FEDERAL ELECTION COMMISSION

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

THIS IS THE END OF MUR # 1275

Date Filmed 10/30/80 Camera No. --- 2

Cameraman GPC

PS Form 3811, Aug 1978

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Robert C. Heckman,
Chairman

3. ARTICLE DESCRIPTION:

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MUR 1275 - Weissenborn

PS Form 3811, Aug. 1978

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2. ARTICLE ADDRESSED TO:

James M. McHale

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MUR 1275 - Weissenbau

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 9, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert C. Heckman, Chairman
Fund for a Conservative Majority
1022 Wilson Boulevard
Suite 1401
Arlington, Virginia 22209

RE: MUR 1275 (80)

Dear Mr. Heckman:

The Federal Election Commission has reviewed the allegations contained in your complaint of August 15, 1980, and has determined that on the basis of the information provided by the respondents, there is no reason to believe that 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 establish a violation of the Act, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 523-4143.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert C. Heckman, Chairman
Fund for a Conservative Majority
1022 Wilson Boulevard
Suite 1401
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Should additional information come to your attention which you believe establish a violation of the Act, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 523-4143.

Sincerely,

Charles N. Steele
General Counsel

AW
10/8/80

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 9, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James M. McHale, Esquire
Counsel to Carter-Mondale
Reelection Committee, Inc.
and Timothy G. Smith
1111 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036

RE: MUR 1275 (80)

Dear Mr. McHale:

On August 19, 1980, the Federal Election Commission notified your clients, the Carter-Mondale Reelection Committee, Inc., and Timothy G. Smith, of a complaint alleging that they may have violated the Federal Election Campaign Act of 1971, as amended.

The Commission on October 8, 1980, determined that on the basis of the information in the complaint and the information which you provided, 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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James M. McHale, Esquire
Counsel to Carter-Mondale
  Reelection Committee, Inc.
  and Timothy G. Smith
1111 Nineteenth Street, N.W.
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The Commission on October 8, 1980, determined that on the basis of the information in the complaint and the information which you provided, 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

AW 10/8/80

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1275
Carter/Mondale Reelection Committee	)	
Timothy G. Smith	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on October 8, 1980, the Commission decided by a vote of 6-0 to take the following actions regarding MUR 1275:

1. Find NO REASON TO BELIEVE that the Carter/Mondale Reelection Committee and Timothy G. Smith violated 2 U.S.C. §437g(a)(12)(A) or 11 C.F.R. §111.21 by sending letters to broadcasters on July 18, 1980.

2. Send the letters as attached to the First General Counsel's Report dated October 3, 1980.

3. CLOSE THE FILE.

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

Attest:

10/8/80 Marjorie W. Emmons

Date

Marjorie W. Emmons
Secretary to the Commission

Received in Office of the Commission Secretary: 10-3-80, 10:40
Circulated on 48 hour vote basis: 10-3-80, 2:00

October 3, 1980

MEMORANDUM TO: Marjorie W. Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 1275

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

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 11-3-80

80 OCT 3 A10: 40

MUR # 1275
DATE COMPLAINT REC'D.
BY OGC 8/15/80

STAFF MEMBER
Anne Weissenborn

COMPLAINANT'S NAME: Fund for a Conservative Majority

RESPONDENTS' NAMES: Carter/Mondale Reelection Committee
Timothy G. Smith

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

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

The complaint alleges that the Carter/Mondale Reelection Committee ("the Committee") and Timothy G. Smith, the Committee's general counsel, have violated the confidentiality requirement of 2 U.S.C. § 437g(a)(12)(A) and 11 C.F.R. § 111.21 by notifying broadcasters that the Committee had filed a complaint against the Reagan for President Committee, "so-called 'independent groups'", and others. The Fund for a Conservative Majority ("FCM") was one of the respondents in the Committee's complaint, which has been designated MUR 1252.

FACTUAL AND LEGAL ANALYSIS

On July 18, 1980, the Committee apparently sent letters to broadcasters, signed by Timothy G. Smith as general counsel, informing them that the Committee had filed the above complaint. The complaint was filed on July 2, 1980. The letter to the broadcasters contained the following language:

> The Carter/Mondale Reelection Committee, Inc., the official and authorized campaign committee for President Carter, and the Democratic National Committee have filed a complaint with the Federal Election Commission against these so-called "independent groups", the Reagan for President Committee, and others alleging that the Federal

> Election Campaign Act will be violated if the Republican nominees receive public funding of their campaign while at the same time receiving massive support from alleged "independent" backers.

In its present complaint FCM alleges that the Committee and Timothy G. Smith have knowingly and willfully violated 2 U.S.C. § 437g(a)(12)(A) and 11 C.F.R. § 111.21 by making public the filing of the complaint without the written consent of the respondents.

The Commission has recently addressed the issue of the publication of complaints by complainants in MURs 1244 and 1266. The Commission in those instances determined that the confidentiality provision of the statute does not prevent a complainant from making public the fact that it has filed a complaint and the complaint's substance. The statute only prohibits persons from making public a Commission notification or investigation.

In the present instance the letter to the broadcasters did not mention any notification or investigation by the Commission. Thus this Office finds no basis for finding a violation of the statute or the regulations.

RECOMMENDATION

1. Find no reason to believe that the Carter/Mondale Reelection Committee and Timothy G. Smith violated 2 U.S.C. § 437g(a)(12)(A) or 11 C.F.R. § 111.21 by sending letters to broadcasters on July 18, 1980.

2. Send the attached letters.

3. Close the file.

Attachments

A - Complaint
B - Response
C - Proposed letter (2)

THE FUND FOR A CONSERVATIVE MAJORITY

80 AUG 15 AM 11: 14

80 AUG 15 P 4: 35

August 6, 1980

General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 10463

Dear Members of the Commission:

This letter constitutes a complaint filed with the Commission by the Fund for a Conservative Majority ("FCM"), a multi-candidate political committee, in accordance with 2 U.S.C. §437(g).

The records of the Commission will reflect the fact that the Carter/Mondale Reelection Committee, Inc., on July 2, 1980, filed a complaint with the Commission alleging that independent expenditures made by FCM and its project, "Citizens for Reagan in '80", (among others named in the complaint) on behalf of the election of presidential candidate Ronald Reagan, violate the conditions for eligibility for Mr. Reagan to receive payment of public funds from the United States pursuant to the Presidential Election Campaign Fund Act, 26 USC §§9001, et seq. That complaint has been designated MUR 1252.

Attached hereto is a copy of a letter, with attachments, dated July 18, 1980, prepared on the letterhead of the Carter/Mondale Presidential Committee, Inc., which bears the signature of Timothy G. Smith, general counsel for the Carter/Mondale Presidential Committee, Inc. Upon information and belief, the attached letter was sent nationwide to numerous media broadcasters.

Please note the second paragraph of the letter which states:

> The Carter/Mondale Reelection Committee, Inc., the official and authorized campaign committee for President Carter, and the Democratic

CHAIRMAN • Robert Heckman • DIRECTORS • Kenneth F. Boehm, Esq. • Jeffrey D. Kane
1022 WILSON BOULEVARD • SUITE 1401 • ARLINGTON, VIRGINIA 22209 • (703) 524-4400

80 AUG 15 AM: 14

General Counsel
Page Two
August 6, 1980

National Committee have filed a complaint with the Federal Election Commission against . . . so-called "independent groups," the Reagan for President Committee, and others alleging that the Federal Election Campaign Act will be violated if the Republican nominees receive public funding of their campaign while at the same time receiving massive support from alleged "independent" bankers.

FCM did not authorize Mr. Smith or the Carter/Mondale Committee to make public the complaint designated as MUR 1252. Accordingly, it appears that Timothy Smith and the Carter/Mondale Reelection Committee, Inc. may have violated the provisions of 2 U.S.C. §437g(a)(12)(A) and of 11 CFR §111.21. Those sections provide, 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). It is further alleged that Timothy Smith and the Carter/Mondale Reelection Committee, Inc. knowingly and willfully violated 2 U.S.C. §437g(a)(12)(A), and thus are subject to a penalty of not more than $5,000.00, under the provisions of 2 U.S.C. §437g(a)(12)(B).

