



FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF TUE # 1244

Date Filmed 10/1/80 Camera No. --- 2

Cameraman LPC

00040214093



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 8, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert F. Bauer
1101 Seventeenth Street, N.W.
Suite 406
Washington, D.C. 20036

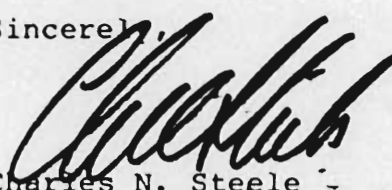
Re: MUR 1244

Dear Mr. Bauer:

On June 19, 1980, the Federal Election Commission notified your clients, Senator George McGovern and George Cunningham, of a complaint alleging that they may have violated the Federal Election Campaign Act of 1971, as amended.

The Commission, on September 3, 1980, determined that on the basis of the information in the complaint and the information provided by you, there is no reason to believe that a violation of any statute or regulation within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter.

Sincerely,


Charles N. Steele
General Counsel

00040214094



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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Robert F. Bauer
1101 Seventeenth Street, N.W.
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Sincerely,

Charles N. Steele
General Counsel

CS
9/5/80

Yellow

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 8, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

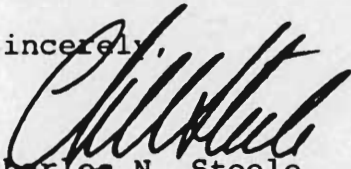
John T. Dolan, Chairman
National Conservative Political Action
Committee
1500 Wilson Boulevard
Suite 513
Arlington, Virginia 22209

Dear Mr. Dolan:

The Federal Election Commission has reviewed the allegations of your complaint dated May 30, 1980, and determined that on the basis of the information provided in your complaint and information provided by the respondents, there is no reason to believe a violation of the Federal Election Campaign Act of 1971, as amended, has been committed. Accordingly, the Commission has decided to close the file in this matter.

Should additional information come to your attention which you believe establishes a violation of the Act, please contact Scott Thomas, the attorney assigned to this matter, at (202) 523-4143.

Sincerely,


Charles N. Steele
General Counsel

80040014095



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

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RETURN RECEIPT REQUESTED

John T. Dolan, Chairman
National Conservative Political Action
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1500 Wilson Boulevard
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Sincerely,

Charles N. Steele
General Counsel

181
9/5/80

Yeller

80040014097

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Senator George McGovern)
George Cunningham)

MUR 1244

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission's executive session on September 3, 1980 do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 1244:

1. Find no reason to believe that Senator George McGovern or Mr. George Cunningham violated 2 U.S.C. §437g(a) (12) (A) or 11 C.F.R. §111.21.
2. Send the letters attached to the General Counsel's First Report.

Commissioners Aikens, Friedersdorf, Harris, McGarry, and Tiernan voted affirmatively for the decision; Commissioner Reiche dissented.

Attest:

9/5/80

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

MEMORANDUM TO:

CHARLES STEELE

FROM:

MARJORIE W. EMMONS

DATE:

AUGUST 20, 1980

SUBJECT:

MUR 1244 - First General Counsel's
Report dated 8-15-80.
ADDITIONAL OBJECTION.

mwe

Commissioner Aikens has objected to the above-named matter,
already scheduled for the September 3, 1980 Executive Session
Agenda pursuant to an objection filed by Commissioner Reiche.

00040014099



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM TO:

CHARLES STEELE

FROM:

MARJORIE W. EMMONS *mwe*

DATE:

AUGUST 20, 1980

SUBJECT:

OBJECTION: MUR 1244
First General Counsel's Report
dated August 15, 1980

By this memorandum we are informing you that Commissioner Reiche has filed an objection in the above-captioned matter, and we are placing it on the agenda for the Executive Session of September 3, 1980.

00040014100

August 15, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1244

Please have the attached First GC Report distributed to the Commission on a 48 hour tally basis. Thankyou.

80040214101

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

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

80 AUG 15 A11: 13

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 8-15-80

MUR # 1244
DATE COMPLAINT RECEIVED
BY OGC 6/2/80

STAFF MEMBER Thomas

COMPLAINANT'S NAME: John T. Dolan, Chairman
National Conservative Political
Action Committee

RESPONDENTS' NAMES: Senator George McGovern
George Cunningham

RELEVANT STATUTE: 2 U.S.C. § 437g(a)(12)(A); 11 C.F.R. § 111.21

INTERNAL REPORTS CHECK: None

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

The complaint alleges that Senator George McGovern and his administrative assistant, George Cunningham, violated the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) and 11 C.F.R. § 111.21 by making public a complaint by the South Dakota Democratic Party filed on May 2, 1980.

FACTUAL AND LEGAL ANALYSIS

This matter stems from the filing of an earlier complaint against the National Conservative Political Action Committee ("NCPAC"). That complaint, now denominated as MUR 1231, was filed by the South Dakota Democratic Party on May 2, 1980. It contained allegations concerning certain expenditures by NCPAC against the renomination of Senator George McGovern. The 5-day notification letter to NCPAC in MUR 1231 was mailed on May 7, 1980.

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On July 29, 1980, the Commission found "no reason to believe" in MUR 1231.

It is alleged that after the filing of the complaint against NCPAC, Senator McGovern and his administrative assistant, George Cunningham, "discussed in public the fact that the subject complaint [against NCPAC] had been filed." See the complaint herein, Attachment A. As evidence of such public disclosure, complainant refers to an article in the May 8, 1980, edition of Roll Call. That article indicates that Senator McGovern "is supporting a complaint alleging that the National Conservative Political Action Committee (NCPAC) overstepped its legal bounds..." and goes on to make several apparent quotations of Senator McGovern concerning the complaint against NCPAC. Id.

In response to the complaint herein, counsel for Senator McGovern and Mr. Cunningham states that all references in the Roll Call article emanate from a press release and press conference by Senator McGovern occurring before the complaint against NCPAC was filed. See Attachment C. Counsel states that the complainant herein is in error with regard to the time that the complaint against NCPAC was filed and that, in fact, the press release was issued from Senator McGovern's office "several hours" before the complaint was filed, and the press conference was held by Senator McGovern over an hour before the filing of the complaint. Id. Attached to the response are affidavits of two individuals supporting counsel's statement that the complaint against NCPAC was filed three hours later than complainant herein alleged. Also provided are a copy of the time-stamped page of the complaint and a copy of the press release issued by Senator McGovern's office.

An examination of the wording of the press release and of the Roll Call article indicates that every quotation attributed to Senator McGovern in the Roll Call article is drawn directly from the prior press release issued on May 2, 1980. There are three quotations attributed to George Cunningham in the Roll Call article none of which appear in the press release. The three quotations attributed to Mr. Cunningham appear in the article as follows:

[1] 'Investigation is also being pursued in certain other states - Idaho, Iowa, and Indiana - to determine if NCPAC was involved in the selection of candidates,' said McGovern aide George Cunningham.

[2] Cunningham said Abdnor amended his first quarter '80 campaign report 'to acknowledge a \$500 contribution in kind from NCPAC for this poll which indicates a very close association between NCPAC and Abdnor.'

[3] 'Abdnor is trying to separate himself from NCPAC, but sometimes like a tarbaby these things stick to your hands,' says McGovern aide George Cunningham.

The response from counsel for Senator McGovern and Mr. Cunningham does not state expressly when Mr. Cunningham's comments were made, but states that those quotations not taken directly from the press release "resulted from questions based on that release and directed by the by-lined author of that article to the McGovern office, including Mr. Cunningham." See Attachment C.

The applicable statutory provision, 2 U.S.C. §437g(a)(12)(A), reads as follows:

Any notification or investigation made under this section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.

The Commission's regulations, at 11 C.F.R. § 111.21(a), state:

Except as provided in 11 CFR 111.20 [pertaining to findings of no reason to believe or no probable cause to believe], no complaint filed with the Commission, nor any notification sent by the Commission, nor any investigation conducted by the Commission, nor any findings made by the Commission shall be made public by the Commission or by any person or entity without the written consent of the respondent with respect to whom the complaint was filed, the notification sent, the investigation conducted, or the finding made.

In the most recent MUR to address these provisions, MUR 1161, the General Counsel stated the view that there is no prohibition against announcing to the public that a complaint is to be filed with the Commission. There the Commission found no reason to believe that the National Abortion Rights Action League violated § 437g(a)(12)(A) or 11 C.F.R. § 111.21 by holding a press conference or releasing notices to the public indicating that a complaint was to be filed.^{1/}

^{1/}The alleged improper acts in MUR 1161 took place prior to the effective date of the Federal Election Campaign Act Amendments of 1979, Pub. L. 96-187, and present 11 C.F.R. § 111.21. The General Counsel's opinions were based on interpretation of the subsequent law and regulations, however.

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In two even earlier MURs concerning the confidentiality requirement, the Commission determined there was no reason to believe a violation had occurred where the complaint was made public after its filing but before any Commission notification or investigation had occurred. See General Counsel's Reports in MURs 804 and 270 which involved press releases by Common Cause after having filed complaints against the American Medical Political Action Committee and others. The General Counsel interpreted the provision to ban disclosure only after a notification or investigation had been made by the Commission.^{2/}

The Commission's prior determinations with regard to the confidentiality provision of the Act are therefore consistent with the opinion of the General Counsel that the statute does not proscribe a complainant from publicizing the fact that a complaint will be filed or has been filed. The terms of the statute only prohibit a person from making public a Commission notification of a respondent or a Commission investigation. Complainants therefore may not disclose actions taken by the Commission, but are not prevented from disclosing the fact that they are filing, or have filed, a complaint.

The Commission's regulations which state that "no complaint filed with the Commission... shall be made public" should, in the General Counsel's view, be read in conjunction with the statute and should prohibit complainants from disclosing information about their complaints only if such disclosure also amounts to disclosure of a Commission notification or investigation. In its explanation and justification of its regulations, the Commission stated that this provision "sets forth the confidentiality requirements of the Act" (emphasis added). 45 Fed. Reg. 15089 (March 7, 1980). We would anticipate difficulty in enforcing a regulation if read to extend beyond the wording of the statute. Moreover, our suggested reading of the regulation appears to be consistent with the Commission's previous determinations based on the statute. See General Counsel's Reports in MURs 804 and 270.

The information available in the present matter indicates that the disclosure by Senator McGovern occurred on May 2, 1980, before the Commission had even notified any respondent of the complaint against NCPAC. The response of Senator McGovern avers that the

^{2/}Former § 437g(a)(2) required the Commission to notify the respondent of an alleged violation only if the Commission had found "reason to believe" a violation had occurred. The present language of § 437g requires the Commission to provide notification to a respondent prior to determining whether there is "reason to believe." Thus, the 1979 amendments to the Act have opened up the possibility of a violation of § 437g(a)(12)(A) after the 5-day notification letter has been sent but before the Commission has determined whether there is reason to believe.

