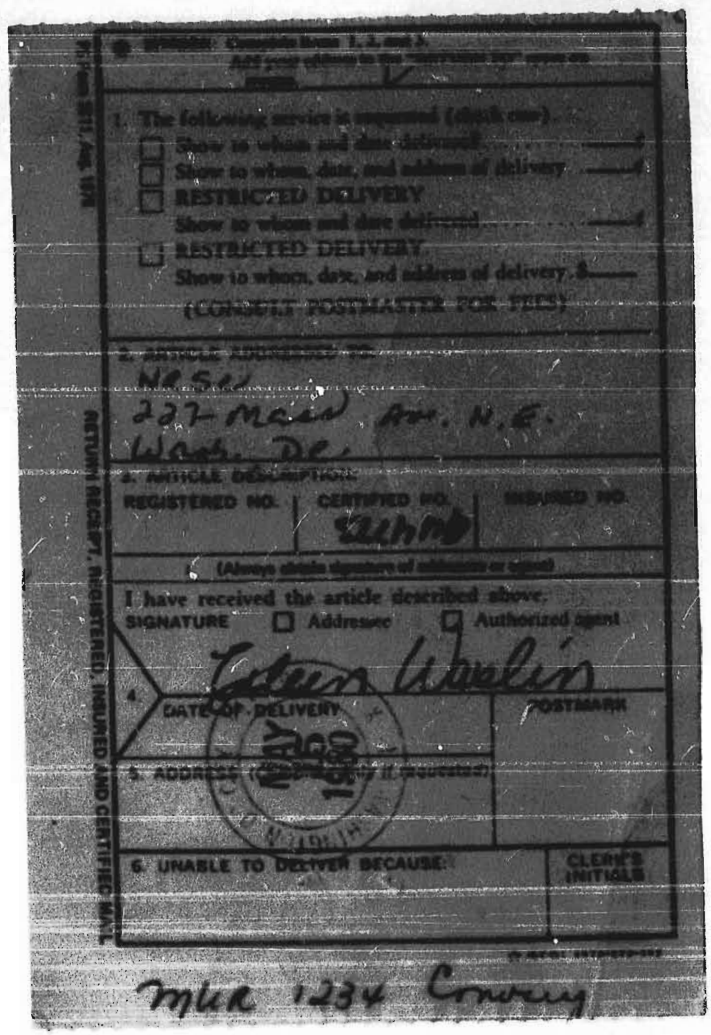
Sincerely,

Charles N. Steele
General Counsel

Enclosure

1. Complaint
2. Procedures

30040202455


SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
☐ Show to whom and date delivered .... ¢
☐ Show to whom, date, and address of delivery .... ¢
☐ RESTRICTED DELIVERY
Show to whom and date delivered .... ¢
☐ RESTRICTED DELIVERY
Show to whom, date, and address of delivery. $
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
NRSC
227 Mass Ave. N.E.
Wash. DC

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	[illegible]	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
[illegible]

4. DATE OF DELIVERY POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

MUR 1234 Convery

Mur 1234

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OGC 1301

'80 MAY 12 AM 11:

LAW OFFICES OF
DECHERT PRICE & RHOADS
888 17th STREET, N. W.
WASHINGTON, D. C. 20006
TELEX 84 5324 • BARDEP
(202) 872-8600

3400 CENTRE SQUARE WEST
1500 MARKET STREET
PHILADELPHIA, PA. 19102
(215) 972-3400

38 SQUARE DE MEEUS, STE 1
1040 BRUSSELS, BELGIUM
(02) 511 80 40

PRINCES HOUSE
95 GRESHAM STREET
LONDON, EC2V 7NA, ENGLAND
01. 606. 8598

[illegible] BROADWAY
NEW YORK, N. Y. [illegible]
(212) 425-3510

SUITE 1760
ENERGY CENTER ONE
717 SEVENTEENTH STREET
DENVER, COLORADO 80202
(303) 623-1777

900 NORTH THIRD STREET
HARRISBURG, PA. 17102
(717) 233-7947

May 9, 1980

007946

Charles N. Steele
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20006

Dear Sir:

Attached you will find a Complaint and Request for Expedited Consideration filed today by the Democratic Senatorial Campaign Committee. You will note that the Complaint is supplemented by 1) an Affidavit signed by the Executive Director of the DSCC; and 2) a Memorandum of Points and Authorities prepared by counsel for the DSCC in support of the Complaint.

In filing this complaint, the DSCC is seeking to prevent the National Republican Senatorial Committee from continuing to make Section 441a(d) "coordinated" expenditures pursuant to illegal "delegations" of authority from state party committees. Expedited consideration of this Complaint is essential if the DSCC is to obtain a full adjudication of the merits of its position, and if it is to pursue all available remedies, prior to the late summer and early fall when the bulk of these unlawful expenditures will be made in U.S. Senate general election campaigns. The most expeditious possible resolution by the Commission is, therefore, urgently sought by the DSCC.

If you have any questions, please do not hesitate to let me know.

Very truly yours,

Robert F. Bauer

Robert F. Bauer

RFB:ps

Enclosures

80 MAY 9 P3: 33

GENERAL COUNSEL
RECEIVED

80040202455

RECEIVED

'80 MAY 9 AM 11:56

Before the
FEDERAL ELECTION COMMISSION
Washington, D.C.

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE,

400 North Capitol Street, Suite 319
Washington, D.C. 20001

Complainant

v.

NATIONAL REPUBLICAN SENATORIAL COMMITTEE,

227 Massachusetts Avenue, N.E.
Washington, D.C.

Respondent

MUR No. ____

COMPLAINT AND REQUEST FOR EXPEDITED CONSIDERATION

1. Complainant Democratic Senatorial Campaign Committee ("DSCC") files this complaint pursuant to §437g of the Federal Election Campaign Act ("Act"), alleging that certain expenditures by respondent National Republican Senatorial Committee ("NRSC") violate §441a of the Act. Specifically, the DSCC seeks Commission action to prevent the NRSC from continuing to expend funds under §441a(d), on behalf of Republican U.S. Senate nominees, in amounts well in excess of the applicable limits. Failure of the Commission to take swift and effective action to discontinue this violation will

impose severe hardship upon the DSCC and those candidates which it supports, and will undermine the carefully constructed statutory scheme of limits on contributions and expenditures by candidates and committees. For these reasons, and in the absence of material facts in dispute requiring factual investigation, expedited consideration of this complaint is urgently requested.

2. Complainant Democratic Senatorial Campaign Committee is a political committee established and maintained by the Democratic Party. See 11 C.F.R. §110.2. The DSCC contributes to the campaigns of Democratic candidates for the United States Senate, subject to the limits specified by §441a(h) of the Act, and it promotes and assists the election of Democratic candidates to the Senate. The DSCC has never made, and does not intend to make, the illegal and unauthorized payments challenged in this complaint.

3. Respondent National Republican Senatorial Committee is a political committee established and maintained by the Republican Party. See 11 C.F.R. §110.2. The NRSC contributes to and otherwise assists the campaigns of Republican candidates to the United States Senate.