Respectfully submitted,

Robert C Heckman

Robert C. Heckman, Chairman

Sworn to before me this 11th day of August, 1980.

Notary Public

MY COMMISSION EXPIRES 6/12/84

CARTER/MONDALE P[illegible]SIDENTIAL COMMITTEE, [illegible]
1413 K STREET, N.W., WAS[illegible]GTON, D.C. 20005
(202) 789-7200

80 AUG 15 AM : 15

Robert S. Strauss, Chairman
Tim Kraft, National Campaign Manager
S. Lee Kling, Treasurer
Evan S. Dobelle, National Finance Chairman

July 18, 1980

Dear Broadcaster:

It has come to the attention of the Carter/Mondale Reelection Committee, Inc. that allegedly "independent" supporters of Ronald Reagan's campaign plan massive purchases of broadcasting time to air highly controversial spots, containing attacks on either the President, other leading Democrats, or the Democratic Party generally. The Wall Street Journal, for example, reported on June 19, 1980, page 1, that groups identified as "Americans for Change," "Citizens for Reagan in '80," "Americans for Reagan," and "The Ronald Reagan Victory Fund" are among those which intend to spend over $50 million to try to influence the outcome of the November election. (See also the attached New York Times editorial and a recent Associated Press article on the commericals apparently already being distributed by one of the groups.)

The Carter/Mondale Reelection Committee, Inc., the official and authorized campaign committee for President Carter, and the Democratic National Committee have filed a complaint with the Federal Election Commission against these so-called "independent groups", the Reagan for President Committee, and others alleging that the Federal Election Campaign Act will be violated if the Republican nominees receive public funding of their campaign while at the same time receiving massive support from alleged "independent" backers.

In addition, a lawsuit was recently filed by Common Cause against one of these groups challenging its independent status and charging that the proposed expenditures in support of Reagan's candidacy will seriously distort and undermine the plan for public financing of Presidential election campaigns enacted by Congress in 1974. Finally, the Federal Election Commission this week has filed its own action seeking a judicial ruling that would have the effect of prohibiting these groups from making their planned multi-million dollar expenditures while the Reagan campaign is also accepting more than $29 million in taxpayer funds. These cases are pending in the Federal District Court in Washington, D.C.

We are confident that these proceedings will establish that such groups are not permitted under the law to make such expenditures on behalf of a presidential candidate who also is receiving public financing. Further, we believe that it will be determined that the particular committees in question and their organizers are not, and cannot be, truly independent of the Reagan campaign.

However, in either event, the purchase of broadcasting time by the so-called "independent" groups under such circumstances raises serious legal questions which you should consider.

Even if some or all of these groups are deemed legally capable of making independent expenditures for Reagan as a matter of federal election law:

*They are not entitled to the reasonable access provision of Section 312(a)(7) of the Communications Act.

*The broadcast of programs dealing with controversial issues of public importance paid for by such "independent" groups may obligate you under the FCC's Fairness Doctrine to provide time without charge for the broadcast of opposing viewpoints.

*Any such program which constitutes a personal attack will obligate you, under the FCC rules, to notify the person or persons attacked and to offer them a free opportunity to respond.

*To the extent any such program involves a "political use" by a qualified candidate within the meaning of Section 315(a) of the Communications Act, you will be required to offer equal time to all other legally qualified candidates, and, to the extent that the political use was without cost to the candidate whose candidacy was promoted in the broadcast, you would be required to offer free time to all other legally qualified candidates. See Letter to Hon. Mike Monroney, 40 F.C.C. 251 (1952).

If, as claimed in the actions mentioned above, the groups in question are found to be acting in concert with the Reagan for President Committee or otherwise ineligible for the making of "independent expenditures," then:

*The purchase by them of broadcast time may involve serious violations of law that could potentially involve a participating station in litigation before courts and federal agencies.

*The purchase of time by such groups would obligate a station to provide equal opportunities to all opposing candidates and their affiliated supporters.

As is apparent from this letter, we believe that expenditures, by allegedly independent backers of one candidate, of massive funds for the purchase of broadcast time to influence the result of the Presidential Election in favor of that candidate is a direct threat to the delicately balanced system of campaign spending limitations and public financing mandated by Congress for the conduct of Presidential elections.

We hope you will give careful consideration to the problems inherent in use of the broadcast media for these purposes and, if you have any questions, we urge you to consult with your counsel before accepting requests for the purchase of political broadcast time by any group which is not the official, authorized committee of a qualified candidate.

Sincerely,

Timothy G. Smith

Timothy G. Smith
General Counsel

cc: Federal Communications Commission

Attachments

TGS:jm

Return of the Fat Cats

The cork has been popped off the campaign bottle by some prominent Republicans who call themselves "Americans for Reagan." They're out to raise $30 million in so-called "independent" political contributions and they don't care if it shatters the law's restraints on private election money. The electorate can brace itself for the return of the big spenders whose money talks and whose gifts are not forgotten. We're in for a noisy campaign, just when it seemed that election reform laws might let us lower our voices.

To give these highly organized individualists their due, they are probably within their constitutional rights. Congress tried to limit this kind of funding to $1,000 per person as part of a comprehensive Campaign Reform Act in 1974. It appropriated public funds for campaigning by the major party candidates provided they forgo private fund-raising and limit their spending to the ceilings set by Congress. The intention was to enforce the limit by charging candidates for every penny spent by anyone to advance their cause, except for $1,000 that individual citizens might choose to invest in electioneering by their own lights.

The Supreme Court, however, said in 1976 that the $1,000 limit on people not involved in a candidate's campaign was a violation of their First Amendment rights of free speech. The justices brushed aside the warnings that large-scale "independent" giving could ruin the rest of the law and subvert the ban on huge private funds for Presidential campaigns. The Court held that "truly independent" expenditures, not coordinated with official campaign organizations, should not be forbidden without concrete evidence of abuse.

Will the 1976 conjecture of abuse become this year's reality? We fear so. These so-called independent givers want to price the 1980 Republican campaign at double the limits envisioned by Congress, more than matching the $29-million subsidy that their candidate will receive from public funds.

•

We worry about "Americans for Reagan" not from solicitude for President Carter. He enjoys an incumbency that is literally priceless, and displays no tenderness toward opponents. We worry for ourselves because of the deluge of television commercials that will leave the voter reeling but be effective enough to require a matching effort by other candidates. Thus will die the effort to spare our politics from the deals that are needed to raise such huge sums.

For the moment we are reduced to wondering how independent these independents really are — folks like Melvin Laird, Clare Booth Luce, Senator Harrison Schmidt of New Mexico, Senator Dave Durenberger of Minnesota, former Senator Carl Curtis of Nebraska, and John Harmer, Ronald Reagan's former lieutenant governor. They say they can prove to the Federal Election Commission, if necessary, that they have nothing to do with the formal Reagan campaign. If they can, they'll earn their constitutional protection but hardly the country's gratitude. Not every constitutional right is attractive or wise in its exercise.

The tension is basic to American society: a conflict between free political expression and equality of political opportunity. An imaginative reform law has tried to equalize the lung-power of the rich and not-so-rich by giving money to both sides in a Presidential race. Now one side wants to spend more, even at the risk of being labeled the party of the fat cats. Congress and the courts should monitor this sorry development. They will surely have to deal with the problem anew.

80 AUG 15 A11 : 15

Two groups may spend $9 million for Reagan

BALT. SUN P. A7

Detroit (AP)—Two independent committees yesterday announced plans to raise as much as $9 million to spend in support of Ronald Reagan's presidential candidacy, beginning with television commercials right after his nomination.

The National Conservative Political Action Committee (NCPAC) previewed a series of 10 television commercials that it will begin airing in selected markets Friday and will run through the November 4 presidential election.

At the same time, Americans for Reagan, headed by Senator Jesse Helms (R, N.C.), said it has set a fund-raising goal of $4 million for the November election.

Terry Dolan, chairman of the NCPAC, said his group would spend at least $1 million and could spend as much as $5 million.

At least seven committees have announced plans to support Mr. Reagan's Republican candidacy with independent expenditures this fall. The Federal Election Commission disclosed plans last week to take legal action against the groups, claiming their activity violates legal restraints on campaign spending and contributions. But the committees insist they are operating legally and only exercising their constitutional right to free speech.