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press release and press conference involving the complaint against NCPAC were held on May 2. The Commission's notification to NCPAC was sent 5 days later on May 7, 1980. There was therefore no way the Senator's disclosures about the complaint against NCPAC could have made public a Commission "notification or investigation."

With regard to Mr. Cunningham's statements quoted in the Roll Call article (see pages 2,3, supra), there is, first of all, no allegation in the complaint that these statements were made before May 7, 1980, when the Commission sent its notification to NCPAC. Moreover, the statements do not refer to any Commission notification or investigation. Nor do they even refer to the complaint filed against NCPAC.

We therefore do not believe that the facts warrant taking any action against Senator McGovern or Mr. Cunningham. The disclosure here involved does not fall within the language of the statute.

RECOMMENDATION

1. Find no reason to believe that Senator George McGovern or Mr. George Cunningham violated 2 U.S.C. § 437g(a)(12)(A) or 11 C.F.R. § 111.21.
2. Send the attached letters.

Attachments:

- A - complaint
- B - 5-day notice letters
- C - response
- D - proposed letters

60040214105

National Conservative Political Action Committee

RECEIVED
GCC #1517
JUN 30 PM 4:10

1500 wilson blvd. suite 513 arlington, va. 22209 (703) 522-2800

May 30, 1980

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

Dear Members of the Commission:

008257

This letter constitutes a complaint filed with you by National Conservative Political Action Committee, a multi-candidate political committee, in accordance with 2 U.S.C. 437g.

The records of the Federal Election Commission will reflect the fact that the South Dakota Democratic Party filed a complaint with the Federal Election Commission on May 2, 1980 at 1:38 o'clock in the afternoon. The complaint, which names National Conservative Political Action Committee as the respondent, has been designated MUR 1231.

On May 8, 1980, an article was published in Roll Call entitled "McGovern Challenges NCPAC," in which it was reported that Senator George McGovern and an individual described as a McGovern aide, George Cunningham,* discussed in public the fact that the subject complaint had been filed. The fact that the public statements of Messrs. McGovern and Cunningham were made after the complaint was filed is further evidenced by the statement in the second paragraph of the article, a copy of which is attached, that: "The complaint was filed by the South Dakota Democratic Party before the Federal Election Commission." (Emphasis added.)

In view of the fact that National Conservative Political Action Committee did not authorize Messrs. McGovern and Cunningham to make public the complaint designated as MUR 1231, it appears that Senator George McGovern and Mr. George Cunningham may have violated the provisions of 2 U.S.C. 437g(a)(12)(A) and of 11 CFR 111.21. Those sections provide,

*It appears that George Cunningham is George V. Cunningham, Senator McGovern's Administrative Assistant.

30040214107

Federal Election Commission
Page Two

in essence, that no complaint filed with the Commission shall be made public by any person without the written consent of the respondent. (See also, the decision of the Commission in MUR 1161.) Furthermore, based upon the fact that he was a member of the United States Senate which considered and voted upon H.R. 5010 (P.L. 96-187), Senator McGovern knew, or should have known, of the provisions of 2 U.S.C. 437g(a)(12)(A). As a consequence, it is suggested that the alleged violation by Senator McGovern should be considered to have been knowing and willful within the meaning of 2 U.S.C. 437(a)(12)(B), which provides the offending person shall be fined not more than \$5,000.00.

Your attention to this matter will be appreciated.

Respectfully submitted,

Sincerely,

John T. Dolan,
Chairman

Sworn to before me
this 30 day of May, 1980.

Notary Public

My Commission Expires on
December 27, 1983.

Front Page Edit Page Other Page

ROLL CALL
-WASHINGTON, D.C.-
MAY 8 1980
WEEKLY--9,048

McGovern Challenges NCPAC

By Maggie Lawson

Sen. George McGovern (D-SD) is supporting a complaint alleging that the National Conservative Political Action Committee (NCPAC) overstepped its legal bounds in the effort to persuade Rep. James Abdnor (SD) to run for McGovern's Senate seat.

The complaint was filed by the South Dakota Democratic Party before the Federal Election Commission.

"NCPAC has far exceeded the special First Amendment privileges granted to organizations and groups in the Federal Election Act," according to McGovern.

The ultra-conservative political group is alleged to have overtly entered into the candidate selection procedure to select a candidate for the 1980 South Dakota Republican nomination for the Senate.

"Investigation is also being pursued in certain other states—Idaho, Iowa, and Indiana—to determine if NCPAC was involved in the selection of candidates," said McGovern aide George Cunningham.

The state Democratic parties in the other states might join in the suit, he says.

Much of the South Dakota controversy centers on a public opinion poll which McGovern says was "designed for the sole purpose of causing the candidate (Congressman Abdnor) to enter the race."

Arthur Finkelstein, NCPAC's pollster, and Terry Dolan, executive director of NCPAC, went to see Abdnor "armed with this poll," for the purpose of urging the Congressman to enter the Senate race, according to McGovern.

Cunningham said Abdnor amended his first quarter '80 campaign report "to acknowledge a \$500 contribution in kind from NCPAC for this poll which indicates a very close association between NCPAC and Abdnor."

A spokesman for Abdnor acknowledged that the congressman received a letter from Terry Dolan informing Abdnor of the in-kind contribution to "Friends of Jim Abdnor" for the value of the survey information

presented to the South Dakota Congressman at a meeting on December 6, 1979.

Dolan advised the Congressman that he must indicate the contribution in his campaign finance report.

On March 10, 1980, Abdnor notified Edmund Henshaw, Clerk of the House, that he was amending his first quarter report to show the in-kind contribution from NCPAC.

"We see nothing wrong with this," said Jane Boorman, Abdnor's press secretary.

McGovern, however, views NCPAC's role in convincing Abdnor to run for the Senate as a breach of "the protective veil" provided to the organization to make "independent and unlimited expenditures."

"The question presented to the Federal Election Commission is whether a committee (NCPAC) should be able to 'step in and out' of its independent status at will," says McGovern.

McGovern has joined the South
(Continued on Page 6)

McGovern - Abdnor

(Continued from Page 1)

Dakota Democratic Party in asking the FEC to determine whether the NCPAC's actions in connection with Abdnor "constitute a covert intent to knowingly evade the provisions of the Federal Election Act."

South Dakota is one of the five states with incumbent Democratic Senators seeking re-election targeted by the NCPAC in 1979.

During that year, NCPAC launched a negative media campaign costing around \$112,093, and aimed at McGovern, who says his announcement for reelection was "a foregone conclusion" at the time.

Meanwhile, the Republicans staged a search for a strong opponent to McGovern. South Dakota's Lieutenant Governor Lowell Hansen was considered a likely choice, but on Oct. 8, 1979 he announced his decision not to run.

On the same day, a committee called the "People for an Alternative to McGovern" was formed. Chairman was Minnehaha County State Representative Hal Wick.

McGovern claims the committee is hardly more than a conduit for NCPAC expenditures in South Dakota.

Abdnor was one of several possible GOP candidates for the Senate mentioned in October, but the Congressman remained unconvinced that he would be a viable challenger to McGovern.

At this point, NCPAC "took it upon themselves to mount a campaign to bring Abdnor into the race," McGovern charges.

NCPAC commissioned pollster Arthur Finkelstein & Associates of New York to conduct a survey in South Dakota. The poll reportedly showed that Abdnor could successfully challenge McGovern for the Senate.

Finkelstein and Dolan then met with Abdnor and urged him to enter the race.

McGovern says "subsequent events indicate that there was more agreed upon than simply for Mr.

Abdnor to enter the race for the GOP Senate nomination."

When Abdnor formally announced for the Senate in a series of press conferences on March 19 and 20, "People for an Alternative to McGovern" bought and ran an extensive series of radio and TV commercials "effectively bracketing the Abdnor announcement with negative ads," said McGovern.

"This strongly suggests a degree of coordination that far exceeds any reasonable limit for those groups entitled to make independent expenditures under the Federal Election Act," McGovern asserts.

Abdnor has denied that NCPAC played any direct role in his decision to seek the South Dakota Senate seat.

"At the time of the South Dakota state fair the last week in August and early September, Hal Wick commented to Abdnor that they had some interesting polls that indicated he'd do very well against McGovern," according to Jane Boorman, Abdnor's press secretary.

"Abdnor said he didn't believe the polls," said Boorman.

She acknowledged that Dolan and Finkelstein arranged for an appointment with Abdnor on Oct. 9, 1979.

"They brought information in showing Abdnor would do well because of his high name recognition," said Boorman.

"Abdnor said 'you haven't shown me I can beat McGovern,'" she said.

On December 6 Dolan and Finkelstein met again with Abdnor. This time they brought a head-on-head poll showing Abdnor could beat McGovern.

"Abdnor still wasn't convinced," said Boorman.

The Congressman then commissioned his own informal survey of South Dakota voters, and "though the results were very encouraging, Abdnor said he still didn't believe it," said Boorman.

Abdnor then tried another targeted poll into five population areas and got the same results, she said. Still cautious, Abdnor commissioned a Decision Making Information survey.

"This in-depth poll showed Abdnor with a 14 point margin over McGovern," explained Boorman. "The results from this caused him to decide to run."

The NCPAC polls "didn't convince Mr. Abdnor of anything," says Boorman, although she admits "they whetted his interest."

"Abdnor is trying to separate himself from NCPAC, but sometimes like a tarbaby these things stick to your hands," says McGovern aide George Cunningham.

McGovern wants the FEC to prohibit NCPAC from spending any further funds in South Dakota "for any purpose."

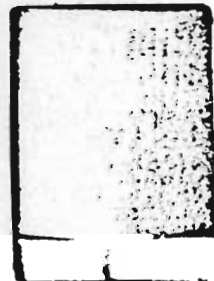
"NCPAC, in its classification as a Political Action Committee—without 'independent spending' status—has already exceeded the \$5,000 limitation by several times in the 1980 calendar year, not to mention its substantive expenditures during 1979," McGovern charges.

"If the FEC fails to stop this activity, the way will be open for any group, initially qualified to make independent expenditures under the Act, to actively involve itself in the political process in the several states and make meaningless any heretofore applied constraint on their activities," asserts McGovern.

Federal election law forbids an independent organization to communicate with a candidate or his aides, once that candidate has announced for office. It is not illegal for such a group to consult a potential candidate or to encourage him to enter a race.

However, NCPAC's handling of funds in the Abdnor matter likely will be a factor in the FEC's decision.

The FEC is prohibited by law from discussing a pending complaint.





FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 6, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable George McGovern
Dirksen Senate Office Building
Room 4239
Washington, D.C. 20510

Re: MUR 1244

Dear Senator McGovern:

This letter is to notify you that on June 2, 1980, the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of this complaint is enclosed. We have numbered this matter MUR 1244. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you in 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 remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by 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.

Attachment B

Letter to: The Honorable George
McGovern

Page Two

If you have any questions, please contact Scott Thomas, 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 M. Steele
Charles M. Steele
General Counsel

Enclosure

1. Complaint
2. Procedures

PS Form 3811, Aug. 1978

● 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:
The Hon. George McGovern

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. | INSURED NO.
| *945084* |

4. (Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
E. Mucklus

4. DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

WASHINGTON, D.C. 20540
0861
NR
CLERK'S INITIALS

Mar 1244 Thomas



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 6, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

George V. Cunningham
Dirksen Senate Office Building
Room 4239
Washington, D.C. 20510

Re: MUR 1244

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Sincerely,

Charles N. Steele
Charles N. Steele
General Counsel

Enclosure

1. Complaint
2. Procedures

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) ☐ 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: <i>George V. Cunningham</i>		
3. ARTICLE DESCRIPTION: REGISTERED NO. CERTIFIED NO. INSURED NO. <i>945082</i>		
1 (Always obtain signature of addressee or agent)		
I have received the article described above. SIGNATURE ☐ Addressee ☐ Authorized agent <i>B. Mickles</i>		
4. DATE OF DELIVERY		
5. ADDRESS (Complete only if requested)		
6. UNABLE TO DELIVER BECAUSE:		

POSTMARK
JUN 10 1980
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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 6, 1980

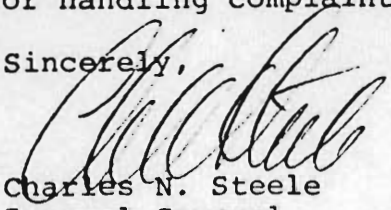
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John T. Dolan
Chairman
National Conservative Political
Action Committee
1500 Wilson Blvd.
Suite 513
Arlington, Virginia 22209

Dear Mr. Dolan:

This letter is to acknowledge receipt of your complaint of May 30, 1980, against Senator George McGovern and George Cunningham which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondents will be notified of this complaint within 5 days and a recommendation to the Federal Election Commission as to how this matter should be initially handled will be made 15 days after the respondents' 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

Enclosure

0040214115

611412006

PS Form 3811, Aug 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER Complete items 1 through 4 Add your address in the "RETURN TO" space on reverse		
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2. ARTICLE ADDRESSED TO: <i>John J. Dolan</i>		
3. ARTICLE DESCRIPTION:		
REGISTERED NO	CERTIFIED NO	INSURED NO
	<i>945083</i>	
4. (Always obtain signature of addressee or agent)		
I have received the article described above:		
SIGNATURE	☐ Addressee \$	☐ Authorized agent
<i>[Signature]</i>		
4. DATE OF DELIVERY		POSTMARK
5. ADDRESS (Complete only if requested):		
6. UNABLE TO DELIVER BECAUSE:		CLERK'S INITIALS

1244

Shomes

RECEIVED
GENERAL COUNSEL

LAW OFFICES
ROBERT F. BAUER

SUITE 406

1101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

NO JUN 25 P 5:06

(202) 296-0555

June 25, 1980

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

RE: MUR 1244

Dear Sir:

On behalf of Senator George McGovern and Mr. George Cunningham, this letter is herewith submitted as a response to the complaint filed by the National Conservative Political Action Committee (NCPAC), dated May 30, 1980, alleging that Senator McGovern and Mr. Cunningham violated the confidentiality provisions of the Federal Election Campaign Act, section 437 g (a)(12)(A). Specifically, it is NCPAC's allegation that Senator McGovern and Mr. Cunningham "made public" a complaint previously filed against NCPAC by the South Dakota Democratic Party.* As set forth below, these allegations have no foundation whatever in either law or fact, and NCPAC's complaint should, therefore, be expeditiously dismissed.

At the very outset, NCPAC simply misstates the time that the South Dakota Democratic Party complaint was filed. In its complaint to the Commission, NCPAC alleges that the Party filed its complaint "... on May 2, 1980 at 1:38 o'clock in the afternoon." NCPAC provides no support for this allegation -- as precise as it is -- about the timing of that complaint. In fact, the Party's complaint was filed at 4:38 p.m. -- over one hour after a press conference held by Senator McGovern who, among other things, discussed then the pending complaint, and several hours after the issuance by Senator McGovern's office of a press release reviewing the allegation made in that complaint. Attached for the Commission's review is the time-stamped facing page of the Party's complaint, which, upon formal request to the General Counsel, counsel for Senator McGovern and Mr. Cunningham was permitted to inspect and duplicate. That time-stamped facing page indicates clearly, at the bottom of the page, that the Complaint was received by the Commission at 4:38 p.m. on May 2. Moreover, the evidence of this time-stamped page is further corroborated by the enclosed affidavits of Ms. Dorothy Lou Crisp and Mr. Jeffrey Eldon Robinson, who assisted the attorney for

*Senator McGovern, of course, is the senior United States Senator from the State of South Dakota. Mr. Cunningham is his Administrative Assistant.

Attachment C

Mr. Charles Steele
June 25, 1980
Page Two

LAW OFFICES
ROBERT F. BAUER

the Party with the preparation and filing of the complaint, and who were charged with insuring that it was filed after 4:00 p.m. on May 2, 1980.

In taking all steps necessary to ensure that the Complaint would not be filed until after 4:00 p.m., the attorney for the Party was aware that Senator McGovern would be responding to questions about the complaint in South Dakota at 3:00 p.m. (Eastern Daylight Time), and that the complaint should not be filed until after the conclusion of that press conference at 3:30 p.m. See attached Affidavit of Ms. Crisp.

These facts support only one legal conclusion, namely, that the publicity given to the Party's complaint by Senator McGovern and Mr. Cunningham, all of it prior to the filing of that complaint, cannot constitute a violation of the Act's confidentiality provisions. Only recently, in MUR 1161, the Commission held that the confidentiality provisions did not bar public statements about a complaint prior to it's filing with the Commission. In that MUR, the National Right to Life Committee, Inc. filed a complaint against the National Abortion Rights Action League (NARAL), alleging, much as NCPAC has here, that the confidentiality provisions were violated when NARAL publicized in advance it's intention to file a complaint against the Committee. The Commission dismissed this complaint on an unanimous 5-0 vote, see the Certification dated April 24, 1980, and in doing so, accepted the conclusion of the General Counsel that:

"there is ... no prohibition against announcing to the public that a complaint is to be filed with the Commission." See page 2 of the General Counsel's report.

The General Counsel found clearly that public announcements, prior to the filing of the complaint, could take any of the usual forms, including "... holding a press conference or releasing notices to the public indicating that a complaint is to be filed ...". These are precisely the actions taken by Senator McGovern and his staff in making the complaint against NCPAC public, i.e., a press conference held by Senator McGovern prior to the filing of the complaint, and the issuance of a press release -- prepared by Senator McGovern's office -- also a good number of hours before the complaint was filed with the Commission on May 2.

Apart from its erroneous allegation that the complaint against NCPAC was filed at 1:38 p.m., NCPAC presents, as "evidence", a newspaper clipping from ROLL CALL dated May 8, allegedly establishing that Senator McGovern and Mr. Cunningham's comments were made following the filing of the complaint on May 2. Here, too, NCPAC has simply misstated the case. As the Commission will note from a comparison of the May 2 press release of Senator McGovern's office

Mr. Charles Steele
June 25, 1980
Page Three

LAW OFFICES
ROBERT F. BAUER

with the ROLL CALL article, most of the quoted material from that article was drawn from the May 2nd press release, and the rest resulted from questions based on that release and directed by the by-lined author of that article to the McGovern office, including Mr. Cunningham. As established previously, that release was issued on May 2, well before the Party complaint against NCPAC was filed.

It is not even clear from available Commission authority that comments based on a complaint, even following its filing, would violate the confidentiality provisions of the Act. While the General Counsel in MUR 1161 refused to accept NARAL's contention that the confidentiality provisions are only triggered upon a "reason to believe" finding by the Commission, those contentions appear to have considerable support in previous decisions by the Commission. For example, in MUR 804, the Minnesota Medical Political Action Committee (MINNPAC) alleged a violation of the confidentiality provisions by Common Cause and its General Counsel, Mr. Ken Guido, who had filed a complaint against MINNPAC. By unanimous vote, the Commission followed the recommendation of the General Counsel that there was no violation of the confidentiality provisions, notwithstanding the fact that Common Cause's and Mr. Guido's comments were made following the actual filing of their complaint against MINNPAC. The General Counsel, however, contended -- and the Commission held -- that the confidentiality provisions only covered "action taken by the Commission with regard to the complaint". See page 2 of the General Counsel's report. Similarly, in MUR 270, which involved another alleged violation of the confidentiality provisions by Common Cause and its Vice President, Mr. Fred Wertheimer, the General Counsel concluded, and the Commission once again held, that section 437 g (a) (12) (A) only referred to "any notification or investigation made pursuant to a finding by the Commission of reason to believe ... Therefore, the prohibition of section 437 g (a) (3) (B) is not triggered until the Commission has found reason to believe ...".*

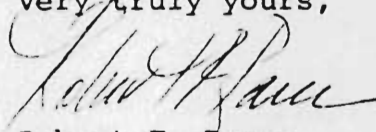
*Since MUR 270 was decided, sec. 437 g (a) (3) (B) was renumbered as sec. 437 g (a) (12) (A), but its wording has not changed at all. In the course of promulgating the 1979 amendment, the Commission added a new regulatory provision to implement sec. 437 g (a) (12) (A), which may be found at sec. 111.21. That provision is drafted more broadly than the statute; it goes beyond reference to any "notification" or "investigation", and refers also to the "complaint filed" as being subject to confidential treatment. The Explanation and Justification of sec. 111.21 does not state that the Congress in 1979 or the Commission intended to change the reach of sec. 437 g (a) (12) (A), but the General Counsel, in MUR 1161, appears to have concluded that this is its effect. This is, in any event, an issue which is not decisive in this case, since under any interpretation, Senator McGovern and Mr. Cunningham did not violate either sec. 111.21 or sec. 437 g (a) (12) (A).

Mr. Charles Steele
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LAW OFFICES
ROBERT F. BAUER

The Commission's position, then, on what constitutes a violation of the confidentiality provision is not altogether clear. Whichever theory applies, however, it is evident from the foregoing that Senator McGovern and Mr. Cunningham did not violate those provisions, either in making a complaint public following it's filing, or in publicizing any action of the Commission on that complaint, such as a finding of "reason to believe". Since NCPAC allegations are, therefore, wholly without merit, these should be expeditiously dismissed by the Commission.