4. Section 441a(d) grants limited authority to a "... national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee ..." to make

expenditures, inter alia, in connection with the general election campaigns of candidates for the United States Senate, and that section prescribes specific, absolute limitations applicable to that authority. Subsection 441a(d)(3) provides in relevant part:

> "The national committee of a political party ... may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds -
>
> (A) in the case of a candidate to the office of Senator ... the greater of -
> (i) 2 cents multiplied by the voting age population of the State ...; or
> (ii) $20,000 ...."

Subsection 441a(c) provides for an increase in these measures of limitation based upon increases in the Consumer Price Index.

5. State committees of a political party, including any subordinate committee of a State committee, are subject to the same dollar limits as national committees in making expenditures in connection with U.S. Senate general elections.

6. The Act, in clear and unambiguous language, precludes any national or state committee from making expenditures in U.S. Senate general election campaigns in excess of the specific limitations imposed upon each such committee by §441a(d)(3).

7. The regulations of this Commission at 11 C.F.R. §§110.7(a)(4) authorize the national committee of a political party to delegate its authority to make expenditures under §441a(d) to "... any designated agent, including State or subordinate party committees." There is no statutory or regulatory provision which permits a State committee to delegate to the national committee of the political party its separate and independent authority to make §441a(d) expenditures.

8. In past U.S. Senate general election campaigns, the NRSC has made §441a(d) expenditures under delegated authority of the Republican National Committee. In the 1978 U.S. Senate general election campaigns, the NRSC also arranged for delegations from State party committees of their separate and independent expenditure authority under §441a(d). The NRSC used these state committee delegations as a basis for spending its own funds on behalf of Republican Senate candidates in amounts that exceeded the statutory limitations applicable to national party committees or their agents, in 21 of 33 states holding U.S. Senate elections in 1978. Those expenditures violated the provisions of §441a.

9. Complainant has reason to believe that, once again in this election year, the NRSC will expend considerable funds in excess of the applicable limits pursuant to such

unauthorized delegations from the State committees of their separate §441a(d) expenditure authority. The magnitude of these illegal expenditures, based upon the 1978 expenditures and present resources of the NRSC, is likely to be substantial. These expenditures will severely disadvantage Democratic Senate candidates; and if the Commission fails to take immediate and decisive action to halt this practice, these candidates could suffer irreparable injury.

10. The provisions of §441a(d) authorizing State party committees to make expenditures on behalf of U.S. Senate candidates are intended by Congress to stimulate and strengthen State party organizations and to encourage the growth of "grass roots" fund raising and decision making in senatorial campaigns. The NRSC's practice of spending pursuant to "delegations" of State party §441a(d) authority is not only contrary to the express language of the Act and regulations, but also undermines the very purposes for which Congress created independent spending authority for State committees in U.S. Senate elections.

11. The effect of this unauthorized delegation is to double the expenditure limitations applicable to the NRSC while undermining the Congressional purpose of revitalizing State political party organizations. These expenditures in excess of the statutory limitations severely disadvantage the candidates receiving the support of the

DSCC, which does not make payments in excess of those limitations.

12. The §441a(d) expenditure limitations also cannot be subverted through transfer of funds from national committees to State committees. Unlike §441a(a)(4) of the Act, which provides that limitations upon contributions to candidates shall not apply to transfers of funds among party committees, §441a(d) contains no similar exemption for transfers made for the purposes of national or State party expenditures under §441a(d). It is clear that Congress did not intend to permit transfers for §441a(d) purposes, since the policy of encouraging fund raising and other grass roots activities by State party committees can be fostered only by requiring such committees to raise their own funds for purposes of making §441a(d) expenditures.

13. In response to an administrative complaint filed in October 1978 by the National Committee for an Effective Congress (MUR No. 780), the Commission's Office of General Counsel issued a preliminary report approving the state committee delegations to the NRSC challenged here. The General Counsel concluded that, notwithstanding the absence of language authorizing these delegations, such authority could be implied. As set forth in the accompanying Memorandum of Points and Authorities the DSCC asserts that there is no basis consistent with the express language of the Act, the Commission's regulations, or the legislative history for implying any authority of a

State party committee to delegate its spending authority under §441a(d) to the national committee or any of its agents, including NRSC. The report in MUR No. 780 is cursory and offers no persuasive reason for implying such authority, and Complainant maintains that it should be reversed after de novo review of this Complaint by this Commission. However, should that report either represent the Commission's final determination on this issue, or constitute binding precedent, Complainant requests immediate notice to that effect through prompt issuance of a final order.

14. The facts material to this case are not in dispute. The factual allegations contained herein and in the attached affidavit of Mr. Tom Baker, Executive Director and Secretary-Treasurer of the DSCC, are based, with but one exception, exclusively upon public reports and documents on file with the Commission. The one exception is the allegation that the NRSC will make §441a(d) expenditures in excess of the limitation specifically applicable to the national committee and its agents during the 1980 campaign. Respondent can moot this case by stipulating that it will neither make expenditures in excess of these limits, nor transfer funds to the State Republican committees permitting them to make expenditures pursuant to §441a(d) that they would not otherwise make from their own funds. Therefore, there is no need for any factual investigation of this Complaint, and

DSCC is entitled to expedited consideration and swift resolution of its grievances under the Act.

WHEREFORE, Complainant DSCC prays that this Commission:

A. Determine the legal merits and vote on the disposition of this Complaint on an expedited basis; and

B. Make a finding that there is probable cause that respondent NRSC has committed, and is about to commit violations of §441a of the Act; and <u>either</u>

C. Seek to obtain within 30 days of that finding an agreement from NRSC that it and all committees or individuals acting on its behalf will 1) not make expenditures in excess of limitations imposed on national party committees under §441a(d) of the Act, and 2) not transfer funds to State committees for the purpose of making §441a(d) expenditures pursuant to their authority under the Act; <u>or</u>

D. In the event that conciliation efforts do not yield such an agreement within 30 days, immediately institute in an appropriate District Court a civil action seeking the imposition of a temporary and permanent injunction to halt violations of §441a(d), and of civil penalties.

ROBERT F. BAUER
General Counsel
Democratic Senatorial
Campaign Committee
888 17th Street, N.W.
Washington, D.C. 20006
202-872-8600

OF COUNSEL

William A. White
Robert P. vom Eigen
DECHERT PRICE & RHOADS
888 17th Street, N.W.
Washington, D.C. 20006
202-872-8600

Before the
FEDERAL ELECTION COMMISSION
Washington, D.C.

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE,

400 North Capitol Street, Suite 319
Washington, D.C. 20001,

Complainant,

v.

NATIONAL REPUBLICAN SENATORIAL COMMITTEE,

227 Massachusetts Avenue, N.E.
Washington, D.C.,

Respondent.