Most of the NCPAC television spots feature film clips from a Reagan campaign speech and man-on-the-street comments. Each one includes the slogan, "He'll make America great again."

Some, however, have very strong anti-Carter messages, including one that features the quote from President Carter, "Why not the best?" and then flashes pictures of Carter staffers who have left the administration under cloud or controversy.

Mr. Dolan said most of his committee's Reagan support is expected to be positive, but "we reserve the right and possibility that we will go very, very negative."

First showings of the commercials will be in the Midwest, but future airing will depend on the Reagan campaign strategy and market testing done for the committee by a professional pollster.

Although such committees have come under fire recently, Mr. Dolan said there was nothing illegal in coordinating independent support with what the official Reagan campaign is doing as long as there is no direct contact with the campaign.

Mr. Dolan also said his group would coordinate with other independent committees supporting Mr. Reagan.

Both Mr. Dolan and Tom Ellis, chairman of Americans for Reagan, also indicated that much of their effort may be directed at John B. Anderson, a Republican congressman who withdrew from the GOP primaries to run for president as an independent.

"Americans for Reagan will produce and broadcast TV commercials that make it clear that Mr. Anderson is close to the ultra-liberal Kennedy wing of the Demo-[illegible]

cratic Party and clearly out of step with the voters," Mr. Ellis said.

Mr. Dolan said polling done for his group found that Mr. Anderson was taking more votes away from Mr. Reagan than from Mr. Carter in every state tested.

"We plan to go after John Anderson if that is required," Mr. Dolan said. "And we think it may be."

GCC#2578

80 SEP 9 P1:22

BEFORE THE

FEDERAL ELECTION COMMISSION

In the Matter of the Carter-Mondale Reelection Committee, Inc.	)	
and	)	MUR 1275 (80)
Timothy G. Smith, its General Counsel,	)	
Respondents.	)	

RESPONDENTS' STATEMENT WHY THE COMPLAINT FAILS TO STATE A VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT

Respectfully submitted,

James M. McHale
1111 19th Street, N.W.
Suite 500
Washington, D.C. 20036
202/463-2516

Thomas F. Holt, Jr.
1850 K Street, N.W.
Washington, D.C. 20006
202/828-5880

Of Counsel

Robert B. Barnett
Hill Building
Washington, D.C. 20006

September 8, 1980

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BEFORE THE

FEDERAL ELECTION COMMISSION

In the Matter of the Carter-Mondale Reelection Committee, Inc. and Timothy G. Smith, its General Counsel, Respondents.	)	MUR 1275 (80)

RESPONDENTS' STATEMENT WHY THE COMPLAINT FAILS TO STATE A VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT

PRELIMINARY STATEMENT

The instant case involves the question of what limits, if any, the Federal Election Campaign Act ("FECA" or the "Act") places on public reference by a complainant to a complaint it has filed with the Commission. Respondents respectfully submit that, at least in the context of the instant case, neither the Act nor the Commissions' regulations prohibit Respondents or others from referring to the fact that they had filed a complaint and its general subject matter. Respondents further submit that any other result would run counter to the First Amendment's prohibition on governmental limitation of speech.

FACTS

A. Background

Following the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976), substantial public controversy has surrounded the issue of so-called "independent" expenditures in support of presidential candidates. Over the past year, this controversy has gravitated toward the numerous organizations that have been formed to support the candidacy of former Governor Ronald Reagan. See, for example, "Surge in Independent Campaign Spending," Congressional Quarterly, vol. 38, no. 24 pp. 1635-1639. Several such organizations have pledged themselves to support Mr. Reagan's candidacy for the presidency. The controversy surrounding these independent expenditures has led to several legal actions, including one instituted by the Commission itself.

B. The Common Cause lawsuit

July, 1980 marked a flurry of activity challenging the legality of the support by Complainant and other "independent" groups for Mr. Reagan's presidential campaign if Mr. Reagan's campaign committee were also to receive federal campaign funds. Common Cause, the citizens' lobby, filed a lawsuit on

July 1, 1980 in the United States District Court for the District of Columbia charging a close relationship between one of the "independent" groups supporting Mr. Reagan and the committee officially authorized to conduct his campaign. This lawsuit received widespread press coverage. For example, the Associated Press Wire Service story of July 1 reads in part as follows:

> Common Cause, a citizens' action group, today filed a federal lawsuit seeking to stop a committee from its announced intention of spending $20 million to $30 million in support of Ronald Reagan's presidential candidacy.
>
> * * * * * * * *
>
> Common Cause claimed that since Reagan as the "virtually certain" candidate of the Republican Party will receive $29.4 million of federal funds for the post-convention campaign, he cannot receive private funds.

(Emphasis added). The United Press International Wire Service story of July 1 described the lawsuit in similar terms. It reads in part:

> Common Cause today filed suit to block Republican and Conservative groups from raising and spending $55 million in an independent effort to elect Ronald Reagan president. The two groups have announced they will raise the funds in addition to the $29.6 million in Federal money Reagan can directly spend on his campaign.

> Announcing the suit, Common Cause Chairman Archibald Cox said the independent fund raising violates campaign reform laws and would "return us to the old days of Watergate abuse."
>
> Common Cause also wrote the Federal Election Commission asking it [to] oppose the request by the Schmitt group for an advisory opinion that their effort is legal. The FEC may act on that request Thursday.

(Emphasis added).

C. The Carter-Mondale FEC Complaint

The Carter-Mondale Reelection Committee (hereinafter "Respondent Committee" or the "Committee"), was the next to take legal action, challenging the "independent" backers of Mr. Reagan's campaign. On July 2, 1980, it filed a forty-one page complaint with the Commission requesting principally that the Commission "decline to certify Mr. Reagan and the Republican candidate for Vice President as eligible to receive payments under the Fund Act." (This complaint is in the Commission's files as MUR 1252 (80)). Prior to the actual filing of the complaint, Respondent Committee held a press briefing on the subject of "independent expenditures" on behalf of Mr. Reagan's campaign and the Committee's decision to complain to the Commission about these activities.

Press stories in this regard appeared in several newspapers. See, for example, the July 3, 1980 Washington Star, The New York Times, and The Los Angeles Times. And the July 12, 1980 Congressional Quarterly pointed out similarities between the Committee's complaint and the Common Cause lawsuit.

D. The Commission's lawsuit

Next, the Commission itself brought a lawsuit against the Fund for a Conservative Majority ("FCM" or the "Complainant") and other "independent" groups to challenge their expenditures to aid Mr. Reagan's presidential campaign. The Commission filed its suit on July 15, 1980. The Commission's complaint shared the general purpose of the action that Common Cause filed in Court and the Complaint that Respondent Committee filed with the Commission.

For practical purposes, the Commission's lawsuit summarized many of the same facts alleged in the Common Cause lawsuit and Respondent Committee's complaint to the Commission; and the Commission's lawsuit generally sought the same relief as those two actions. See The Congressional Quarterly of July 26, 1980. The Commission's complaint made specific reference to FCM's activities in support of the Reagan Campaign, and it named FCM as a defendant.

E. Respondents' Statement

By the end of the week of July 14, 1980, the legal controversy surrounding "independent" expenditures in support of the Reagan/Bush campaign was a significant public issue. In fact, as a direct result of the Common Cause and Commission lawsuits (filed July 1 and July 15 respectively), and the Respondent Committee's complaint to the Commission, the media gave widespread publicity to the fact that the Reagan/Bush campaign was about to receive $29.4 million in federal funds while simultaneously receiving the support of an approximately equal amount of private funds. The media noted that the Reagan campaign's support by these independent groups raised many controversial issues.

In that context, Respondents herein published their July 18, 1980 letter which made reference to their July 2 complaint to the Commission. The purpose of the letter was to insure that broadcasters were aware of the novel legal issues raised by the activities of the independent backers of the Reagan Campaign. The National Association of Broadcasters subsequently conveyed similar information to its members. (See pp. 3-4 of Appendix A.)