Very truly yours,



Robert F. Bauer

RFB:peg

Enclosures

00040314120

AFFIDAVIT OF
DOROTHY LOU CRISP

I, Dorothy Lou Crisp, a paralegal with the law firm Dechert Price & Rhoads, in Washington, D. C., do hereby certify that I assisted in the preparation of a complaint initiated by Robert F. Bauer, Esq., on behalf of the South Dakota Democratic Party, and since designated by the Federal Election Commission as MUR 1231. Mr. Bauer and I worked through the afternoon of May 2, 1980 reviewing the complaint and preparing it for filing. The document was not completed before 3:00 p.m. on Friday, May 2, 1980.

I was aware of the sensitive nature of the complaint and, in particular, of the sensitivity associated with the timing of the filing of the complaint. I knew that Senator George McGovern would probably be responding to questions about the complaint in a press conference in the afternoon of May 2, 1980 and that the complaint had to be filed after 4:00 p.m., eastern daylight time, when that press conference would have been concluded.

I instructed Jeff Robinson, a messenger with the firm Dechert Price & Rhoads, that he was not to deliver the document to the Federal Election Commission before 4:00 p.m. and he assured me that he would do as I asked. I gave him these instructions at approximately 3:30 p.m., May 2, 1980.

6/11/80

Dorothy Lou Crisp
DISTRICT OF COLUMBIA

Subscribed and sworn to before me this
11th day of June, 1980

Marsha L. Brooks

My Commission Expires March 31, 1984 Notary Public

AFFIDAVIT OF
JEFFREY ELDON ROBINSON

I, Jeffrey Eldon Robinson, do hereby certify that on Friday, May 2, 1980 I delivered to the Federal Election Commission a complaint initiated by Robert F. Bauer, Esq. on behalf of the South Dakota Democratic Party, and since designated by the Federal Election Commission as MUR 1231. I received explicit instructions to deliver the document after 4:00 p.m.

I arrived at the Federal Election Commission shortly after 4:00 p.m., May 2, 1980, and had to wait in a fairly long line in order to file the document. It was sometime after 4:15 p.m. that the document was actually filed.

6-11-80
Date

Jeffrey Robinson
Jeffrey Eldon Robinson

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this

11th day of June, 1980
Marsha G. Brooks

Notary Public

My Commission Expires March 31, 1984

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

PRINCES HOUSE
95 GRESHAM STREET
LONDON, EC2V 7NA, ENGLAND
01. 606. 8588

LAW OFFICES OF

DECHERT PRICE & RHOADS

888 17TH STREET, N.W.
WASHINGTON, D. C. 20006
TELEX 84 5324 • BARDEP

(202) 872-8600

COMPLAINT

BEFORE

THE FEDERAL ELECTION COMMISSION

3400 CENTRE SQUARE WEST
1800 MARKET STREET
PHILADELPHIA, PA. 19102
(215) 972-3400

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

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

I. Introduction

The South Dakota Democratic Party (the "South Dakota Party") files herewith this complaint, pursuant to §437g of the Federal Election Campaign Act (the "Act"), alleging, inter alia, that the National Conservative Political Action Committee (NCPAC) violated §441a of the Act by making contributions in-kind to U.S. Representative James Abdnor, candidate for the Republican nomination to the United States Senate in South Dakota, in amounts well in excess of the lawful limits. The allegations of the South Dakota Party are presented in this complaint as follows:

I. Introduction

- A. Summary of the South Dakota Party's Complaint
- B. Summary of the South Dakota Party's Request for Relief

II. NCPAC Undertook Through Direct Consultations with Mr. Abdnor and Otherwise, To Persuade Him to Enter The Race For The Republican U.S. Senate Nomination in South Dakota, and Cannot, Therefore, Claim "Independence" From His Candidacy

- A. Background of NCPAC's Attempts to Persuade Mr. Abdnor to Become a Candidate for the U.S. Senate
- B. NCPAC's Interest in an Abdnor Candidacy
- C. NCPAC's Contacts with Abdnor to Persuade Him to Enter the Republican Primary Contest
- D. NCPAC Support to Abdnor After the Declaration of His Candidacy

III. The Activities of NCPAC in Encouraging Congressman Abdnor to Become a Candidate, and in Supporting His Candidacy Beyond the Date of his Formal Announcement, Make it Clear that NCPAC's Expenditures Were Not "Independent" Within the Meaning of the Act

- A. NCPAC's Activities Clearly Included "Consultation" and "Coordination" with the Abdnor Campaign
- B. NCPAC's Conduct Cannot be Reconciled with the True Nature and Purpose of "Independent" Expenditures as Established by the Supreme Court in Buckley v. Valeo

FILED
JAN 11 1978
FBI - DENVER

George McGovern

4239 Dirksen Senate Office Building, Washington, DC 20510 phone: (202)224-2321

CONTACT:
George Cunningham
202/224-8403
or
Bob Bauer, Esq.
202/872-8600

FOR RELEASE FRIDAY
May 2, 1980

ABDNOR/NCPAC ASSOCIATION CHARGED - COMPLAINT ON POSSIBLE
VIOLATION OF FEDERAL ELECTION LAWS FILED WITH FEDERAL
ELECTION COMMISSION

SIOUX FALLS, SOUTH DAKOTA: Senator George McGovern today said that he was supporting a legal action filed by the South Dakota Democratic Party, et al, before the Federal Election Commission alleging a violation of Federal Election Laws by the National Conservative Political Action Committee (NCPAC).

"The complaint," McGovern said, "centers on the belief that NCPAC - and possibly it's South Dakota surrogate committee, 'People for an Alternative to McGovern' - has violated the Federal Election Law by exceeding the limitations proscribed by law as it relates to activities by those groups entitled to make unlimited independent expenditures in political campaigns".

The operating section of the law states:

"...any expenditure by a person which expressly advocates the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, and which is not made in concert with, or at the request or suggestion of any candidate, or any authorized committee or agent of the candidate." (emphasis supplied)

"It is the contention in this complaint," McGovern said, "that NCPAC has breached the protective veil provided to it to make independent and unlimited expenditures by 'cooperating and consulting' with Congressman James Abdnor, playing a substantive role in encouraging Abdnor to change his political plans and seek the 1980 South Dakota Republican Senatorial nomination and has, subsequent to that, coordinated its media and other plans in South Dakota with an Abdnor candidacy."

"Simply stated," McGovern pointed out, "the question presented to the Federal Election Commission is whether a committee (NCPAC) should be able to 'step in and out' of its independent expenditure status at will. It is our view that once the independent status is breached, as we believe it was in this case, NCPAC should be foreclosed from further independent expenditures in South Dakota and subjected to the same limitations set forth in the law for any Political Action Committee."

Whether the NCPAC actions in concert with Congressman Abdnor constitute a covert intent to knowingly evade the provisions of the Federal Election Act - and what civil or criminal penalties might be appropriate if such a determination is made will be up to the Federal Election Commission.

#

(SEE DETAILED BACKGROUND AND SUMMARY INFORMATION ATTACHED)

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BACKGROUND INFORMATION ON FEC COMPLAINT

In 1979, NCPAC publicly identified five states (South Dakota, Iowa, Indiana, Idaho and California) where incumbent Democratic Senators were seeking re-election. These five seats were "targeted" by NCPAC for a maximum effort in terms of monies to be raised and spent to mount a negative campaign against the incumbents with the idea to clear the way for a probably conservative challenger in the 1980 general election.

In South Dakota in 1979, NCPAC, under its negative program, expended some \$112,093 in newspaper, television and radio advertisements directed against the Democratic incumbent, Senator George McGovern. He was, for them a clearly identified candidate under the terms of the Act and his formal announcement for re-election at some appropriate time in 1980 was a foregone conclusion. The Senator, himself, indicated, informally, that he intended to seek re-election.

During the first three quarters of 1979, there was considerable speculation in the public press as to who Senator McGovern's opponent would be. A number of names were surfaced, but by August, 1979, it was clear that GOP Lt. Governor Lowell Hansen was the apparent choice.

It was expected that any GOP Senate Candidate would benefit from the negative NCPAC ads in terms of Senator McGovern's reduced standing among the electorate in South Dakota.

The only announced candidate on the Republican side during 1979 was Mr. Dale Bell of Spearfish, South Dakota. Mr. Bell made no formal announcement, however, until 1980 on the date he turned 30 years of age and qualified for the Senate.

To advance his cause, Mr. Bell created the "Target McGovern" Committee which served as his fund raising mechanism to provide monies to his operating Committee, "People for a New Senator".

On October 8, 1979, two events occurred which should be noted. First, the "preferred GOP Senate Candidate", Lt. Governor Lowell Hansen, announced that he would not seek the South Dakota Republican Senate nomination. He sent a letter to his supporters giving "personal and family reasons" for his decision. Second, NCPAC, apparently feeling they needed a surrogate committee in the State, formed the "People for an Alternative to McGovern", chaired by Minnehaha County State Representative Hal Wick.

In announcing the Committee, Mr. Wick indicated that while their membership was small (12 persons), their budget was to be \$50,000 which would be underwritten by NCPAC. Disclaimers on their advertising bear this out - indicating that ads are run by "People for an Alternative to McGovern", a project of the National Conservative Political Action Committee".

In fact, the "People for an Alternative to McGovern" is little more than an administrative conduit for NCPAC expenditures in South Dakota. Media is prepared and booked through NCPAC headquarters in Arlington, Virginia. In more recent ads, the surrogate chairman, Hal Wick, has been featured, but the funds, technical advice and other assistance comes directly from NCPAC.

The search for a viable GOP Senate candidate then centered on the Republican Governor, William J. Janklow, who, as he has done before, refused to run - and the search continued. Although Congressman Abdnor was mentioned during October as a possible candidate, his was not the only name used.

In fact, Abdnor continued to support a Janklow candidacy even after the Governor had indicated he would not run. As late as October 16th Abdnor continued to support Janklow, but said he might consider a race if there was a draft but, as Abdnor said, "they're going to have to convince me. Right now, I'm gearing up for my Congressional race."

Abdnor's filings with the FEC support his indecision. Throughout 1979, his political operating committee was the "Friends of Jim Abdnor" - a committee that had been formed early in his Congressional career to provide support for his campaigns and a continuing vehicle for periodic fund raising.

It was not until the week of February 17, 1980, that Abdnor actually changed his committee from one supporting his re-election bid to the Congress - to a committee for his race for the 1980 South Dakota Senatorial nomination.