Docket No. ____

AFFIDAVIT OF TOM BAKER

Tom Baker, first being duly sworn, deposes and says:

1. I am Executive Director and Secretary-Treasurer of the Democratic Senatorial Campaign Committee ("DSCC"). The DSCC is a political committee established and maintained by the Democratic party for the purposes, <u>inter alia</u>, of contributing to the campaigns of Democratic candidates for the United States Senate and of promoting and otherwise assisting the election of Democratic candidates to the Senate. The membership of the DSCC is comprised of twenty-one incumbent Democratic Senators.

2. I have read and authorized the filing of the foregoing Complaint and Request for Expedited Consideration. The DSCC files this Complaint to prevent the National Republican Senatorial Committee ("NRSC") from making expenditures in connection with the impending general elections for the Senate that exceed the explicit limitations applicable to national committees of political parties under §441a(d) of the Federal Election Campaign Act ("Act"). The factual allegations contained in the foregoing Complaint and this affidavit are true and correct to the best of my knowledge and belief.

3. Pursuant to a delegation of authority from the Republican National Committee on file with the Commission, the NRSC has made §441a(d) expenditures in connection with previous Senatorial campaigns.

4. In making expenditures during 1978 in connection with the general election campaigns of Republican candidates for Senate, the NRSC exceeded the §441a(d) limitations for national committees in 21 of the 33 states in which elections were conducted and in 22 of the 36 general election campaigns of various Republican candidates for Senate (including States where two Senate seats were contested). Table I to this affidavit depicts the amount of §441a(d) expenditures permitted for State or national party committees in connection with each 1978 Republican senatorial campaign

and the amount actually expended by the NRSC in each campaign. The data are compiled from the Commission's Interim Report, No. 5.

5. Table I shows that even though the NRSC expended nothing, or only nominal amounts, pursuant to §441a(d) in several states, the total §441a(d) expenditures exceeded the sum of the allowable §441a(d) limits for national committees in all states by $751,629.65. Those excess expenditures were concentrated in key states where the elections were hotly contested and the results determined by a small margin of voters. In twelve of those key campaigns,[1/] the NRSC expended a total of $2,133,441. The amount allowable for a national committee -- whether by the Republican National Committee itself or by the NRSC through delegation of authority from the RNC -- in those states was only $1,106,286.60. These expenditures exceeded allowable limits by 92.8 per cent.

6. NRSC has filed with the Commission letters from various State party committees which purport to delegate to NRSC the expenditure authority of those State committees pursuant to §441a(d). Based upon these letters, NRSC has made §441a(d) expenditures in excess of the limitations applicable to national party committees. Pursuant to these letters or letters like them, I am confident that NRSC will make expenditures

1/ Those States include: Alabama, Colorado, Delaware, Iowa, Kansas, Maine, Massachusetts, Michigan, Mississippi, Montana, New Hampshire, New Jersey, Oklahoma, Texas, Virginia and West Virginia.

in excess of §441a(d) limits in connection with this year's election campaigns unless this Commission takes action pursuant to this Complaint. Table II shows for each state in which a campaign for the Senate will be conducted during 1980 the potential expenditures that the NRSC could make in connection with election campaign of Republican senatorial candidates, if it is permitted to expend up to the combined total allowable for both state and national committees.

7. The present NRSC practice of utilizing expenditure authority delegated from State party committees undermines the purposes for which separate §441a(d) spending limits were created for national and State party committees, i.e., to build strong party organizations and to encourage grass root fund raising and decision making in senatorial campaigns.

8. This is shown by reference to periodic financial reports submitted in advance of the 1978 election by State party committees. Six states were studied. Three states (Colorado, New Jersey and Illinois) involved campaigns that were hotly contested and where Republican candidates prior to the election were generally perceived to have a good prospect of victory. NRSC expenditures were heavy in these states, and were made in amounts exceeding the §441a(d) limit applicable to the national committee. (See Table I.) The remaining three

states (Arkansas, Nebraska and Rhode Island) involved campaigns where Republican candidates were not generally perceived as having a significant chance for victory. Predictably, the NRSC made only nominal §441a(d) expenditures in these campaigns, and in only one (Nebraska) did the NRSC come close to spending half of even the national committee's §441a(d) limit. (See Table I.)

9. The survey showed that the State party committees played no role whatsoever in any of these campaigns. In the states where the NRSC expenditures were heavy (Colorado, Illinois and New Jersey), the July 10 and pre-election reports show that the State party committees did not have the funds adequate to equal the NRSC expenditures made on their behalf. However, perhaps most striking is the fact that none of the six State party committees made any §441a(d) expenditures on behalf of the candidate for Senate in their state with the exception of a $42.00 expenditure made in Illinois. This is true notwithstanding significant cash balances reported by several of the State committees. For instance, the Illinois Republican State Central Committee reported nearly $30,000.00 of available cash on October 23, 1978, yet there was over $100,000.00 of unused §441a(d) authority available to it.

10. The significance of these findings is that the State party committees in those states surveyed play no role pursuant to their §441a(d) authority. While they may have made contributions to the senatorial campaigns, they

clearly took a side line position with respect to coordinated expenditures under §441a(d) and permitted the NRSC to run the show if it wished. The expenditures which were made did not reflect the judgment or sentiment of the State party organization. This is not the result intended by Congress when it enacted the separate limits for State party committees.

11. My conviction that this practice employed by NRSC during the 1978 senatorial campaigns will be repeated this year is buttressed by activities already undertaken on behalf of NRSC. In AOR 1979-45, presented to the Commission for decision early this year, NRSC petitioned this Commission to issue an advisory opinion permitting the NRSC to make extensive, coordinated expenditures on behalf of Republican senatorial candidates prior to their designation in party primaries. This action indicates a disposition on behalf of NRSC to make substantial §441a(d) expenditures, and periodic reports filed on behalf of NRSC show that it presently has at its disposal funds adequate to make expenditures in execess of the §44a(d) limits applicable to it.

12. A prompt Commission disposition of this complaint is essential to avoid irreparable harm to the candidates for Senate that receive DSCC support. The DSCC has never made and will not make expenditures pursuant to §441a(d) in excess of the limitations applicable to national party committees. However, the unauthorized expenditures by NRSC, once made, could affect voter attitudes to the disadvantage of Democractic candidates who do not have access to funds that exceed the §441a(d) limitations. Delaying imposition of penalties or other possible remedies until the election, or afterwards, will not help a Democratic U.S. Senate candidate whose opponent for Senate benefits from the avalanche of campaign advertising financed by the NRSC. Immediate action to halt this threatened result before it happens is the only effective remedy for the DSCC.

Tom Baker

Tom Baker

Subscribed to and sworn before me this 8th day of May 1980.