F. The Complaint

By letter of August 6, 1980, Complainant FCM specifically complained of the following language appearing in Respondents' July 18, 1980 letter:

> The Carter/Mondale Reelection Committee, Inc., the official and authorized campaign committee for President Carter, and the Democratic National Committee have filed a complaint with the Federal Election Commission against . . . so-called "independent groups," the Reagan for President Committee, and others alleging that the Federal Election Campaign Act will be violated if the Republican nominees receive public funding while at the same time receiving massive support from alleged "independent" bankers (sic.) 1/

1/ While Respondents' complaint to the Commission named FCM, the Respondents' letter at issue here did not do so. Indeed, the paragraph in Respondents' letter that is specifically complained of does not refer to any organizations by name. In another paragraph, Respondents' letter refers to "Citizens for Reagan in '80", which FCM in its complaint describes as "its project." This assertion by FCM is undocumented and leads to the conclusion that FCM is not the real party in interest. The complaint is thus subject to dismissal in this ground alone.

The Respondent's letter also did not refer to any independent Reagan for President group as "bankers." Rather it simply referred to independent "backers."

FCM claims that Respondents publishing the above paragraph "violated the provisions of 2 U.S.C. 437g(a)(12)(A) and of 11 C.F.R. 111.21." FCM also claims that Respondents "knowingly and willfully violated" this provision of the Act. This is the totality of their allegation.

We respectfully submit that the Respondents' action comes nowhere close to violating either the Act or the regulations; we base our conclusion on the following analysis.

DISCUSSION

I. RESPONDENTS' MERE DISCLOSURE THAT THEY HAD FILED A COMPLAINT WITH THE COMMISSION DOES NOT CONSTITUTE A VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT.

A. The Act does not prohibit comment upon or disclosure of the filing of a complaint.

Complainant FCM alleges that Respondents violated the Act, 2 U.S.C. 437g(a)(12)(A), by publishing a letter stating that they had filed a Complaint with the Commission regarding FCM's activities on behalf of the Reagan Campaign. FCM's complaint is without merit and in direct conflict with the plain language of the relevant portion of the Act. Section 437g(a)(12)(A) of that Act states in pertinent part that:

> 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 an investigation is made.

(Emphasis added.) This provision makes no reference to the term "complaint" nor does it explicitly state or imply that a complaint may not be disclosed without written consent of the party who is the subject of the Complaint. *A fortiori*, this provision does not restrain complainants from publicly stating they have filed a complaint.

B. The Legislative History Reinforces the Inapplicability Of The Act.

While the Federal Election Campaign Act of 1976 was amended in 1979, Congress re-enacted without change this provision of the Act.[2/] The House version of the 1979 amendments would have extended the Act's confidentiality protection to the complaint phase of the Commission's administrative proceedings.[3/] The House bill was sent to the Senate for consideration. On December 18, 1979, the Senate adopted and passed the House version of the 1979 amendments, with a crucial difference -- the Senate deleted the term "complaint" from 437g(a)(12)(A) of the Act. Thus, it is clear that the Senate rejected the House's inclusion of the term "complaint" in the confidentiality provision of the Act, prefering to retain virtually the same language that was used in 1976. The

---

2/ The provision now appearing at 2 U.S.C. 437g(a)(12)(A) appeared as 2 U.S.C. 437g(a)(3)(b) in the 1976 version of the Act.

3/ The House language originally provided:

> Any complaint filed under this section, or 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 who is the subject of such complaint. . .

Cong. Rec. 7625.

Senate version, which excised the word complaint was then sent back to the House and passed there on December 20, 1979 with the word "complaint" deleted.

Thus while Congress considered enlarging the scope of the Act's confidentiality restrictions to include complaints, as well as notifications and investigations, the 1979 amendments, as finally passed, did not contain such an amendment. Accordingly, we respectfully submit that the Act's confidentiality provision applies only to a notification or investigation by the Commission after it has found reason to believe that a violation of the federal election laws may have occurred.

C. The Commission's Office of the General Counsel has already determined that the Act does not prohibit comment upon the filing of a complaint with the Commission.

The Commission accepted its General Counsel's recommendation in In the Matter of Common Cause, Ken Guido, MUR 804 (78). This case convincingly demonstrates that the Act's confidentiality prohibitions do not extend to the mere publication of the existence of a complaint and the general point of the complaint. In MUR 804, the Commission adopted its General Counsel's Report which reasoned that:

> Moreover, in explaining the Bill [the Federal Election Campaign Act of 1976] Congressman Hayes stated "'[D]etails of

> the investigation are not to be made public without the written consent of the person being investigated.'" 122 CONG. REC. H2532 (1976).
>
> While Common Cause and Ken Guido [the Respondents] may have publicized the Complaint filed by Common Cause with the Commission, they have not made public action taken by the Commission with regard to the Complaint; they have not made public the Commission's "notification or investigation" of the Complaint.

MUR 804 at 2-3 (Emphasis added).

Similarly in In the Matter of Common Cause, Fred Wertheimer, MUR 270 (76), the Commission also accepted the recommendation of its General Counsel to dismiss a complaint regarding the disclosure of a complaint. There, the American Medical Political Action Committee alleged that Common Cause had violated the Act's confidentiality provisions by disseminating publicity concerning a complaint it had filed with the Commission. In recommending that no further action be taken by the Commission, the General Counsel's Office concluded that:

> "[t]he Act refers to notifications or investigations after the Commission has found reason to believe a violation has occurred. Therefore, it would appear that the prohibition of 2 U.S.C. 437g(a)(3)(B) is not triggered until the Commission has found reason to believe [that a violation has occurred] pursuant to 2 U.S.C. 437g(a)(2)."

MUR 270 at p. 2 (Emphasis added).

Thus, the Commission's own construction of the Act firmly establishes that the its confidentiality prohibitions do not restrain a person from stating he has filed a complaint with the Commission and generally describing his claim.

II. RESPONDENTS' STATEMENT THAT THEY HAD FILED A COMPLAINT DOES NOT VIOLATE THE COMMISSION'S REGULATIONS.

We respectfully submit that conduct permitted by the Act cannot be found to violate the very regulations that are based on the Act. However, we will address FCM's complaint that Respondents violated the regulations. The regulations state in pertinent part:

> Except as provided in 11 C.F.R. 111.20, 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 is filed, the notification sent, the investigation conducted, or the filing made.

11 C.F.R. § 111.21(a). Because the Act's confidentiality provision makes no reference to a "complaint," we seriously doubt the Commission would have intended its regulations implementing this provision to exceed the express limits set by Congress.[4/] We also doubt the Commission intended this regulation to raise serious Constitutional questions.[5/]

4/ We see no basis to conclude that Congress intended to delegate to the Commission the authority to define new areas of prohibited conduct, or that the Commission intended to assume such additional authority. See notes 5 and 7, infra.

Any statute or regulation which purports to limit free expression guaranteed by the First Amendment to the United States Constitution must be read narrowly. Schneider v. Smith, 390 U.S. 17 (1968). In this context, the Commission's regulation cannot be construed as applicable to a situation where, as here: what is involved is reference to a complaint that itself concerns a subject of continuing public importance and debate; the reference is only to the fact of filing and the general substance of the complaint; the fact of filing and the substance of the complaint are already publicly known, so that the statement contained no information that was not already in the public domain; the allegations in the complaint were also entirely based on information previously in the public domain; and the Commission itself has found it necessary to make comparable reference to the complaint and its substance in pursuing its own litigation on the subject. This confluence of circumstances makes it evident that the action complained of here is not subject to the prohibition contained in section 111.20(a) of the Commission's regulations.

5/ In issuing 11 C.F.R. 111.21(a) on March 7, 1980, the Commission never stated that it intended to expand the scope of the previous regulation or exceed the plain limits of the statutory provision. Indeed the Commission offered no explanation whatsoever for the apparent departure from the previous regulation. See 45 Fed. Reg. 15,080 at p. 15,089 (March 7, 1980).