Realizing that the normal candidate recruitment mechanisms of the South Dakota Republican Party were not going to surface what they considered to be a strong candidate against McGovern - NCPAC took it upon themselves to mount a campaign to bring Abdnor into the race.

It is at this point that NCPAC exceeded the limits set out by the Federal Election Act and advisory opinions of the Federal Election Committee.

In an overt effort to "encourage" Congressman Abdnor to enter the South Dakota Senate race, NCPAC commissioned their pollster, Arthur Finkelstein & Associates of New York, to take a sampling in South Dakota. It purported to show that the only "announced" candidate for the GOP/South Dakota Senate nomination, Dale Bell, would lose to McGovern; whereas, Congressman Abdnor would win easily.

Armed with this poll, Mr. Finkelstein and Mr. Terry Dolan, Executive Director of NCPAC, "consulted" with Congressman Abdnor, possibly on several occasions, urging his entrance into the race.

We do not, of course, have detailed information on what transpired at the meetings between NCPAC and Congressman Abdnor, but subsequent events indicate that there was more agreed upon than simply for Mr. Abdnor to enter the race for the GOP Senate nomination.

Mr. Abdnor, after some delay, made his formal announcement for the Senate in a series of press conferences in various media markets around South Dakota on March 19 and 20. NCPAC, through its surrogate South Dakota affiliate, "People for an Alternative to McGovern", bought, paid for and ran an extensive series of television and radio commercials against Senator McGovern during the March 17 to March 24th period - effectively bracketing the Abdnor announcement with negative ads. This strongly suggests a degree of coordination that far exceeds any reasonable limit for those groups entitled to make independent expenditures under the Federal Election Act. The connection between Mr. Abdnor and NCPAC has been noted, as well, by Mr. Abdnor's primary opponent, Mr. Dale Bell.

SUMMARY AND ACTION REQUESTED FROM THE FEDERAL ELECTION COMMISSION

NCPAC has far exceeded the special First Amendment privileges granted to organizations and groups in the Federal Election Act by:

1. Overtly entering into the candidate selection procedure to select a candidate to seek the South Dakota GOP Senate nomination in 1980.
2. By paying for and conducting a public opinion poll designed for the sole purpose of causing the candidate (Congressman Abdnor) to enter the race.
3. By consulting with Congressman Abdnor - to encourage him to enter the race.
4. By cooperating with Congressman Abdnor and his campaign in arranging negative media to run simultaneously with Abdnor's formal announcement for the 1980 GOP/South Dakota Senate nomination.

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By having acted outside of the acceptable limits of an organization entitled to make independent expenditures in political contests, NCPAC has ceased to be an "independent group" and should now be classified as a Political Action Committee, subject to all the limitations and prohibitions on their actions as is any other PAC.

At a minimum, NCPAC should be precluded from expending any further funds in South Dakota for any purpose. Its surrogate committee, the "People for an Alternative to McGovern" should be dissolved and its remaining funds transferred back to its parent group (NCPAC). Its direct mail into South Dakota should be prohibited, and it should be foreclosed from any transfer of funds, goods or services to any PAC, group or organization for expenditure or use in South Dakota between now and the general election, November 4, 1980.

NCPAC, in its classification as a Political Action Committee - without "independent spending" status - has already exceeded the \$5,000 limitation by several times in the 1980 calendar year, not to mention its substantive expenditures during 1979.

Whether the NCPAC actions in concert with Congressman Abdnor constitute a covert intent to knowingly evade the provisions of the Federal Election Act - and what civil or criminal penalties might be appropriate if such a determination is made will be up to the Federal Election Commission.

But if the FEC fails to stop this activity - the way will be open for any group, initially qualified to make independent expenditures under the Act, to actively involve itself in the political process in the several states and make meaningless any heretofore applied constraint on their activities.

800400214127



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert F. Bauer
1101 Seventeenth Street, N.W.
Suite 406
Washington, D.C. 20036

MUR 1244

Dear Mr. Bauer:

On June 19, 1980, the Federal Election Commission notified your clients, Senator George McGovern and George Cunningham, of a complaint alleging that they may have violated the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1980, determined that on the basis of the information in the complaint and the information provided by you, there is no reason to believe that a violation of any statute or regulation within its jurisdiction has been committed. Accordingly, the Commission has closed its file in this matter.

Sincerely,

Charles N. Steele
General Counsel

00040214129



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John J. Dolan, Chairman
National Conservative Political Action
Committee
1500 Wilson Boulevard
Suite 513
Arlington, Virginia 22209

Dear Mr. Dolan:

The Federal Election Commission has reviewed the allegations of your complaint dated May 30, 1980, and determined that on the basis of the information provided in your complaint and information provided by the respondents, there is no reason to believe a violation of the Federal Election Campaign Act of 1971, as amended, has been committed. Accordingly, the Commission has decided to close the file in this matter.

Should additional information come to your attention which you believe establishes a violation of the Act, please contact Scott Thomas, the attorney assigned to this matter, at (202) 523-4143.

Sincerely,

Charles N. Steele
General Counsel

00040014129

3cc
1769

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

LAW OFFICES
ROBERT F. BAUER

SUITE 406

1101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

80 JUN 25 P 5:06

(202) 296-0555

June 25, 1980

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

RE: MUR 1244

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At the very outset, NCPAC simply misstates the time that the South Dakota Democratic Party complaint was filed. In its complaint to the Commission, NCPAC alleges that the Party filed its complaint "... on May 2, 1980 at 1:38 o'clock in the afternoon." NCPAC provides no support for this allegation -- as precise as it is -- about the timing of that complaint. In fact, the Party's complaint was filed at 4:38 p.m. -- over one hour after a press conference held by Senator McGovern who, among other things, discussed then the pending complaint, and several hours after the issuance by Senator McGovern's office of a press release reviewing the allegation made in that complaint. Attached for the Commission's review is the time-stamped facing page of the Party's complaint, which, upon formal request to the General Counsel, counsel for Senator McGovern and Mr. Cunningham was permitted to inspect and duplicate. That time-stamped facing page indicates clearly, at the bottom of the page, that the Complaint was received by the Commission at 4:38 p.m. on May 2. Moreover, the evidence of this time-stamped page is further corroborated by the enclosed affidavits of Ms. Dorothy Lou Crisp and Mr. Jeffrey Eldon Robinson, who assisted the attorney for

*Senator McGovern, of course, is the senior United States Senator from the State of South Dakota. Mr. Cunningham is his Administrative Assistant.

Mr. Charles Steele
June 25, 1980
Page Two

LAW OFFICES
ROBERT F. BAUER

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"there is ... no prohibition against announcing to the public that a complaint is to be filed with the Commission." See page 2 of the General Counsel's report.

The General Counsel found clearly that public announcements, prior to the filing of the complaint, could take any of the usual forms, including "... holding a press conference or releasing notices to the public indicating that a complaint is to be filed ...". These are precisely the actions taken by Senator McGovern and his staff in making the complaint against NCPAC public, i.e., a press conference held by Senator McGovern prior to the filing of the complaint, and the issuance of a press release -- prepared by Senator McGovern's office -- also a good number of hours before the complaint was filed with the Commission on May 2.

Apart from its erroneous allegation that the complaint against NCPAC was filed at 1:38 p.m., NCPAC presents, as "evidence", a newspaper clipping from ROLL CALL dated May 8, allegedly establishing that Senator McGovern and Mr. Cunningham's comments were made following the filing of the complaint on May 2. Here, too, NCPAC has simply misstated the case. As the Commission will note from a comparison of the May 2 press release of Senator McGovern's office

0004021431

Mr. Charles Steele
June 25, 1980
Page Three

LAW OFFICES
ROBERT F. BAUER

with the ROLL CALL article, most of the quoted material from that article was drawn from the May 2nd press release, and the rest resulted from questions based on that release and directed by the by-lined author of that article to the McGovern office, including Mr. Cunningham. As established previously, that release was issued on May 2, well before the Party complaint against NCPAC was filed.

It is not even clear from available Commission authority that comments based on a complaint, even following its filing, would violate the confidentiality provisions of the Act. While the General Counsel in MUR 1161 refused to accept NARAL's contention that the confidentiality provisions are only triggered upon a "reason to believe" finding by the Commission, those contentions appear to have considerable support in previous decisions by the Commission. For example, in MUR 804, the Minnesota Medical Political Action Committee (MINNPAC) alleged a violation of the confidentiality provisions by Common Cause and it's General Counsel, Mr. Ken Guido, who had filed a complaint against MINNPAC. By unanimous vote, the Commission followed the recommendation of the General Counsel that there was no violation of the confidentiality provisions, notwithstanding the fact that Common Cause's and Mr. Guido's comments were made following the actual filing of their complaint against MINNPAC. The General Counsel, however, contended -- and the Commission held -- that the confidentiality provisions only covered "action taken by the Commission with regard to the complaint". See page 2 of the General Counsel's report. Similarly, in MUR 270, which involved another alleged violation of the confidentiality provisions by Common Cause and it's Vice President, Mr. Fred Wertheimer, the General Counsel concluded, and the Commission once again held, that section 437 g (a)(12)(A) only referred to "any notification or investigation made pursuant to a finding by the Commission of reason to believe ... Therefore, the prohibition of section 437 g (a)(3)(B) is not triggered until the Commission has found reason to believe ...".*

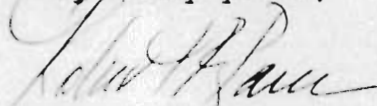
*Since MUR 270 was decided, sec. 437 g (a)(3)(B) was renumbered as sec. 437 g (a)(12)(A), but its wording has not changed at all. In the course of promulgating the 1979 amendment, the Commission added a new regulatory provision to implement sec. 437 g (a)(12)(A), which may be found at sec. 111.21. That provision is drafted more broadly than the statute; it goes beyond reference to any "notification" or "investigation", and refers also to the "complaint filed" as being subject to confidential treatment. The Explanation and Justification of sec. 111.21 does not state that the Congress in 1979 or the Commission intended to change the reach of sec. 437 g (a)(12)(A), but the General Counsel, in MUR 1161, appears to have concluded that this is its effect. This is, in any event, an issue which is not decisive in this case, since under any interpretation, Senator McGovern and Mr. Cunningham did not violate either sec. 111.21 or sec. 437 g (a)(12)(A).

Mr. Charles Steele
June 25, 1980
Page Four

LAW OFFICES
ROBERT F. BAUER

The Commission's position, then, on what constitutes a violation of the confidentiality provision is not altogether clear. Whichever theory applies, however, it is evident from the foregoing that Senator McGovern and Mr. Cunningham did not violate those provisions, either in making a complaint public following it's filing, or in publicizing any action of the Commission on that complaint, such as a finding of "reason to believe". Since NCPAC allegations are, therefore, wholly without merit, these should be expeditiously dismissed by the Commission.