Marsha G. Brooks

Notary

My Commission Expires March 31, 1984

'80 MAY 9 AM 11 36

TABLE I

SECTION 441a(d) SPENDING LIMITATIONS AND ACTUAL NRSC EXPENDITURES IN CONNECTION WITH 1978 SENATORIAL CAMPAIGNS

STATE/CANDIDATE	ACTUAL NRSC §441a(d) EXPENDITURES	ALLOWABLE §441a(d) EXPENDITURES*	% OF ALLOWABLE §441a(d) EXPENDED
ALA/Martin**	$201,022.00	62,506.94	324
ALASKA/Stevens	0	24,580.00	0
ARK/Kelly	192.00	36,772.52	1
COLO/Armstrong	85,528.00	44,927.24	190
DEL/Baxter	44,708.00	24,580.00	182
DEL/Venema	0	24,580.00	0
GA/Stokes	0	84,801.00	0
IDAHO/McClure	0	24,580.00	0
IL/Percy	211,227.00	193,518.34	109
IOWA/Jepsen	85,558.00	49,774.50	172
KS/Kassenbaum	79,957.00	40,601.12	197
KENTUCKY/Guenther	0	59,041.16	0
LOUISIANA	0	64,129.22	0
MAINE/Cohen	48,001.00	24,580.00	195
MASS/Brooke	198,177.00	102,400.28	194
MICH/Griffin	284,498.00	154,460.72	184
MINN/Boschwitz	86,835.00	67,963.70	128
MINN/Durenberger	71,975.00	67,963.70	106
MISS/Cochran	67,982.00	38,713.50	176
MONTANA/Williams	47,438.00	24,580.00	193
NEB/Shasteen	12,143.00	26,915.10	45
NEW HAMP/Humphrey	45,797.00	24,580.00	186
NEW HAMP/Masiello	1,316.00	24,580.00	5
NEW JERSEY/Bell	206,075.00	128,405.92	160
NEW MEX/Domenici	3,674.00	24,580.00	15
N. CAROLINA/Helms	94,045.00	94,977.12	99
OKLA/Kamm	98,333.00	49,012.52	201
OREGON/Hatfield	0	41,663.10	0
RHODE ISL/Reynolds	350.00	24,580.00	1
S. CARO/Thurmond	35,006.00	48,004.74	73
S. DAK/Pressler	37,709.00	24,580.00	153
TENN/Baker	15,573.00	74,428.24	21
TEXAS/Tower	431,145.00	215,640.34	200
VA/Warner	146,310.00	89,249.98	164
VA/Obenshain	45,772.00	89,249.98	51
WEST VA/Moore	62,882.00	32,273.54	195
WYO/Simpson	21,767.00	24,580.00	89
TOTALS	2,770,995.00	2,019,356.32	137

* The Federal Election Campaign Act specifies in §441a(d)(3) that the limit for each party committee (national or state) is two cents times the voting population or, $20,000 (both subject to an adjustment reflecting the increase in the Consumer Price Increase since 1976), whichever is greater.

** Separate campaigns for two Senate vacancies.

SOURCE: Federal Election Commission, Interim Report No. 5.

TABLE II

PARTY CONTRIBUTION LIMITATIONS & §441a(d) EXPENDITURE
LIMITATIONS FOR THE 34 1980 SENATORIAL ELECTIONS

STATE	ALLOWABLE §441a(d) EXPENDITURES	COMBINED TOTAL OF ALLOWABLE NATIONAL AND STATE EXPENDITURES	REP. SEN. CAMPAIGN COMM. CONT.	REP. STATE PARTY CONTR.*	TOTAL
ALABAMA	$77,839.36	$155,678.72	$17,500.00	$10,000.00	$183,178.72
ALASKA	29,440.00	58,880.00	"	"	86,380.00
ARIZONA	49,959.68	99,919.00	"	"	127,419.36
ARKANSAS	45,396.48	90,792.96	"	"	118,292.96
CALIFORNIA	485,024.00	970,048.00	"	"	997,548.00
COLORADO	58,055.68	116,111.36	"	"	143,611.36
CONNECTICUT	67,564.80	135,129.60	"	"	162,629.60
FLORIDA	195,275.52	390,551.04	"	"	418,051.04
GEORGIA	104,835.84	209,671.68	"	"	237,171.68
HAWAII	29,440.00	58,880.00	"	"	86,380.00
IDAHO	29,440.00	58,880.00	"	"	86,380.00
ILLINOIS	235,431.68	470,863.36	"	"	498,363.36
INDIANA	112,078.08	224,156.16	"	"	251,656.16
IOWA	61,235.20	122,470.40	"	"	149,970.40
KANSAS	50,754.56	101,509.12	"	"	129,009.12
KENTUCKY	73,158.40	146,316.80	"	"	173,816.80
LOUISIANA	80,165.12	160,330.24	"	"	187,830.24
MARYLAND	88,320.00	176,640.00	"	"	204,140.00
MISSOURI	103,746.56	207,493.12	"	"	234,993.12
NEVADA	29,440.00	58,880.00	"	"	86,380.00
NEW HAMP.	29,440.00	58,880.00	"	"	86,380.00
NEW YORK	379,717.12	759,434.24	"	"	786,934.24
N. CAROLINA	117,524.48	235,048.96	"	"	262,548.96
N. DAKOTA	29,440.00	58,880.00	"	"	86,380.00
OHIO	225,068.80	450,137.60	"	"	477,637.60
OKLAHOMA	61,117.44	122,234.88	"	"	149,734.88
OREGON	53,816.32	107,632.64	"	"	135,132.64
PENNSYLVANIA	253,772.80	507,545.60	"	"	535,045.60
S. CAROLINA	59,645.44	119,290.88	"	"	146,790.88
S. DAKOTA	29,440.00	58,880.00	"	"	86,380.00
UTAH	29,440.00	58,880.00	"	"	86,380.00
VERMONT	29,440.00	58,880.00	"	"	86,380.00
WASHINGTON	83,285.76	166,571.52	"	"	194,071.52
WISCONSIN	99,271.68	198,543.36	"	"	226,043.36
TOTAL	3,487,020.80	6,974,041.60	$595,000.00	$340,000.00	7,909,041.60

* Does not include an additional $5,000 for those states with run-off provisions.

Before the
FEDERAL ELECTION COMMISSION
Washington, D.C.

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE, 400 North Capitol Street, Suite 319 Washington, D.C. 20001 Complainant v. NATIONAL REPUBLICAN SENATORIAL COMMITTEE, 227 Massachusetts Avenue, N.E. Washington, D.C. Respondent	MUR No. ____

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE DSCC COMPLAINT

I. INTRODUCTION

The DSCC submits this Memorandum in support of its complaint, which seeks immediate Commission action to prevent the NRSC from making expenditures in connection with the 1980 election campaigns of Republican Senate candidates pursuant to "delegations" of state party committee spending authority under §441a(d). With these "delegations", which are supplemented by additional delegations of 441a(d) authority from the national party committee, the NRSC has emerged as the most potent spending power in U.S. Senate elections in the American political system today. The attached affidavit of Tom Baker, Executive Director of the DSCC, refers to and attaches tables setting forth the scope of NRSC spending in Senate elections in the past.

This Memorandum will show that state delegations to the NRSC of their spending authority under §441a(d) violates the provisions of the Act, both in contradicting the plain letter terms of the statute and regulations, but also in undermining the very purposes underlying the Congress' decision in §441a(d) to provide national and state party committees with extraordinary spending power in Congressional elections.