Indeed, in light of limited statutory authorization described above and in reading the regulation as a whole, it would appear that the Commission's inclusion of the term "complaint" in the regulation, along with the terms "notification" by the Commission and "investigation" by the Commission, was designed to preclude dissemination of the complaint by Commission personnel or others in a way that would disclose internal action taken by the Commission or its staff with respect to the complaint. In fact, as is discussed more fully in section III below, only in this manner can the regulation be reconciled with the General Counsel's determination in MUR No. 804, adopted by the Commission, that the First Amendment precludes application of the Act's confidentiality provisions in a manner that would prohibit public comment about a complaint. The General Counsel stated in that case:

> Comment by Mr. Guido and Common Cause on the complaint filed by them [the Petitioners] appears to be within a First Amendment right and not within the prohibition of the statute.

Matter of Common Cause, Ken Guido, MUR 804 at 3.[6/]

6/ The Commission's General Counsel based his conclusion on _Landmark Communications, Inc. v. Virginia_, 435 U.S. 829 (1978). And his conclusions was adopted by the Commission in dismissing the complaint in MUR 804.

Accordingly, the FCM's contention that the respondents have violated the Commission's regulations is without merit and must be rejected.

III. THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PROTECTS RESPONDENTS' RIGHT TO PUBLISH COMMENTS ABOUT THEIR COMPLAINT.

A. The First Amendment safeguards political discussion and the free exchange of ideas on public issues.

As just indicated in the prior discussion, FCM raises a substantial challenge to Respondents' First Amendment rights. Freedom of speech enjoys a protected status under the First Amendment to the Constitution of the United States. Any governmental action purporting limit the right of free expression must be considered:

> against the background of a profound national commitment to the principal that debate on public issues should be uninhibited, robust, and wide-open, ...

New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964); accord Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 839 (1978).

The repression of speech by government regulation is subject to strict scrutiny by courts because of the high value placed on freedom of expression. As the Supreme Court observed in Mills v. Alabama, 384 U.S. 214 (1966):

> Whatever differences may exist about interpretation of the First Amendment, there is practically universal agreement

> that a major purpose of that Amendment was to protect the free discussion of governmental affairs.

Id. at 218; accord Buckley v. Valeo, 424 U.S. 1, 64-5 (1976).

Without a doubt, the Respondents' comments upon and publication of the fact they had filed a complaint with the Commission against FCM -- a group actively involved in an effort to defeat an incumbent president -- constitutes precisely the type of protected speech which lies near the core of the First Amendment. FCM's strained interpretation of the Act and the Commission's regulations would sharply undercut the fundamental principles of freedom of expression contained in the First Amendment. We respectfully submit that in light of these principles the Commission must flatly reject FCM's contention.

B. Any asserted governmental interest in the confidentiality of complaints filed with the Commission is insufficient to warrant an abridgement of Respondents' right of free expression on a significant issue of public interest.

No governmental interest in preserving the confidentiality of a complaint filed with the Commission can easily justify an

encroachment on First Amendment guarantees.[7/] In Landmark Communications, Inc. v. Virginia, supra, information concerning a pending, confidential investigation by a state judicial review commission was published by a newspaper in alleged violation of a Virginia statute which was aimed at withholding such confidential information from the public domain. The Virginia Supreme Court held that the state's interest in preserving the confidentiality of judicial conduct investigations was sufficient to warrant imposing criminal penalties against individuals disseminating information about such investigations. The Supreme Court reversed the lower court's ruling, and it reiterated the fundamental teaching that the First Amendment protects the free discussion of governmental affairs. 435 U.S. at 838. The Court further held that a reviewing court must balance the purported state interest in confidentiality against the constitutionally-protected interest in free, unfettered discussion of public

---

7/ Moreover, we are not aware that the Commission, by including the term "complaint" in the coverage of § 111.21(a), gave any consideration to the required balancing between the First Amendment rights and any governmental interest that might be involved. Cf. Branzburg v. Hayes, 408 U.S. 665, 739-40 (1972). Indeed in promulgating the regulation, the Commission made no reference to this critical point. See 45 Fed. Reg. 15,080 at 15,089. This further indicates that the Commission did not intend to affect first amendment rights.

issues guaranteed by the First Amendment. 435 U.S. at 838. Mr. Chief Justice Burger speaking for the majority concluded that:

> It can be assumed for purposes of decision that confidentiality of Commission proceedings serves legitimate state interests. The question, however, is whether these interests are sufficient to justify the encroachment on First Amendment guarantees which the imposition of criminal sanctions entails with respect to nonparticipants such as Landmark.
>
> * * *
>
> Admittedly, the commonwealth has an interest in protecting the good repute of its judges, like that of all other public officials; our prior cases have firmly established; however, that injury to official reputation is an insufficient reason "for repressing speech that would otherwise be free." (Emphasis added, citations omitted.)

435 U.S. at 841-42. See also Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) (rejecting an attempted state sanction on the publication of information in the public domain by virtue of its inclusion in court records.)

The Landmark decision, on which the Commission itself previously relied to approve conduct nearly identical to that of the Respondents, makes it abundantly clear that mere comments on the existence and nature of a complaint filed with Commission are protected speech under the First Amendment.

We respectfully urge that the ruling in Landmark must control in the instant case. Here, as indicated above, the question of the legality of expenditures in support of the Reagan candidacy by FCM and other alleged "independent" organizations has been a subject of serious public interest and concern for some time and has received extensive press coverage. The Carter-Mondale complaint to the Commission followed the Common Cause law suit by one day and preceded the Commission's law suit by only two weeks. All of these actions were widely reported. Under these circumstances, Respondents' mere publication of the fact they had filed a complaint and their brief comments on its nature are not sufficiently threatening to any legitimate governmental interest to overcome the jealously guarded constitutional safeguards referred to in the Landmark case. Surely in this instance, the balance falls in favor of free political discussion of presidential campaign financing against a technical consideration of confidentiality with respect to conduct that even the Commission itself has brought to the attention of the national media.

CONCLUSION

We respectfully submit that the Commission should find no violation of the Act or its regulations by the mere publication of the fact of the complaint and its general nature, under the circumstances described *supra*. Neither the Act nor the regulations issued under it were intended to prohibit the conduct of which FCM complains. Any other result would improperly deprive Respondents' of their First Amendment rights.

Based on the foregoing facts, analysis and discussion, we respectfully move the Commission to dismiss the instant complaint and close the instant matter under review.

Respectfully submitted,

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Of Counsel:

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September 8, 1980

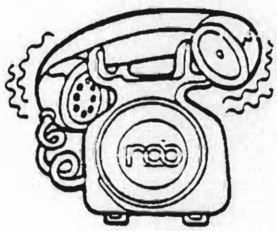
APPENDIX A

RADIO/TV

August 11, 1980

Volume VI
No. 31

IN THIS ISSUE FCC holds up AM stereo; needs more info • NAB sets up political hot-line • Task Force on Radio Allocations meets to decide course of action • Senate passes bill prohibiting surprise newsroom searches • FCC might drop First Class licenses



New Member Service: A Political Hot-Line . . .

NAB will set up a special toll-free number for members to call with their political broadcasting questions. This service will be in operation from October 1 until the election.

Bill Ray, the former chief of the FCC's complaints and compliance division, and author of the Commission's primer on political broadcasting laws will man the phone. While Mr. Ray is not a lawyer and can't give you legal advice, he's had over two decades' experience and can provide you with some expert guidance in this area.

We'll have more information soon on the times the service will be in operation.

AM Stereo: FCC Needs More Information . . .

Reports of an AM stereo system in operation by Christmas have turned out to be premature. Last April, the FCC tentatively selected the Magnavox system from the five under consideration and ordered its engineering staff to review the data to justify or validate the selection of Magnavox. in the process of doing that, the staff found some weaknesses in the matrix (the scorecard used to choose a system) so the Commission has decided to go back and get data. This gives interested parties another chance to file comments. Comments in the docket have been closed since August, 1979.

In making the announcement, the FCC said it owed it "to the system proponents, broadcasters and the public to seek additional information so that it might carry out a thoroughly objective analysis."

In addition to seeking more information in the technical area, the Commission has some interest in hearing about the desirability of its making decisions of this nature as opposed to leaving them to the marketplace. The Commission is also soliciting comments on the possibility of a universal decoder being developed to permit reception of all five systems. Comment dates have not been announced.

The Commission's action is expected to delay the implementation of AM stereo for at least six months.

Radio Allocations Task Force Meets, Develops Plan . . .