Very truly yours,



Robert F. Bauer

RFB:peg

Enclosures

00040214133

AFFIDAVIT OF
DOROTHY LOU CRISP

I, Dorothy Lou Crisp, a paralegal with the law firm Dechert Price & Rhoads, in Washington, D. C., do hereby certify that I assisted in the preparation of a complaint initiated by Robert F. Bauer, Esq., on behalf of the South Dakota Democratic Party, and since designated by the Federal Election Commission as MUR 1231. Mr. Bauer and I worked through the afternoon of May 2, 1980 reviewing the complaint and preparing it for filing. The document was not completed before 3:00 p.m. on Friday, May 2, 1980.

I was aware of the sensitive nature of the complaint and, in particular, of the sensitivity associated with the timing of the filing of the complaint. I knew that Senator George McGovern would probably be responding to questions about the complaint in a press conference in the afternoon of May 2, 1980 and that the complaint had to be filed after 4:00 p.m., eastern daylight time, when that press conference would have been concluded.

I instructed Jeff Robinson, a messenger with the firm Dechert Price & Rhoads, that he was not to deliver the document to the Federal Election Commission before 4:00 p.m. and he assured me that he would do as I asked. I gave him these instructions at approximately 3:30 p.m., May 2, 1980.

6/11/80

Dorothy Lou Crisp

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this

11th day of June, 1980

Marshall D. Brooks

My Commission Expires March 31, 1984

Notary Public

AFFIDAVIT OF
JEFFREY ELDON ROBINSON

I, Jeffrey Eldon Robinson, do hereby certify that on Friday, May 2, 1980 I delivered to the Federal Election Commission a complaint initiated by Robert F. Bauer, Esq. on behalf of the South Dakota Democratic Party, and since designated by the Federal Election Commission as MUR 1231. I received explicit instructions to deliver the document after 4:00 p.m.

I arrived at the Federal Election Commission shortly after 4:00 p.m., May 2, 1980, and had to wait in a fairly long line in order to file the document. It was sometime after 4:15 p.m. that the document was actually filed.

6-11-80
Date

Jeffrey Robinson
Jeffrey Eldon Robinson

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this

11th day of June, 1980
Marsha L. Brooks
Notary, Public

My Commission Expires March 31, 1984

20040014135

1004 1027

LAW OFFICES OF

DECHERT PRICE & RHOADS

888 17TH STREET, N. W.

WASHINGTON, D. C. 20006

TELEX 84 5324 • BARDEP

(202) 872-8600

COMPLAINT

BEFORE

THE FEDERAL ELECTION COMMISSION

38 SQUARE DE MEEUS, BTE 1
1040 BRUSSELS, BELGIUM
(02) 811 80 40

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

3400 CENTRE SQUARE WEST
1800 MARKET STREET
PHILADELPHIA, PA. 19102
(215) 872-3400

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

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

I. Introduction

The South Dakota Democratic Party (the "South Dakota Party") files herewith this complaint, pursuant to §437g of the Federal Election Campaign Act (the "Act"), alleging, inter alia, that the National Conservative Political Action Committee (NCPAC) violated §441a of the Act by making contributions in-kind to U.S. Representative James Abdnor, candidate for the Republican nomination to the United States Senate in South Dakota, in amounts well in excess of the lawful limits. The allegations of the South Dakota Party are presented in this complaint as follows:

I. Introduction

- A. Summary of the South Dakota Party's Complaint
- B. Summary of the South Dakota Party's Request for Relief

II. NCPAC Undertook Through Direct Consultations with Mr. Abdnor and Otherwise, To Persuade Him to Enter The Race For The Republican U.S. Senate Nomination in South Dakota, and Cannot, Therefore, Claim "Independence" From His Candidacy

- A. Background of NCPAC's Attempts to Persuade Mr. Abdnor to Become a Candidate for the U.S. Senate
- B. NCPAC's Interest in an Abdnor Candidacy
- C. NCPAC's Contacts with Abdnor to Persuade Him to Enter the Republican Primary Contest
- D. NCPAC Support to Abdnor After the Declaration of His Candidacy

III. The Activities of NCPAC in Encouraging Congressman Abdnor to Become a Candidate, and in Supporting His Candidacy Beyond the Date of his Formal Announcement, Make it Clear that NCPAC's Expenditures Were Not "Independent" Within the Meaning of the Act

- A. NCPAC's Activities Clearly Included "Consultation" and "Coordination" with the Abdnor Campaign
- B. NCPAC's Conduct Cannot be Reconciled with the True Nature and Purpose of "Independent" Expenditures as Established by the Supreme Court in Buckley v. Valeo

00040214136

7-11-79
11:27 AM
11-11-79

George McGovern

4239 Dirksen Senate Office Building, Washington, DC 20510 phone: (202)224-2321

CONTACT:
George Cunningham
202/224-8403
or
Bob Bauer, Esq.
202/872-8600

FOR RELEASE FRIDAY
May 2, 1980

ABDNOR/NCPAC ASSOCIATION CHARGED - COMPLAINT ON POSSIBLE

VIOLATION OF FEDERAL ELECTION LAWS FILED WITH FEDERAL

ELECTION COMMISSION

SIOUX FALLS, SOUTH DAKOTA: Senator George McGovern today said that he was supporting a legal action filed by the South Dakota Democratic Party, et al, before the Federal Election Commission alleging a violation of Federal Election Laws by the National Conservative Political Action Committee (NCPAC).

"The complaint," McGovern said, "centers on the belief that NCPAC - and possibly it's South Dakota surrogate committee, 'People for an Alternative to McGovern' - has violated the Federal Election Law by exceeding the limitations proscribed by law as it relates to activities by those groups entitled to make unlimited independent expenditures in political campaigns".

The operating section of the law states:

"...any expenditure by a person which expressly advocates the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, and which is not made in concert with, or at the request or suggestion of any candidate, or any authorized committee or agent of the candidate." (emphasis supplied)

"It is the contention in this complaint," McGovern said, "that NCPAC has breached the protective veil provided to it to make independent and unlimited expenditures by 'cooperating and consulting' with Congressman James Abdnor, playing a substantive role in encouraging Abdnor to change his political plans and seek the 1980 South Dakota Republican Senatorial nomination and has, subsequent to that, coordinated its media and other plans in South Dakota with an Abdnor candidacy."

"Simply stated," McGovern pointed out, "the question presented to the Federal Election Commission is whether a committee (NCPAC) should be able to 'step in and out' of its independent expenditure status at will. It is our view that once the independent status is breached, as we believe it was in this case, NCPAC should be foreclosed from further independent expenditures in South Dakota and subjected to the same limitations set forth in the law for any Political Action Committee."

Whether the NCPAC actions in concert with Congressman Abdnor constitute a covert intent to knowingly evade the provisions of the Federal Election Act - and what civil or criminal penalties might be appropriate if such a determination is made will be up to the Federal Election Commission.

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(SEE DETAILED BACKGROUND AND SUMMARY INFORMATION ATTACHED)

BACKGROUND INFORMATION ON FEC COMPLAINT

In 1979, NCPAC publicly indentified five states (South Dakota, Iowa, Indiana, Idaho and California) where incumbent Democratic Senators were seeking re-election. These five seats were "targeted" by NCPAC for a maximum effort in terms of monies to be raised and spent to mount a negative campaign against the incumbents with the idea to clear the way for a probably conservative challenger in the 1980 general election.

In South Dakota in 1979, NCPAC, under its negative program, expended some \$112,093 in newspaper, television and radio advertisements directed against the Democratic incumbent, Senator George McGovern. He was, for them a clearly indentified candidate under the terms of the Act and his formal announcement for re-election at some appropriate time in 1980 was a foregone conclusion. The Senator, himself, indicated, informally, that he intended to seek re-election.

During the first three quarters of 1979, there was considerable speculation in the public press as to who Senator McGovern's opponent would be. A number of names were surfaced, but by August, 1979, it was clear that GOP Lt. Governor Lowell Hansen was the apparent choice.

It was expected that any GOP Senate Candidate would benefit from the negative NCPAC ads in terms of Senator McGovern's reduced standing among the electorate in South Dakota.

The only announced candidate on the Republican side during 1979 was Mr. Dale Bell of Spearfish, South Dakota. Mr. Bell made no formal announcement, however, until 1980 on the date he turned 30 years of age and qualified for the Senate.

To advance his cause, Mr. Bell created the "Target McGovern" Committee which served as his fund raising mechanism to provide monies to his operating Committee, "People for a New Senator".

On October 8, 1979, two events occurred which should be noted. First, the "preferred GOP Senate Candidate", Lt. Governor Lowell Hansen, announced that he would not seek the South Dakota Republican Senate nomination. He sent a letter to his supporters giving "personal and family reasons" for his decision. Second, NCPAC, apparently feeling they needed a surrogate committee in the State, formed the "People for an Alternative to McGovern", chaired by Minnehaha County State Representative Hal Wick.

In announcing the Committee, Mr. Wick indicated that while their membership was small (12 persons), their budget was to be \$50,000 which would be underwritten by NCPAC. Disclaimers on their advertising bear this out - indicating that ads are run by "People for an Alternative to McGovern, a project of the National Conservative Political Action Committee".

In fact, the "People for an Alternative to McGovern" is little more than an administrative conduit for NCPAC expenditures in South Dakota. Media is prepared and booked through NCPAC headquarters in Arlington, Virginia. In more recent ads, the surrogate chairman, Hal Wick, has been featured, but the funds, technical advice and other assistance comes directly from NCPAC.

The search for a viable GOP Senate candidate then centered on the Republican Governor, William J. Janklow, who, as he has done before, refused to run - and the search continued. Although Congressman Abdnor was mentioned during October as a possible candidate, his was not the only name used.

In fact, Abdnor continued to support a Janklow candidacy even after the Governor had indicated he would not run. As late as October 16th Abdnor continued to support Janklow, but said he might consider a race if there was a draft but, as Abdnor said, "they're going to have to convince me. Right now, I'm gearing up for my Congressional race."

Abdnor's filings with the FEC support his indecision. Throughout 1979, his political operating committee was the "Friends of Jim Abdnor" - a committee that had been formed early in his Congressional career to provide support for his campaigns and a continuing vehicle for periodic fund raising.

It was not until the week of February 17, 1980, that Abdnor actually changed his committee from one supporting his re-election bid to the Congress - to a committee for his race for the 1980 South Dakota Senatorial nomination.

Realizing that the normal candidate recruitment mechanisms of the South Dakota Republican Party were not going to surface what they considered to be a strong candidate against McGovern - NCPAC took it upon themselves to mount a campaign to bring Abdnor into the race.