II. THE DELEGATION OF STATE PARTY COMMITTEE §441a(d) LIMITS TO THE NRSC IS NOT CONSISTENT WITH THE ACT

1. <u>Neither the Act nor Regulations Confer Authority Upon State Party Committees (or any of their Subordinate Committees) to Delegate their §441a(d) Limits to the NRSC</u>

Section 441a(d)(3) states as follows:

> (3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds -
>
> (A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of -
>
> (i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e)); or
> (ii) $20,000....

Section 441a(d)(3), by its terms, confers special spending authority in general election campaigns for the United States Senate on only two, designated committees: 1) "the national committee of a political party," <u>and</u> 2) "a state committee of a political party, including <u>any</u> subordinate committee of a state committee."1/ The provision is precise not only in designating the committees which may spend §441a(d) funds, but also in specifying <u>how much</u> each of these committees may spend. It should be emphasized that §441a(d) represents a carefully defined exception to the contribution limits that would otherwise be applicable to these committees, and it must, therefore, be read restrictively.

1/ For the purpose of the §441a(d) limit, the State Committee, together with its various subordinate committees, are treated as a single committee. <u>See</u> §110.7(c) of the FEC Regulations.

Accordingly, unless the Act provides specific authority for, or its policies otherwise justify, the delegation of either of these committee's limits to a third party, or an "agent", such a delegation must be rejected as unlawful. Such a delegation has been authorized in the case of the national party committee, which is empowered under §110.7(a)(4) of the FEC Regulations to effectively "donate its" limit to any agent. In addition, Commission Advisory Opinions 1976-108 has specifically addressed the question of whether an agent may spend only the funds of the national committee under this delegated authority, and has concluded that the agent's own funds may also be used.

No such authority -- in the Act, Regulations or Commission Advisory Opinions -- exists to justify the delegation of the state party committee limit to any "agent", including the NRSC. Moreover, unlike the case of the national committee's delegation of its §441a(d) limit, the policies underlying §441a(d) would not support, but would, in fact, run counter to, any attempt to authorize or justify such a delegation.

2. Section 441a(d) Spending Authority for State Party Committees was Intended to Bolster the Role of State Committees Under the New Campaign Reforms, But the NRSC's Use of "Delegated" State Committee §441a(d) Authority Contravenes Those Purposes

The legislative history of §441a(d) establishes with clarity that the provision is designed to bolster and enhance the role of political parties, at both national and state levels, in the reformed and newly regulated political process. Section 441a(d) was added to the FEC amendments of 1974, P.L. 93-443, by the Senate, and adopted in Conference. The Senate Report (No. 93-689) constitutes, therefore, the best available authority on the purposes of this provision, and it brings into sharp focus the "party-building" function envisioned for §441a(d) by its drafters. In a subsection entitled "Strengthening Political Parties," the Report notes that "several witnesses" had urged an examination of "the relationship between campaign finance legislation and political parties." The Report concurs with those witnesses' conclusions that "a vigorous party system is vital to American politics," and concludes that, in adding §441a(d) to the 1974 amendments, the Senate took the steps necessary to protect this system as follows:2/

2/ In its 1974 original version §441a(d) was located at 18 USC §608(f). The provision was transferred to its current position in the Code in the 1976 amendments.

> "Under the committee bill, parties would retain their essential non-financial responsibilities in electoral politics. More important, the bill retains the role of political parties in private financing for a federal candidate." Congressional & Administrative News, p.5593, (emphasis added).

As the Senate Report further states, the private financing role established for political parties in §441a(d) was designed "... to preserve the place of political parties in the elective process ...." The policies at stake were elaborated in further detail, and with unmistakeable clarity, by Senator Kennedy, one of the co-sponsors of the legislation, in remarks on the floor:

> "By conferring independent spending authority on party committees at the national and state level, over and above the candidate's own spending limits, the bill establishes establishes a specific rule for the parties in their own right, free of the candidates control." Congressional Record, March 26, 1974, p.8210, (emphasis added).

Of especial relevance to this matter, the Senator's remarks make clear that the benefits of §441a(d) were conferred separately on the national committee, on the one hand, and on state party committees, on the other, so that both the national and state party structures would have the means to strengthen their respective positions in the process. Thus, in an outline which he introduced, without objection,into the record for the benefit of his colleagues, Senator Kennedy defined the function and effect of §441a(d) as follows:

> In order to assure the continuity of normal fuctions of political parties, to provide an independent role for the parties in general elections, and to offer an additional opportunity for private contributions, the national committee of a political party is entitled to spend a total of 2¢ per voter of its own funds, collected from private contributions, on behalf of candidates for Federal office in

> general elections; <u>and</u> a State committee of a political party is entitled to spend a total of 2¢ per voter <u>of its own funds on behalf of such candidates within the State.</u> <u>Congressional Record</u>, March 26, 1974, p.8213 (emphasis added).

The purposes of §441a(d), i.e., a continuing, independent role for the political parties, were to be effected by parallel and independent §441a(d) spending by the national and the state committees, with each state committee strengthening the state party structure by spending "a total of 2¢ per voter of <u>its own funds on behalf of [Congressional] candidates within the State</u>." Id.(emphasis added).

It should be clear, from the foregoing, that a "delegation" of the state party committees limits to the NRSC undermines entirely the expressed purposes of this extraordinary spending provision. As the attached Complaint and Affidavit establish, the NRSC uses state party committees' §441a(d) authority, but makes decisions on an exclusively <u>national</u> level on how these funds generated at the <u>national</u> level should be spent in congressional elections around the country. This program leaves no room whatsoever for state committee activity, whether in raising the funds, in determining how they should be spent, or in spending them. What was intended as a party-building provision, has been converted into an additional spending limit for a national party committee -- without express statutory or regulatory authority, and in the face of the clear policies underlying enactment of §441a(d) in the first instance.

It should be emphasized that the considerations militating against delegation of state party committee limits to the NRSC, are not applicable to the practice of the national committee delegating its authority to other national party committees. Currently, in §110.7(a)(4) of the FEC Regulations, the national committee is specifically authorized to designate an "agent" for the purpose of making §441a(d) expenditures, and the Commission has held that the agent so designated may spend its own funds, and not only the funds of the principal, in making these expenditures. This result, however, is consistent with the purposes of §441a(d), for it does not in any way disturb the party-building function of that provision as it affects <u>national</u> political parties. It should be noted, first of all, that §110.2(a)(2)(ii) of the FEC Regulations specifically defines the national committee, on the one hand, and the congressional and senatorial campaign committees (including NRSC),on the other, as committees "established and maintained by a <u>national</u> political party." (emphasis supplied.) The Republican National Committee (RNC) and the NRSC are arms, therefore, of the same national political party. To the degree that §441a(d) seeks to bolster the position of the national party in Congressional elections, it is not adversely affected by close cooperation between these two national party committees. In fact, in allowing for this cooperation between committees of the same national party, the FEC Regulations and applicable advisory opinions are simply providing for a useful measure of flexibility in implementing the provision, and in doing so, they are contributing to its ultimate effectiveness.