NAB's Task Force on Radio Allocations met in Washington last week to develop an action plan for the orderly [illegible] radio. Task Force members heard a report on status of NAB

(continued on p. 2)

(continued from p. 1)
request to form a Joint Government/Industry Advisory Committee. Government Relations Senior Vice President Ken Schanzer reported that he was "pleased and encouraged" by indications from the Commission that it would establish this committee in September. NAB had asked the Commission to create a committee to research and analyze radio allocations issues on a coordinated, comprehensive basis so that the Commission's pending proposals for radio weren't adopted without serious deliberation.

The Task Force also hired broadcast engineer Jules Cohen, Washington, D.C. as a consultant. Cohen and Task Force members are looking at the kinds of research that may need to be done.

Broadcasters Called Upon To Air Cambodian Relief PSAs . . .

Father Theodore Hesburgh, co-chairman of the National Cambodian Crisis Committee, has written to NAB Chairman Tom Bolger, first, to thank him for broadcasters' help in the NCCC's hunger relief fund raising campaign, but also to ask for broadcasters' help once again.

Hesburgh wrote: "The efforts of corporate and labor leaders, governors and civic groups, (to raise $100 million) can be multiplied many times over with a highly successful campaign of public service announcements . . . . By the end of May, the Advertising Council distributed the NCCC television public service announcements, which feature three Cambodian refugees in this country, to all commercial, educational and network stations. The radio PSAs recorded by Pearl Bailey, Danny Kaye and Joanne Woodward went to 6,000 radio stations . . . .

"By writing radio and television broadcasters, asking them to give prime-time consideration to airing the PSAs from now through October, you can make a critical difference.

"The National Association of Broadcasters has already gone the extra mile in this effort, both with Mr. Wasilewski's letter to TV broadcasters last winter and the campaign announcement at the NAB convention. But in the next six months, we will either witness the Cambodian people as they close the gap toward self-sufficiency, or we will see them stricken down again by famine. For this reason, I do hope that you will be able to help . . . ."

Bolger responded that we will do "everything in our power to help in your very humane mission. If there is any specific project or help that seems advisable, please do not hesitate to let me know."

Mail Deadline For RPC Registration . . .

Friday, August 15, is the deadline for mailing Radio Programing Conference registrations. Persons who are planning on attending the conference who cannot be sure their registration application will arrive at the NAB in Washington by the 15th should plan on registering on-site at the Hyatt Regency New Orleans.

If you plan to register on-site, make your hotel reservations immediately by call either Jackie Frashier at the Warwick at 800-535-9141, Marie Keith at Howard Johnsons at 504-581-1600, or Libby Dorris at Le Pavillion at 504-581-3111.

Relief To End Newsroom Raids On The Way . . .

The Senate has unanimously passed a bill prohibiting surprise searches of newsrooms by law enforcement officials. NAB and seven other media organizations had written to each Senator asking him or her to pass the Privacy Protection Act which would make a subpoena and not a search warrant the preferred method for obtaining information.

The letters to the Senators said that legislation is needed to prevent a repetition of the warrant

procedure used to search KBCI-TV in Boise, Idaho and the **Flint Voice**, in Flint, Michigan recently. "We saw in Boise that a search of the premises . . . conducted pursuant to a warrant and without judicial supervision is likely to get out of control."

A similar measure is pending in the House.

The other organizations joining NAB in this effort are: NBC, Association of American Publishers, American Society of Newspaper Editors, American Newspaper Publishers Association, RTNDA, CBS, Inc., and Society of Professional Journalists/Sigma Delta Chi.

FCC Considers Dropping First Class Licenses . . .

Last week's **HIGHLIGHTS** reported that the FCC abolished its Third Class permit. In a further deregulatory move, the Commission is considering dropping the First Class license and eliminating the exam. This means that the station licensee would be fully responsible for checking on the competency of its technicians.

The Commission said a reason for dropping this license is that there is evidence that the exam might not accurately measure an applicant's technical competence. Since there is no way the Commission can test people directly on transmitting equipment, it has decided that the best course of action might be to eliminate the exam.

The Commission also believes that its recent proposal to make random, in-depth investigations of stations' compliance with its rules would result in stations abiding by all of its regulations and provide incentives for them to hire competent staffs. This might further diminish the need for operator licensing.

The Commission noted that the exam does not account for experience and common sense and excludes competent people not skilled in taking exams.

Comments on this proposal are due in November.

"Good Sam" Awards Deadline Extended . . .

The American Advertising Federation has moved its deadline for receiving entries in its Good Sam competition to August 30.

The Good Sam awards will be given for excellence in public service advertising at the local as well as regional and national levels. Awards will be presented for radio and TV commercials, along with print and multimedia campaigns. All creators of public service advertising are eligible.

For more information, contact John Sivatko at the American Advertising Federation, (202) 659-1800.

We Win One . . .

A few months ago, the Citizens Communication Center wanted the FCC to require broadcasters to carry PSAs on the Commission's Consumer Assistance Office and its services. NAB opposed this proposal saying that it's up to the broadcasters to decide what PSAs are scheduled and when.

Last week the Commission rejected the petition for the reasons NAB had suggested. "It would be inappropriate to force broadcasters to air specific programs according to the Commission's desires," said the FCC.

NAB Answers Your Political Broadcasting Questions . . .

Broadcasters across the country have been receiving time requests for political ads sponsored by "independent" committees supporting Ronald Reagan. These ads, new to the political scene, are raising questions for broadcasters. Fueling broadcasters' uncertainty was a letter sent to television

(continued on p. 4)

(continued from p. 3)

broadcasters by the Carter/Mondale Reelection Committee, suggesting "serious legal questions" involving the planned "massive" purchase of time by the "independent" Reagan groups. The Reagan for President Committee responded with its own letter to broadcasters, countering the assertions of the Carter/Mondale letter and emphasizing the complete independence of the Reagan campaign from these groups.

Many political broadcast questions raised by the ads have not been answered by previous FCC rulings. Here are some guidelines, but keep in mind these questions have not been settled and that the nature of particular ads will affect your decisions on these issues.

- **Reasonable Access** — probably does not apply to these ads. "Reasonable access" would seem to be a right personal to the candidate, and not inclusive of "independent" advocacy for that candidate.

- **Equal Opportunities** — would apply if ads carried Mr. Reagan's identifiable voice or image. His opponents would probably not be entitled to free time since the ad was paid for by a political committee analogous to the candidate's campaign committee. This question, however, has not been ruled on by the FCC.

- If the ad does not contain Mr. Reagan's voice or image, the "quasi-equal opportunities" (Zapple doctrine) may come into play. This requires comparable time to be offered at comparable rates to supporters of Mr. Reagan's opponents. The FCC has never ruled that "supporters," for Zapple purposes, must be "authorized supporters." This too is an open question.

- **Fairness Doctrine obligations** — Applies if neither the equal opportunity provision or Zapple doctrine apply. If contrasting views on Presidential election issues are adequately presented in your overall programming, you do not need to make free time available to others to present contrasting views.

- **Personal Attack rules** — may apply where the ads contain an attack on the honesty, character or integrity of an opponent or other identified individual or group. The "independent" sp[illegible]soring group making the attack would probably not be considered as "persons associated with the candidate in the campaign" which would exempt such an attack. But such a personal attack made by Mr. Reagan contained within an ad by an independent group would be exempt from the rules.

- **Lowest Unit Charge** — it's unclear if this requirement would apply. This question comes only if an ad contains Mr. Reagan's voice or image. The Commission has never ruled on the issue in this context. It seems that lowest unit charge, like reasonable access, would be a right personal to a candidate and would not be available to independent groups. It appears that these "Reagan" groups are not requesting lowest unit charge rates.

We'll give you more information as situations develop.

NAB Asks Supreme Court To Deny Petition By Opponents Of Family Viewing...

NAB and other media organizations have asked the Supreme Court to deny a petition, filed by opponents of the family viewing hour, requesting the Supreme Court to review a lower court's decision.

Initially, the family viewing concept was ruled unconstitutional by a District Court judge. When this decision was appealed, a Court of Appeals said that the District Court was not the proper forum for deciding this issue and that the primary jurisdiction for such a decision was with the FCC. Opponents of the family viewing hour, which include the Writers Guild of America and Tandem Productions, filed a petition for rehearing, which was denied. Now these parties have asked the Supreme Court to review the Court of Appeals decision.