It is at this point that NCPAC exceeded the limits set out by the Federal Election Act and advisory opinions of the Federal Election Committee.

In an overt effort to "encourage" Congressman Abdnor to enter the South Dakota Senate race, NCPAC commissioned their pollster, Arthur Finkelstein & Associates of New York, to take a sampling in South Dakota. It purported to show that the only "announced" candidate for the GOP/South Dakota Senate nomination, Dale Bell, would lose to McGovern; whereas, Congressman Abdnor would win easily.

Armed with this poll, Mr. Finkelstein and Mr. Terry Dolan, Executive Director of NCPAC, "consulted" with Congressman Abdnor, possibly on several occasions, urging his entrance into the race.

We do not, of course, have detailed information on what transpired at the meetings between NCPAC and Congressman Abdnor, but subsequent events indicate that there was more agreed upon than simply for Mr. Abdnor to enter the race for the GOP Senate nomination.

Mr. Abdnor, after some delay, made his formal announcement for the Senate in a series of press conferences in various media markets around South Dakota on March 19 and 20. NCPAC, through its surrogate South Dakota affiliate, "People for an Alternative to McGovern", bought, paid for and ran an extensive series of television and radio commercials against Senator McGovern during the March 17 to March 24th period - effectively bracketing the Abdnor announcement with negative ads. This strongly suggests a degree of coordination that far exceeds any reasonable limit for those groups entitled to make independent expenditures under the Federal Election Act. The connection between Mr. Abdnor and NCPAC has been noted, as well, by Mr. Abdnor's primary opponent, Mr. Dale Bell.

SUMMARY AND ACTION REQUESTED FROM THE FEDERAL ELECTION COMMISSION

NCPAC has far exceeded the special First Amendment privileges granted to organizations and groups in the Federal Election Act by:

1. Overtly entering into the candidate selection procedure to select a candidate to seek the South Dakota GOP Senate nomination in 1980.
2. By paying for and conducting a public opinion poll designed for the sole purpose of causing the candidate (Congressman Abdnor) to enter the race.
3. By consulting with Congressman Abdnor - to encourage him to enter the race.
4. By cooperating with Congressman Abdnor and his campaign in arranging negative media to run simultaneously with Abdnor's formal announcement for the 1980 GOP/South Dakota Senate nomination.

By having acted outside of the acceptable limits of an organization entitled to make independent expenditures in political contests, NCPAC has ceased to be an "independent group" and should now be classified as a Political Action Committee, subject to all the limitations and prohibitions on their actions as is any other PAC.

At a minimum, NCPAC should be precluded from expending any further funds in South Dakota for any purpose. Its surrogate committee, the "People for an Alternative to McGovern" should be dissolved and its remaining funds transferred back to its parent group (NCPAC). Its direct mail into South Dakota should be prohibited, and it should be foreclosed from any transfer of funds, goods or services to any PAC, group or organization for expenditure or use in South Dakota between now and the general election, November 4, 1980.

NCPAC, in its classification as a Political Action Committee - without "independent spending" status - has already exceeded the \$5,000 limitation by several times in the 1980 calendar year, not to mention its substantive expenditures during 1979.

Whether the NCPAC actions in concert with Congressman Abdnor constitute a covert intent to knowingly evade the provisions of the Federal Election Act - and what civil or criminal penalties might be appropriate if such a determination is made will be up to the Federal Election Commission.

But if the FEC fails to stop this activity - the way will be open for any group, initially qualified to make independent expenditures under the Act, to actively involve itself in the political process in the several states and make meaningless any heretofore applied constraint on their activities.

#



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 19, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert F. Bauer, Esq.
1101 Seventeenth Street, N.W.
Washington, D.C. 20036

Re: MUR 1244

Dear Mr. Bauer:

This is in response to your letter of June 13, 1980, requesting an opportunity to inspect and copy the time-stamped page of the complaint filed against the National Conservative Political Action Committee ("NCPAC") on May 2, 1980, and denominated as MUR 1231. You indicate that the time the complaint was received is relevant to your clients' defense to the alleged confidentiality violation in MUR 1244.

In light of the fact that you represent the complainant in MUR 1231 and are thus already aware of its contents, we will permit you to examine and copy the time-stamped page of that complaint. Please be advised, however, that the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) and 11 C.F.R. § 111.21 still applies to your handling of this document.

Sincerely,

A handwritten signature in dark ink, appearing to read "Charles N. Steele".

Charles N. Steele
General Counsel

000402141

PS Form 3811, Aug. 1978

• **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 *Robert F. Bauer*
1101 Seventeenth St., N.W.
Wash., D.C. 20036

3. ARTICLE DESCRIPTION
 REGISTERED NO. _____ CERTIFIED NO. *86LSN6* INSURED NO. _____
 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE ☒ Addressee ☐ Authorized agent
Deane Hamlett

DATE OF DELIVERY *6-23-80* POSTMARK _____

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE _____ CLERK'S INITIALS _____

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

★ GPO 1978-272-302

MUR 1244

Thomas

RECEIVED

DEC 16 94

'80 JUN 17 PM 12:05

LAW OFFICES

ROBERT F. BAUER

SUITE 406

1101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

(202) 296-0555

June 13, 1980

000007

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

Re: MUR 1244

Dear Sir:

I am the attorney authorized to represent Senator George McGovern and Mr. George Cunningham, who have been separately named respondents in the above captioned matter. Specifically, it is the allegation of the complainant in MUR 1244, the National Conservative Political Action Committee (NCPAC), that both Senator McGovern and Mr. Cunningham violated the confidentiality provisions of the FEC regulations, Section 111.21, in making public, following its filing, a complaint initiated against NCPAC by the South Dakota Democratic Party (MUR 1231).

In making this allegation against Senator McGovern and Mr. Cunningham, NCPAC makes a key factual allegation, namely, that the South Dakota Democratic Party filed its complaint at 1:38 p.m. on May 2, 1980. This allegation, which is not consistent with records kept by the Party, appears to be based on the complainant's reading of the time-stamped Party complaint filed with the FEC on May 2. This time-stamped complaint, therefore, constitutes evidence in this case, and Senator McGovern and Mr. Cunningham will be unable to effectively prepare their defense unless they are allowed to inspect--and to copy--the time-stamped facing page of the Party's complaint in MUR 1244.

Accordingly, on behalf of Senator McGovern and Mr. Cunningham, I am hereby requesting that I be given the opportunity to inspect and copy the page in question at the earliest possible opportunity. As I stated previously, an expeditious

JUN 17 PM 12:47

RECEIVED
OFFICE OF THE
GENERAL COUNSEL

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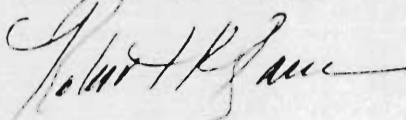
ROBERT F. BAUER

Charles Steele, Esquire
June 13, 1980
Page Two

response to this request is necessary to enable Senator McGovern and Mr. Cunningham to proceed with the preparation of their defense.

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

Very truly yours,



Robert F. Bauer

RFB:erk

cc: Scott Thomas

00040214144

ROBERT F. BAUER

SUITE 406

101 SEVENTEENTH STREET, N.W.

WASHINGTON, D.C. 20036



THE NAACP - SHIRLEY
IT WASN'T EASY
IT ISN'T EASY



Scott Thomas, Esquire
Office of General Counsel
Federal Election Commission
1325 K Street, N. W.
Washington, D. C.

800402141

ROBERT F. BAUER

SUITE 406

101 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036



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

0004021414



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 6, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

George V. Cunningham
Dirksen Senate Office Building
Room 4239
Washington, D.C. 20510

Re: MUR 1244

Dear Mr. Cunningham:

This letter is to notify you that on June 2, 1980, the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of this complaint is enclosed. We have numbered this matter MUR 1244. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you in 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 remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you intend to be represented by counsel in this matter, please advise the Commission by 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.

100400214147

Letter to: Mr. George V. Cunningham
Page Two

If you have any questions, please contact Scott Thomas, 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
Charles N. Steele
General Counsel

Enclosure

1. Complaint
2. Procedures

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).
☐ 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:
George V. Cunningham

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. | INSURED NO.
| *945082* |

4. (Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
B. Mickley

4. DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

WASHINGTON, D.C. STA. NO. JUN 10 1980
CLERK'S INITIALS

GPO: 1978-272-382

MUR 1244 Thomas

000400214148



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 6, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable George McGovern
Dirksen Senate Office Building
Room 4239
Washington, D.C. 20510

Re: MUR 1244

Dear Senator McGovern:

This letter is to notify you that on June 2, 1980, the Federal Election Commission received a complaint which alleges that you may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") or Chapters 95 and 96 of Title 26, U.S. Code. A copy of this complaint is enclosed. We have numbered this matter MUR 1244. Please refer to this number in all future correspondence.

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

If you intend to be represented by counsel in this matter, please advise the Commission by 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.

00040014149

Letter to: The Honorable George
McGovern

Page Two

If you have any questions, please contact Scott Thomas,
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
Charles N. Steele
General Counsel

Enclosure

1. Complaint
2. Procedures

PS Form 3811, Aug 1978

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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, 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:
The Hon. George McGovern

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. | INSURED NO.
| *945084* |
(Always obtain signature of addressee or agent)

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

4. DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE

WASHINGTON, D.C. 20540
0861
6
N
CLEAN
MAILS

Mar 1244 Thomas

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 6, 1980

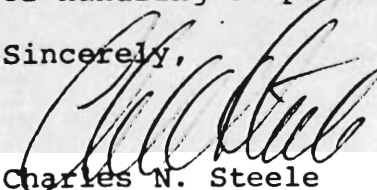
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John T. Dolan
Chairman
National Conservative Political
Action Committee
1500 Wilson Blvd.
Suite 513
Arlington, Virginia 22209

Dear Mr. Dolan:

This letter is to acknowledge receipt of your complaint of May 30, 1980, against Senator George McGovern and George Cunningham which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondents will be notified of this complaint within 5 days and a recommendation to the Federal Election Commission as to how this matter should be initially handled will be made 15 days after the respondents' 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

Enclosure

00040214151

● **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
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☐ RESTRICTED DELIVERY
Show to whom, date, and address of delivery: _____
(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO
John D. Dolan

3. ARTICLE DESCRIPTION
REGISTERED NO. _____ CERTIFIED NO. *945053* INSURED NO. _____
(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☒ Authorized agent
John D. Dolan

4. DATE OF DELIVERY _____ POSTMARK _____

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE _____ CLERK'S INITIALS _____

PS Form 3811, Aug. 1978

RETURN RECEIPT REGISTERED, INSURED AND CERTIFIED MAIL

1244

Thomas

National Conservative Political Action Committee

RECEIVED 1244
GCC #1517
MAY 30 PM 4:10

1500 wilson blvd. suite 513 arlington, va. 22209 (703) 522-2800

May 30, 1980

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

Dear Members of the Commission:

208257

This letter constitutes a complaint filed with you by National Conservative Political Action Committee, a multi-candidate political committee, in accordance with 2 U.S.C. 437g.