The same cannot be said for the decision, without any supporting authority whatever, to allow the NRSC to assume the state party committee limits under §441a(d). In providing a separate and independent limit under that provision for state party committees, it was clearly the Congress' intent to give the state parties as well as national parties, an opportunity to maintain their vitality under the reformed system. This purpose can hardly be served by allowing state party committees to delegate their limits to a national party committee which will proceed to raise and spend monies pursuant to this limit as it chooses. As set forth in further detail below, the various limits specified for different candidates and committees under the Act have been drawn by the Congress with care, and cannot be varied, traded or "delegated" at will. Moreover, in the case of the state party committee limits conferred by §441a(d) the delegation of the limit to the NRSC has unquestionable harmful effects on the statutory scheme including, *inter alia*, the loss by state party committees of any incentive to raise their own funds and to participate actively in Congressional races at the state level. *See* below at p. 8.

It should be noted, in conclusion, that the Act and Regulations intended without question that §441a(d) authority be exercised only by the state committees and their subordinate committees. To this end, the Regulations include an elaborate procedure for each state party committee and its subordinate committees to share the §441a(d) limit applicable to them in any given Senate race. *See* §110.7(c) of the FEC Regulations. The practice of the NRSC, in assuming the limit of the state party committees, renders moot this concern with sharing. As shown by the Baker affidavit, the Republican state parties simply do not exercise their §441a(d) authority to a significant degree.

III EFFECT OF THE UNLAWFUL NRSC ASSUMPTION OF STATE PARTY SECTION 441a(d) AUTHORITY

1. The NRSC's Use of State Party Committee Section 441a(d) Authority Contravenes the Act's Scheme of Dollar Limits on Contributions and Expenditures

The Federal Election Campaign Act sets forth a carefully constructed scheme of dollar limits applicable to contributions and expenditures made by individuals, political action committees, party committees, and all other "political committees." Each individual or committee is subject to specified limits when spending in a Federal election, and these limits must be strictly observed if the integrity of the Act is to be maintained. It is for this reason that the NRSC's practice of assuming the limit of another, i.e., that of the state party committees under §441a(d), poses the most serious danger to the Act and its purposes. While other political committees are limited in their spending to specified amounts, the NRSC has been able, through its 441a(d) "delegations", to fashion for itself an extraordinary limit amounting to 4 cents time the voting age population in each state in which a Senate election is held.

The effect of this enormous spending power can be shown by reference to striking examples from the 1978 campaign for Senate. While other "political committees" were limited to $1,000 or $5,000 contributions to the general election campaign of Robert Krueger, the U.S. Democratic candidate in Texas, the NRSC was able to spend in excess of $400,000 on behalf of his Republican opponent, Senator John Tower. Individual and political committee donations to the general election campaign of Carl Levin, U.S. Senate candidate from Michigan, were similarly overwhelmed by the NRSC's §441a(d) expenditures on behalf of his opponent, Senator Robert Griffin, in amounts exceeding $280,000. These examples are simply a few among many which could be cited in this same vein.

The issue here, once again, is not whether §441a(d) confers authority on national and state party committees to spend significant amounts on behalf of Senate candidates, because it clearly does so. The issue, instead, is whether each committee authorized to spend §441a(d) funds is respecting its own limits, and not usurping the limits of another. The NRSC may legitimately expend its own §441a(d) funds as the "agent" of the Republican national committee. It does not have the authority to spend funds under the §441a(d) authority of state committees, for in doing so, it subverts the scheme of limits applicable under the Act to contributions and expenditures by all other committees, and by individuals. This disproportionate spending power by a single committee, located here in Washington, D.C. and raising its funds nationally, was not envisioned by the Congress, is not sanctioned by the Act, and cannot be justified in light of §441a(d)'s emphasis on these expenditures as an incentive to national and state party-building.

2. <u>The NRSC's Use of State Party Committees Section 441a(d) Authority Deprives the State Party Committees of any Incentive Whatever to Raise and Spend Funds in Connection with General Election Campaigns for the United States Senate</u>

As stated previously, the NRSC's use of "delegated" state party committee §441a(d) authority is at variance with the purposes underlying the provision -- the encouragement of party-building activities at the state party level. In fact, apart from its inconsistency with the congressional purposes of §441a(d), these NRSC's "delegations" could have, in the end, an inhibitive effect on the growth and vitality of state party activity. The state party committees may rely on these "delegations" -- and may indeed be <u>encouraged</u> to rely on them -- in eschewing serious involvement in fund raising and planning for U.S. Senate elections in their own states. In lieu of the "party-building" clearly envisioned by the drafters of §441a(d), these state party committees may well leave the entire process of supporting U.S. Senate candidates to the NRSC, a result which merely instils in state party committees and in U.S. Senate candidates a deepening sense of the declining role of the state party structure in the federal elections process. It is precisely this decline that §441a(d) sought to avoid.

IV. THE GENERAL COUNSEL'S REPORT IN MUR 780 IS WHOLLY LACKING IN THE REASONING AND AUTHORITY NECESSARY TO SUPPORT ITS CONCLUSION THAT NRSC'S USE OF THESE "DELEGATIONS" IS LAWFUL

In November 1978, in MUR 780, the General Counsel issued an analysis of NRSC's use of §441a(d) delegations from state party committees. This MUR arose out of a complaint filed by the National Committee for an Effective Congress (NCEC), which challenged the use by the NRSC of such a delegation in spending <u>4 cents</u> per voter in the state of Montana in 1978 on behalf of the U.S. Senate candidacy of Larry Williams. The General Counsel recommended that the Commission find no "reason to believe" that this delegation violated the Act. In reaching this recommendation, the General Counsel relied on two arguments: 1) that the in the absence of any <u>prohibition</u> in the Act or Regulations on such delegation, it could not be considered unlawful; and 2) that it did not matter that NRSC was expending its own funds, and not the funds of the state party committee, since transfers between party committees were, in any event, unlimited, and the question of which committee's funds were being expended "would appear to be immaterial."

A fair examination of both of these arguments reveal that they constituted insufficient bases for finding the NRSC's state committee "delegation" practices lawful.3/ In the first instance, the absence of any prohibition on such "delegations" can hardly be held a sufficient ground for upholding this practice. In fact, under the usual canons of construction, the opposite conclusion must be reached upon review of the FEC Regulations. Those Regulations expressly confer the authority upon the national committee to delegate its limit, but omit any mention of such authority for state party committees. Since the Commission chose to address this delegation issue directly, and since it chose to confer delegation authority on national committees but not on state committees, it must be concluded that the failure to provide the state committees with that authority was not accidental. Rather, the Commission's actions suggests that §441a(d) state committee "delegations" were not deemed justified or appropriate.4/

Second, the Act's authorization of transfers between party committees simply does not speak to the question at issue here. The general provision for transfers between party committees, see §441a(a)(4), must not be confused with the key question here, that is, whether one party committee may transfer funds to another for the purpose of making §441a(d) expenditures. In the first instance, the transfer provision, §441a(a)(4) exempts by its terms such transfers only from the contribution limits, but not from the limits on §441a(d) expenditures. Moreover, as stated previously, §441a(d) was designed as a party-building provision, one which would encourage state parties to raise and expend funds up to the special limit. By allowing transfers from the NRSC or any other committee to state party committees for §441a(d) purposes, the party-building function is clearly undermined, and the purposes of the section entirely vitiated. Such a transfer would make it unnecessary for the party to engage in the very activities that §441a(d) was expected to encourage, since such committees would need simply to seek, and

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3/ It should be noted that since the Complaint was received on October 30, 1978, and the Commission "no reason to believe" determination was reached only three days later on November 2, 1978, there is reason to believe that the issues addressed in the MUR 780 report did not receive the careful attention that the issue warrants.