NAB argued that this case presents no issues warranting review by the Supreme Court. NAB also said that since it suspended enforcement of the family viewing policy, petitioners are not subject to ongoing harm. Therefore, their claim of urgent need for review is without foundation.

[illegible] President

[illegible] Senior Vice President for Broadcasting

[illegible] Editor

Donna M. Semple Editorial Assistant

[illegible] Published weekly (except for the week of April 21, 1980) by the National Association of Broadcasters, 1771 N Street, N.W., Washington, D.C. 20036 Subscription $8 per year-included in membership dues. Second-class postage paid at Washington, D.C. and additional mailing places.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert C. Heckman, Chairman
Fund for a Conservative Majority
1022 Wilson Boulevard
Suite 1401
Arlington, Virginia 22209

RE: MUR 1275 (80)

Dear Mr. Heckman:

The Federal Election Commission has reviewed the allegations contained in your complaint of August 15, 1980, and has determined that on the basis of the information provided by the respondents, there is no reason to believe that 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 establish a violation of the Act, please contact Anne A. Weissenborn, the attorney assigned to this matter, at (202) 523-4143.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James M. McHale, Esquire
Counsel to Carter-Mondale
Reelection Committee, Inc.
and Timothy G. Smith
1111 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036

RE: MUR 1275 (80)

Dear Mr. McHale:

On August 19, 1980, the Federal Election Commission notified your clients, the Carter-Mondale Reelection Committee, Inc., and Timothy G. Smith, of a complaint alleging that they may have violated the Federal Election Campaign Act of 1971, as amended.

The Commission on September , 1980, determined that on the basis of the information in the complaint and the information which you provided, 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

JAMES M. MCHALE
1111 NINETEENTH STREET, N. W.
WASHINGTON, D. C. 20036

(202) 463-2516

GCC #2576

10 SEP 2 P5: 26

BY HAND DELIVERY

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

Re: MUR 1275(80)

Dear Ms. Weissenborn:

Enclosed is Respondents' Statement Why The Complaint Fails to State a Violation of the Federal Election Campaign Act in respect to the above matter under review.

Please let me know if additional information is needed. Thank you.

Respectfully yours,

James M. McHale
Counsel to Carter-Mondale
Reelection Committee, Inc.
and Timothy G. Smith

BEFORE THE

FEDERAL ELECTION COMMISSION

GCC #2576

In the Matter of the Carter-Mondale Reelection Committee, Inc. and Timothy G. Smith, its General Counsel, Respondents.	)	MUR 1275 (80)

RESPONDENTS' STATEMENT WHY THE COMPLAINT FAILS TO STATE A VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT

Respectfully submitted,

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BEFORE THE

FEDERAL ELECTION COMMISSION

In the Matter of the Carter-Mondale Reelection Committee, Inc.	)	
and	)	MUR 1275 (80)
Timothy G. Smith, its General Counsel,	)	
Respondents.	)	

RESPONDENTS' STATEMENT
WHY THE COMPLAINT FAILS TO STATE A VIOLATION
OF THE FEDERAL ELECTION CAMPAIGN ACT

PRELIMINARY STATEMENT

The instant case involves the question of what limits, if any, the Federal Election Campaign Act ("FECA" or the "Act") places on public reference by a complainant to a complaint it has filed with the Commission. Respondents respectfully submit that, at least in the context of the instant case, neither the Act nor the Commissions' regulations prohibit Respondents or others from referring to the fact that they had filed a complaint and its general subject matter. Respondents further submit that any other result would run counter to the First Amendment's prohibition on governmental limitation of speech.

FACTS

A. Background

Following the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976), substantial public controversy has surrounded the issue of so-called "independent" expenditures in support of presidential candidates. Over the past year, this controversy has gravitated toward the numerous organizations that have been formed to support the candidacy of former Governor Ronald Reagan. See, for example, "Surge in Independent Campaign Spending," Congressional Quarterly, vol. 38, no. 24 pp. 1635-1639. Several such organizations have pledged themselves to support Mr. Reagan's candidacy for the presidency. The controversy surrounding these independent expenditures has led to several legal actions, including one instituted by the Commission itself.

B. The Common Cause lawsuit

July, 1980 marked a flurry of activity challenging the legality of the support by Complainant and other "independent" groups for Mr. Reagan's presidential campaign if Mr. Reagan's campaign committee were also to receive federal campaign funds. Common Cause, the citizens' lobby, filed a lawsuit on

July 1, 1980 in the United States District Court for the District of Columbia charging a close relationship between one of the "independent" groups supporting Mr. Reagan and the committee officially authorized to conduct his campaign. This lawsuit received widespread press coverage. For example, the Associated Press Wire Service story of July 1 reads in part as follows:

> Common Cause, a citizens' action group, today filed a federal lawsuit seeking to stop a committee from its announced intention of spending $20 million to $30 million in support of Ronald Reagan's presidential candidacy.
>
> * * * * * * * *
>
> Common Cause claimed that since Reagan as the "virtually certain" candidate of the Republican Party will receive $29.4 million of federal funds for the post-convention campaign, he cannot receive private funds.

(Emphasis added). The United Press International Wire Service story of July 1 described the lawsuit in similar terms. It reads in part:

> Common Cause today filed suit to block Republican and Conservative groups from raising and spending $55 million in an independent effort to elect Ronald Reagan president. The two groups have announced they will raise the funds in addition to the $29.6 million in Federal money Reagan can directly spend on his campaign.

> Announcing the suit, Common Cause Chairman Archibald Cox said the independent fund raising violates campaign reform laws and would "return us to the old days of Watergate abuse."
>
> Common Cause also wrote the Federal Election Commission asking it [to] oppose the request by the Schmitt group for an advisory opinion that their effort is legal. The FEC may act on that request Thursday.

(Emphasis added).

C. The Carter-Mondale FEC Complaint

The Carter-Mondale Reelection Committee (hereinafter "Respondent Committee" or the "Committee"), was the next to take legal action, challenging the "independent" backers of Mr. Reagan's campaign. On July 2, 1980, it filed a forty-one page complaint with the Commission requesting principally that the Commission "decline to certify Mr. Reagan and the Republican candidate for Vice President as eligible to receive payments under the Fund Act." (This complaint is in the Commission's files as MUR 1252 (80)). Prior to the actual filing of the complaint, Respondent Committee held a press briefing on the subject of "independent expenditures" on behalf of Mr. Reagan's campaign and the Committee's decision to complain to the Commission about these activities.

Press stories in this regard appeared in several newspapers. See, for example, the July 3, 1980 Washington Star, The New York Times, and The Los Angeles Times. And the July 12, 1980 Congressional Quarterly pointed out similarities between the Committee's complaint and the Common Cause lawsuit.

D. The Commission's lawsuit

Next, the Commission itself brought a lawsuit against the Fund for a Conservative Majority ("FCM" or the "Complainant") and other "independent" groups to challenge their expenditures to aid Mr. Reagan's presidential campaign. The Commission filed its suit on July 15, 1980. The Commission's complaint shared the general purpose of the action that Common Cause filed in Court and the Complaint that Respondent Committee filed with the Commission.

For practical purposes, the Commission's lawsuit summarized many of the same facts alleged in the Common Cause lawsuit and Respondent Committee's complaint to the Commission; and the Commission's lawsuit generally sought the same relief as those two actions. See The Congressional Quarterly of July 26, 1980. The Commission's complaint made specific reference to FCM's activities in support of the Reagan Campaign, and it named FCM as a defendant.

E. Respondents' Statement

By the end of the week of July 14, 1980, the legal controversy surrounding "independent" expenditures in support of the Reagan/Bush campaign was a significant public issue. In fact, as a direct result of the Common Cause and Commission lawsuits (filed July 1 and July 15 respectively), and the Respondent Committee's complaint to the Commission, the media gave widespread publicity to the fact that the Reagan/Bush campaign was about to receive $29.4 million in federal funds while simultaneously receiving the support of an approximately equal amount of private funds. The media noted that the Reagan campaign's support by these independent groups raised many controversial issues.