The records of the Federal Election Commission will reflect the fact that the South Dakota Democratic Party filed a complaint with the Federal Election Commission on May 2, 1980 at 1:38 o'clock in the afternoon. The complaint, which names National Conservative Political Action Committee as the respondent, has been designated MUR 1231.

On May 8, 1980, an article was published in Roll Call entitled "McGovern Challenges NCPAC," in which it was reported that Senator George McGovern and an individual described as a McGovern aide, George Cunningham,* discussed in public the fact that the subject complaint had been filed. The fact that the public statements of Messrs. McGovern and Cunningham were made after the complaint was filed is further evidenced by the statement in the second paragraph of the article, a copy of which is attached, that: "The complaint was filed by the South Dakota Democratic Party before the Federal Election Commission." (Emphasis added.)

In view of the fact that National Conservative Political Action Committee did not authorize Messrs. McGovern and Cunningham to make public the complaint designated as MUR 1231, it appears that Senator George McGovern and Mr. George Cunningham may have violated the provisions of 2 U.S.C. 437g(a)(12)(A) and of 11 CFR 111.21. Those sections provide,

*It appears that George Cunningham is George V. Cunningham, Senator McGovern's Administrative Assistant.

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on JUN 2 AM 11:04

GENERAL COUNSEL

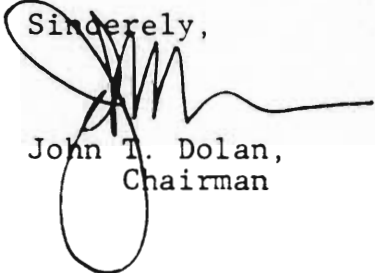
Federal Election Commission
Page Two

in essence, that no complaint filed with the Commission shall be made public by any person without the written consent of the respondent. (See also, the decision of the Commission in MUR 1161.) Furthermore, based upon the fact that he was a member of the United States Senate which considered and voted upon H.R. 5010 (P.L. 96-187), Senator McGovern knew, or should have known, of the provisions of 2 U.S.C. 437g(a)(12)(A). As a consequence, it is suggested that the alleged violation by Senator McGovern should be considered to have been knowing and willful within the meaning of 2 U.S.C. 437(a)(12)(B), which provides the offending person shall be fined not more than \$5,000.00.

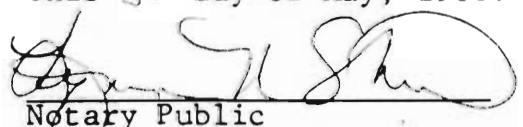
Your attention to this matter will be appreciated.

Respectfully submitted,

Sincerely,


John T. Dolan,
Chairman

Sworn to before me
this 30 day of May, 1980.


Notary Public

My Commission Expires on
December 27, 1983.

00040214154

Front Page	Eds Page	Other Page

ROLL CALL

-WASHINGTON, D.C.-

MAY 8 1980

WEEKLY--9,048

McGovern Challenges NCPAC

By Maggie Lawson

Sen. George McGovern (D-SD) is supporting a complaint alleging that the National Conservative Political Action Committee (NCPAC) overstepped its legal bounds in the effort to persuade Rep. James Abdnor (SD) to run for McGovern's Senate seat.

The complaint was filed by the South Dakota Democratic Party before the Federal Election Commission.

"NCPAC has far exceeded the special First Amendment privileges granted to organizations and groups in the Federal Election Act," according to McGovern.

The ultra-conservative political group is alleged to have overtly entered into the candidate selection procedure to select a candidate for the 1980 South Dakota Republican nomination for the Senate.

"Investigation is also being pursued in certain other states—Idaho, Iowa, and Indiana—to determine if NCPAC was involved in the selection of candidates," said McGovern aide George Cunningham.

The state Democratic parties in the other states might join in the suit, he says.

Much of the South Dakota controversy centers on a public opinion poll which McGovern says was "designed for the sole purpose of causing the candidate (Congressman Abdnor) to enter the race."

Arthur Finkelstein, NCPAC's pollster, and Terry Dolan, executive director of NCPAC, went to see Abdnor "armed with this poll," for the purpose of urging the Congressman to enter the Senate race, according to McGovern.

Cunningham said Abdnor amended his first quarter '80 campaign report "to acknowledge a \$500 contribution in kind from NCPAC for this poll which indicates a very close association between NCPAC and Abdnor."

A spokesman for Abdnor acknowledged that the congressman received a letter from Terry Dolan informing Abdnor of the in-kind contribution to "Friends of Jim Abdnor" for the value of the survey information

presented to the South Dakota Congressman at a meeting on December 6, 1979.

Dolan advised the Congressman that he must indicate the contribution in his campaign finance report.

On March 10, 1980, Abdnor notified Edmund Henshaw, Clerk of the House, that he was amending his first quarter report to show the in-kind contribution from NCPAC.

"We see nothing wrong with this," said Jane Boorman, Abdnor's press secretary.

McGovern, however, views NCPAC's role in convincing Abdnor to run for the Senate as a breach of "the protective veil" provided to the organization to make "independent and unlimited expenditures."

"The question presented to the Federal Election Commission is whether a committee (NCPAC) should be able to 'step in and out' of its independent status at will," says McGovern.

McGovern has joined the South

(Continued on Page 6)

McGovern - Abdnor

(Continued from Page 1)

Dakota Democratic Party in asking the FEC to determine whether the NCPAC's actions in connection with Abdnor "constitute a covert intent to knowingly evade the provisions of the Federal Election Act."

South Dakota is one of the five states with incumbent Democratic Senators seeking re-election targeted by the NCPAC in 1979.

During that year, NCPAC launched a negative media campaign costing around \$112,093, and aimed at McGovern, who says his announcement for reelection was "a foregone conclusion" at the time.

Meanwhile, the Republicans staged a search for a strong opponent to McGovern. South Dakota's Lieutenant Governor Lowell Hansen was considered a likely choice, but on Oct. 8, 1979 he announced his decision not to run.

On the same day, a committee called the "People for an Alternative to McGovern" was formed. Chairman was Minnehaha County State Representative Hal Wick.

McGovern claims the committee is hardly more than a conduit for NCPAC expenditures in South Dakota.

Abdnor was one of several possible GOP candidates for the Senate mentioned in October, but the Congressman remained unconvinced that he would be a viable challenger to McGovern.

At this point, NCPAC "took it upon themselves to mount a campaign to bring Abdnor into the race," McGovern charges.

NCPAC commissioned pollster Arthur Finkelstein & Associates of New York to conduct a survey in South Dakota. The poll reportedly showed that Abdnor could successfully challenge McGovern for the Senate.

Finkelstein and Dolan then met with Abdnor and urged him to enter the race.

McGovern says "subsequent events indicate that there was more aimed upon than simply for Mr.

Abdnor to enter the race for the GOP Senate nomination."

When Abdnor formally announced for the Senate in a series of press conferences on March 19 and 20, "People for an Alternative to McGovern" bought and ran an extensive series of radio and TV commercials "effectively bracketing the Abdnor announcement with negative ads," said McGovern.

"This strongly suggests a degree of coordination that far exceeds any reasonable limit for those groups entitled to make independent expenditures under the Federal Election Act," McGovern asserts.

Abdnor has denied that NCPAC played any direct role in his decision to seek the South Dakota Senate seat.

"At the time of the South Dakota state fair the last week in August and early September, Hal Wick commented to Abdnor that they had some interesting polls that indicated he'd do very well against McGovern," according to Jane Boorman, Abdnor's press secretary.

"Abdnor said he didn't believe the polls," said Boorman.

She acknowledged that Dolan and Finkelstein arranged for an appointment with Abdnor on Oct. 9, 1979.

"They brought information in showing Abdnor would do well because of his high name recognition," said Boorman.

"Abdnor said 'you haven't shown me I can beat McGovern,'" she said.

On December 6 Dolan and Finkelstein met again with Abdnor. This time they brought a head-on-head poll showing Abdnor could beat McGovern.

"Abdnor still wasn't convinced," said Boorman.

The Congressman then commissioned his own informal survey of South Dakota voters, and "though the results were very encouraging, Abdnor said he still didn't believe it," said Boorman.

Abdnor then tried another targeted poll into five population areas and got the same results, she said. Still cautious, Abdnor commissioned a Decision Making Information survey.

"This in-depth poll showed Abdnor with a 14 point margin over McGovern," explained Boorman. "The results from this caused him to decide to run."

The NCPAC polls "didn't convince Mr. Abdnor of anything," says Boorman, although she admits "they whetted his interest."

"Abdnor is trying to separate himself from NCPAC, but sometimes like a tarbaby these things stick to your hands," says McGovern aide George Cunningham.

McGovern wants the FEC to prohibit NCPAC from spending any further funds in South Dakota "for any purpose."

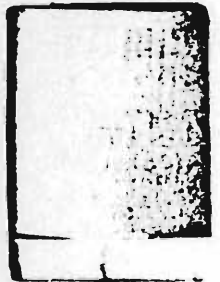
"NCPAC, in its classification as a Political Action Committee—without 'independent spending' status—has already exceeded the \$5,000 limitation by several times in the 1980 calendar year, not to mention its substantive expenditures during 1979," McGovern charges.

"If the FEC fails to stop this activity, the way will be open for any group, initially qualified to make independent expenditures under the Act, to actively involve itself in the political process in the several states and make meaningless any heretofore applied constraint on their activities," asserts McGovern.

Federal election law forbids an independent organization to communicate with a candidate or his aides, once that candidate has announced for office. It is not illegal for such a group to consult a potential candidate or to encourage him to enter a race.

However, NCPAC's handling of funds in the Abdnor matter likely will be a factor in the FEC's decision.

The FEC is prohibited by law from discussing a pending complaint.



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National Conservative
Political Action Committee

1
1500 wilson blvd. suite 513 arlington, va. 22209 (703) 522-2800

RECEIVED

'79 MAY 30 PM 4:10

General Counsel
Federal Election Commission
1325 K St. NW
Washington, DC 20463

8004021



FEDERAL ELECTION COMMISSION

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

THIS IS THE BEGINNING OF MUR #

1244

Date Filmed

10/1/80

Camera No. --- 2

Cameraman

SPC