4/ In any event, authority for such delegations was not included in the regulations submitted to Congress for review, and should not be casually added now, after the fact, without appropriate rulemaking.

receive, a check in the desired amount from a national committee, such as the NRSC, which would raise the funds nationally.

The weakness of both of the General Counsel's arguments can be seen even more clearly when they are developed further and applied to other areas of the Act. It cannot be contended, certainly, that in the absence of a specific prohibition to the contrary, the state party committees may also delegate their contributions limits to the NRSC, for a combined NRSC contribution limit in each state of $22,500 ($17,500 & $5,000). Nor can it fairly be argued that, since transfers between party committees are unlimited, the NRSC may use its own funds for this delegated contributions limit, and need not use the funds of the State committees. These arguments cannot be sustained under a reasonable reading of with the Act, but they are consistent with the position taken by the General Counsel in MUR 780.

Conclusion

It is in light of the foregoing that the DSCC requests that the Commission grant the relief requested in its attached Complaint, and prevent the NRSC from expending §441a(d) funds in U.S. Senate elections pursuant to delegated authority from state party committees.

Respectfully submitted,

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THIS IS THE BEGINNING OF MUR # 1234

Date Filmed 7/24/80 Camera No. --- 2

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

THE FOLLOWING MATERIAL IS BEING ADDED TO THE

PUBLIC FILE OF CLOSED MUR 1234.

EXECUTIVE SESSION
November 5, 1980

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 31, 1980

MEMORANDUM

TO: The Commission

FROM: Charles N. Steele
General Counsel

Kathleen Imig Perkins
Assistant General Counsel

SUBJECT: MUR 1234 and Related Matters

Enclosed for the Commission's consideration are three memoranda regarding the disposition of MUR 1234, the related court action, and other issues raised by the court of appeals' decision in Democratic Senatorial Campaign Committee v. Federal Election Commission. The memoranda are:

1) Disposition of MUR 1234 in light of court ruling that Commission acted contrary to law.

2) Recommendation that the Commission seek review by the Supreme Court by way of a petition for certiorari of the United States Court of Appeals for the District of Columbia Circuit's decision in Democratic Senatorial Campaign Committee v. Federal Election Commission, No. 80-2074.

3) Procedures for Dismissing Administrative Complaints

Enclosures

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1234 (80)
National Republican)
Senatorial Committee)

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission's Executive Session on November 5, 1980, do hereby certify that the Commission decided by a vote of 6-0 to take no action at this time with regard to MUR 1234 pending further order from the Supreme Court.

Attest:

11-7-80
Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 31, 1980

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

SUBJECT: Disposition of MUR 1234 in light of court ruling that Commission acted contrary to law.

Introduction

On October 9, 1980, the United States Court of Appeals for the District of Columbia Circuit issued a decision reversing a lower court ruling that the Commission had not acted contrary to law in dismissing the complaint filed on May 9, 1980, by the Democratic Senatorial Campaign Committee ("DSCC") against the National Republican Senatorial Committee ("NRSC"). Democratic Senatorial Campaign Committee v. Federal Election Commission, ("DSCC v. FEC") No. 80-2074 (D.C. Cir. Oct. 9, 1980). The Court of Appeals thus declared that the Commission's dismissal of the complaint (denominated MUR 1234) was contrary to law, 1/ and directed the Commission to conform with its declaration forthwith.

The purpose of this memorandum is to set forth the relevant considerations involved in this case and to recommend a course of action for the Commission to take at this time with regard to MUR 1234.

Summary of the complaint and court proceedings

The administrative complaint filed by the DSCC with the Commission was a broadscale attack on the past, present, and planned practice of the NRSC acting as the agent of various state party committees for the purpose of making expenditures

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1/ The court used the words "failure to act" rather than "dismissal", presumably through inadvertance. Id., slip op. at 11. The statute under which the suit was brought, 2 U.S.C. § 437g(a)(8), contemplates that a failure to act is different from a dismissal of a complaint.

the state committees are entitled to make under 2 U.S.C. § 441a(d). 2/ The Commission had twice previously rejected this claim when raised in the context of a specific Senate campaign (MURs 780 and 820).

Complainant prepared and appended to its complaint two tables, the first reflecting how during the 1978 elections expenditures by the NRSC for varous Senate candidates exceeded the amount which the NRSC could have expended acting solely as an agent for the national committee of the Republican Party under 2 U.S.C. § 441a(d) (by $751,629.25 in the aggregate) 3/, and the second reflecting the potential amounts which the NRSC could spend in 1980 for various Senate candidates if it acted as the agent of both the national committee and the state committees of the Republican Party ($6,974,041.60 in the aggregate). The DSCC complaint asked specifically for the following relief:

A. Determine the legal merits and vote on the disposition of this Complaint on an expedited basis; and

B. Make a finding that there is probable cause that respondent NRSC has committed, and is about to commit violations of 2 U.S.C. § 441a; and either

C. Seek to obtain within 30 days of that finding an agreement from NRSC that it and all committees acting on its behalf will 1) not make expenditures in excess of limitations imposed on national party committees under 2 U.S.C. § 441a(d), and 2) not transfer funds to State committees for the purpose of making § 441a(d) expenditures pursuant to their authority under the Act 4/; or

D. In the event that conciliation efforts do not yield such an agreement within 30 days, immediately institute in an appropriate district court a civil action seeking the imposition of a temporary and permanent injunction to halt violation of § 441a(d), and of civil penalties.

The Commission voted 6-0 on July 13, 1980, to follow the General Counsel's recommendation that it find no reason to believe the NRSC violated the Act and close the file.

2/ Reference should be made to the First General Counsel Report in MUR 1234 dated July 8, 1980, to which a copy of the complaint is attached.

3/ The DSCC did not challenge the practice whereby the national committee of the Republican Party designated the NRSC as its agent for purposes of making the expenditures the national committee was entitled to make under 2 U.S.C. § 441a(d).

4/ The complaint did not allege that NRSC had actually made any (cont'd. next page)

The General Counsel's report, twelve pages in length, first recited the General Counsel's analysis in the two previous MURs which had involved this claim (MURs 780 and 820): (1) there is no express prohibition of such agency agreements on the face of the statute or regulations, and (2) the language of 2 U.S.C. § 441a(a)(4) which permits unlimited transfers "between and among political committees which are national, State, district, or local committees (including any subordinate committee thereof) of the same political party" indicates that such agency agreements are also permissible. In addition, the General Counsel's report observed that Advisory Opinion 1976-108, which implicitly approved of the National Republican Congressional Committee acting as the agent of the national committee of the Republican Party in House campaigns under § 441a(d), had held that it was immaterial whether the funds expended were those of the agent or the committee authorizing the agent. The General Counsel's report went on to note that in 1978 the House rejected consideration of a bill one provision of which would have specifically prohibited the "movement of funds between the political committees of a national political party (including the House and Senate congressional campaign committees of such party) and the political committees of a State political party... for the purpose of making contributions to, or expenditures on behalf of any candidate for Federal office." Congress's consideration of this bill indicates that the House recognized that party committees could presently transfer funds from one level to another to assist each other in making contributions or § 441a(d) expenditures on behalf of federal candidates; if such transfers are permissible, there is no reason to prohibit agency agreements which have virtually the same effect.

Although the district court ruled that the Commission's dismissal of the DSCC complaint was not contrary to law, the court of appeals decided otherwise. Stating that the Commission itself presented no reasoned explanation of its decision and that, even if the analysis of the General Counsel's Report was taken as that of the Commission, there was an absence of consistency

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4/ (cont'd) transfers to state committees to enable such committees to make § 441a(d) expenditures. Apparently complainant anticipated that if the Commission precluded the agency authorizations by the state committees, the NRSC would then simply make transfers of funds to the state committees to enable the state committees to make the § 441a(d) expenditures directly.

with past positions, the court of appeals concluded that the Commission's determination in this case was not entitled to substantial deference. DSCC v. FEC, supra, slip op. at 5-7. 5/

5/ The analysis used by the General Counsel and the positions taken by the Commission were not inconsistent, in our view. The court suggests that because the General Counsel's Reports added new justifications in MURs 820 and 1234, some inconsistency was created. However, the addition of more reasons for upholding the agency agreements in question, without disclaiming any of the reasons used in the past, does not create inconsistency; to the contrary, it creates a stronger case.

Moreover, the court of appeals incorrectly interpreted the General Counsel's reference in MUR 1234 to 11 C.F.R. § 110.7(a)(4). This regulation allows the national committees of the parties to designate agents in the presidential general election and was a specific response to the fact that state and local parties were precluded from making any § 441a(d) expenditures in the presidential election by the terms of the statute. In neither MUR 820 nor MUR 1234 did the General Counsel argue that the regulation itself gave authority for state party committees designating agents for non-presidential elections under § 441a(d). Referring to the explanation and justification of § 110.7 of the then-proposed regulations (which pertained to the section generally and not to § 110.7(a)(4) specifically) the General Counsel merely observed, "It would seem that the goal of coordinated party expenditures [meaning expenditures coordinated with the candidates] could be achieved by allowing the State Party to designate a national committee of the Party as its agent as well as by allowing the National Party to designate a State committee as its agent." In essence, the General Counsel was arguing that the goal of permitting the party committees to carry out the § 441a(d) expenditures they are entitled to make was furthered by allowing both the national and state party committees to designate agents if they so desired.

While the Commission did state in Advisory Opinion 1976-108 that § 110.7(a)(4) expressly authorized the national committee of a party to designate the congressional campaign committee of its party as an agent to make § 441a(d) expenditures in connection with a congressional campaign, and that position was followed in the report in MUR 820, that statement was not the basis of the General Counsel's analysis in MUR 1234. For in MUR 1234, there was no question raised as to the propriety of the national committee of a party designating an agent in a congressional election. In briefing and argument to the court of appeals, the General Counsel clarified that the regulation, § 110.7(a)(4), does not expressly authorize the national committee to designate an agent in connection with a nonpresidential election. The court of appeals seized on this and incorrectly assumed that the General Counsel had relied heavily on the regulation in MUR 1234, which in fact was not the case.
(cont'd. next page)

Turning to the legal merits of the agency agreements, the court of appeals concluded that the plain language of § 441a(d) "seems to preclude any arrangement by which the special authority of a named entity is transferred to another." Id. at 8. While not ruling on the question of whether the NRSC could transfer funds to the various state party committees to enable the state committees to make § 441a(d) expenditures, the court concluded that such transfer arrangements would be different from agency agreements in that the state committees would have more control over how funds were spent, the state committees would be more likely to maintain an active role, and candidates might remain more closely in touch with their local party constituents. Id at 10, 11. In a footnote the court stated that it had some doubt as to whether the congressional committees (DSCC, NRSC, and the House campaign committees) were intended to fall under the unlimited party transfer provision of 2 U.S.C. § 441a(a)(4) at all. Id. at n. 34. Observing that apparently no such transfers had been made, however, the court concluded only that the agency agreements entered into by the NRSC were precluded by the statute.

The court of appeals declared the Commission's dismissal of the complaint against NRSC contrary to law 6/ and directed the Commission to conform with the court's decision "forthwith". The mandate of the court was issued the same day, October 9. NRSC's motion to recall the mandate and to grant rehearing en banc was denied by the court of appeals on October 11. An application for a stay was filed by NRSC with the Supreme Court on October 16, and a stay was granted by Chief Justice Burger on October 17. In addition, DSCC's motion to vacate the stay was denied on October 21, 1980; and on October 28, 1980, the

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5/ (cont'd.)
The court of appeals also erroneously interpreted a statement in the General Counsel Report in MUR 1234 regarding the relative strength of the two arguments presented by the General Counsel in MUR 780. Indeed, the General Counsel suggested in MUR 1234 that the argument that nothing in the statute or regulations specifically prohibits the agency agreements in question was "weaker" than the argument that the unlimited transfer provision, § 441a(a)(4), indicates that agency agreements should be allowed. However, that suggestion did not mean that the first argument is without any merit or that it is not persuasive by itself. In our view it is a sound argument, although not as persuasive, perhaps, as the second argument. The court of appeals was mistaken in assuming that the General Counsel changed its position and placed no substantial reliance on this contention in MUR 1234.

6/ See n. 1, supra.

Chief Justice denied DSCC's motion to expedite consideration of the application for a stay as moot.

Discussion

The Supreme Court's issuance of a stay and denial of DSCC's motion to vacate and to expedite in effect stays the court of appeals' mandate that the Commission conform with the court's decision "forthwith." DSCC v. FEC, supra, slip op. at 11. The statute under which the suit was brought states that a court "may direct the Commission to conform with [its] declaration within 30 days, failing which the complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint." However, the statutory 30-day compliance period will not begin to run until or unless the stay is lifted or the Supreme Court decides the case consistent with the court of appeals' decision.

Until the court of appeals ruled that the agency agreements in question were improper, the NRSC was clearly entitled to rely on the Commission's interpretations of the statute which had indicated that such agreements were not inconsistent with FECA. The stay of the Supreme Court holds the court of appeals' mandate in abeyance so that the NRSC can presently rely on the Commission's interpretation of the statute in MURs 780, 820, 1234.

Recommendation

1. Take no action at this time with regard to MUR 1234, pending further order from the Supreme Court.

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
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END OF ADDITIONAL MATERIAL FOR CLOSED MUR 1234.

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