In that context, Respondents herein published their July 18, 1980 letter which made reference to their July 2 complaint to the Commission. The purpose of the letter was to insure that broadcasters were aware of the novel legal issues raised by the activities of the independent backers of the Reagan Campaign. The National Association of Broadcasters subsequently conveyed similar information to its members. (See pp. 3-4 of Appendix A.)

F. The Complaint

By letter of August 6, 1980, Complainant FCM specifically complained of the following language appearing in Respondents' July 18, 1980 letter:

> The Carter/Mondale Reelection Committee, Inc., the official and authorized campaign committee for President Carter, and the Democratic National Committee have filed a complaint with the Federal Election Commission against . . . so-called "independent groups," the Reagan for President Committee, and others alleging that the Federal Election Campaign Act will be violated if the Republican nominees receive public funding while at the same time receiving massive support from alleged "independent" bankers (sic.) 1/

FCM claims that Respondents publishing the above paragraph "violated the provisions of 2 U.S.C. 437g(a)(12)(A) and of 11 C.F.R. 111.21." FCM also claims that Respondents "knowingly and willfully violated" this provision of the Act. This is the totality of their allegation.

We respectfully submit that the Respondents' action comes nowhere close to violating either the Act or the regulations; we base our conclusion on the following analysis.

1/ The Respondent's letter also did not refer to any independent Reagan for President group as "bankers." Rather it simply referred to independent "backers."

While Respondents' complaint to the Commission named FCM, the Respondents' letter at issue here did not do so.

[Footnote 1 cont'd on p. 8.]

DISCUSSION

I. RESPONDENTS' MERE DISCLOSURE THAT THEY HAD FILED A COMPLAINT WITH THE COMMISSION DOES NOT CONSTITUTE A VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT.

A. The Act does not prohibit comment upon or disclosure of the filing of a complaint.

Complainant FCM alleges that Respondents violated the Act, 2 U.S.C. 437g(a)(12)(A), by publishing a letter stating that they had filed a Complaint with the Commission regarding FCM's activities on behalf of the Reagan Campaign. FCM's complaint is without merit and in direct conflict with the plain language of the relevant portion of the Act. Section 437g(a)(12)(A) of that Act states in pertinent part that:

> Any notification or investigation made under this section shall not be made public by the

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[Footnote 1 cont'd from p. 7.]

Indeed, the paragraph in Respondents' letter that is specifically complained of does not refer to any organizations by name. In another paragraph, Respondents' letter refers to "Citizens for Reagan in '80", which FCM in its complaint describes as "its project", this assertion by FCM is undocumented and leaves open the question of why FCM is the Complaintant here rather than "Citizens for Reagan in '80". Because, FCM does not appear to have shown that it is the real party in interest, the complaint appears subject to dismissal in this ground alone.

> Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such an investigation is made.

This provision makes no reference to the term "complaint" nor does it explicitly state or imply that a complaint may not be disclosed without written consent of the party who is the subject of the Complaint. _A fortiori_, this provision does not restrain complainants from publicly stating they have filed a complaint.

B. The Legislative History Reinforces the Inapplicability Of The Act.

While the Federal Election Campaign Act of 1976 was amended in 1979, Congress re-enacted without change this provision of the Act.[2/] The House version of the 1979 amendments would have extended the Act's confidentiality protection

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2/ The provision now appearing at 2 U.S.C. 437g(a)(12)(A) appeared as 2 U.S.C. 437g(a)(3)(b) in the 1976 version of the Act.

to the complaint phase of the Commission's administrative proceedings.3/ The House bill was sent to the Senate for consideration. On December 18, 1979, the Senate adopted and passed the House version of the 1979 amendments, with a crucial difference -- the Senate deleted the term "complaint" from 437g(a)(12)(A) of the Act. Thus, it is clear that the Senate rejected the House's inclusion of the term "complaint" in the confidentiality provision of the Act, prefering to retain virtually the same language that was used in 1976. The Senate version, which excised the word complaint was then sent back to the House and passed there on December 20, 1979 with the word "complaint" deleted.

Thus while Congress considered enlarging the scope of the Act's confidentiality restrictions to include complaints, as well as notifications and investigations, the 1979 amendments, as finally passed, did not contain such an amendment. Accordingly, we respectfully submit that the Act's confidentiality

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3/ The House language originally provided:

> Any complaint filed under this section, or 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 who is the subject of such complaint. . .

Cong. Rec. 7625.

provision applies only to a notification or investigation by the Commission after it has found reason to believe that a violation of the federal election laws may have occurred.

C. The Commission's Office of the General Counsel has already determined that the Act does not prohibit comment upon the filing of a complaint with the Commission.

The Commission accepted its General Counsel's recommendation in Minnesota Medical Political Action Committee, MUR 804 (1978). This case convincingly demonstrates that the Act's confidentiality prohibitions do not extend to the mere publication of the existence of a complaint and the general point of the complaint. In MUR 804, the Commission adopted its General Counsel's Report which reasoned that:

> Moreover, in explaining the Bill [the Federal Election Campaign Act of 1976] Congressman Hayes stated "'[D]etails of the investigation are not to be made public without the written consent of the person being investigated.'" 122 CONG. REC. H2532 (1976).
>
> While Common Cause and Ken Guido [the Respondents] may have publicized the Complaint filed by Common Cause with the Commission, they have not made public action taken by the Commission with regard to the Complaint; they have not made public the Commission's "notification or investigation" of the Complaint.

MUR 804 at 2-3 (emphasis added).

Similarly in In the matter of Common Cause, MUR 270 (1976), the Commission also accepted the recommendation of its General Counsel to dismiss a complaint regarding the disclosure of a complaint. There, the American Medical Political Action Committee alleged that Common Cause had violated the Act's confidentiality provisions by disseminating publicity concerning a complaint it had filed with the Commission. In recommending that no further action be taken by the Commission, the General Counsel's Office concluded that:

> "[t]he Act refers to notifications or investigations after the Commission has found reason to believe a violation has occurred. Therefore, it would appear that the prohibition of 2 U.S.C. 437g(a)(3)(B) is not triggered until the Commission has found reason to believe [that a violation has occurred] pursuant to 2 U.S.C. 437g(a)(2)."

MUR 270 (1976), at p. 2 (emphasis added).

Thus, the Commission's own construction of the Act firmly establishes that the its confidentiality prohibitions do not restrain a person from stating he has filed a complaint with the Commission and generally describing his claim.

II. RESPONDENTS' STATEMENT THAT THEY HAD FILED A COMPLAINT DOES NOT VIOLATE ANY COMMISSION REGULATIONS.

We respectfully submit that conduct permitted by the Act cannot be found to violate the very regulations that are based on the Act. However, we will address FCM's complaint that Respondents violated the regulations. The regulations state in pertinent part:

> Except as provided in 11 C.F.R. 111.20, 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 is filed, the notification sent, the investigation conducted, or the filing made.

11 C.F.R. § 111.21(a). Because the Act's confidentiality provision makes no reference to a "complaint," we seriously doubt the Commission would have intended its regulations implementing this provision to exceed the express limits set by Congress.[4/] We also doubt certain the Commission

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4/ We see no basis to conclude that Congress intended to delegate to the Commission the authority to define new areas of prohibited conduct, or that the Commission intended to assume such additional authority. *See* note, *infra*.

intended this regulation to raise serious Constitutional questions.[5/]

Any statute or regulation which purports to limit free expression guaranteed by the First Amendment to the United States Constitution must be read narrowly. Schneider v. Smith, 390 U.S. 17 (1968). In this context, the Commission's regulation cannot be construed as applicable to a situation where, as here: what is involved is reference to a complaint that itself concerns a subject of continuing public importance and debate; the reference is only to the fact of filing and the general substance of the complaint; the fact of filing and the substance of the complaint are already publicly known, so that the statement contained no information that was not already in the public domain; the allegations in the complaint were also entirely based on information previously in the public domain; and the Commission itself has found it necessary to make comparable reference to the complaint and its substance in pursuing its own litigation on the subject.

5/ In issuing 11 C.F.R. 111.21(a) on March 7, 1980, the Commission never stated that it intended to expand the scope of the previous regulation or exceed the plain limits of the statutory provision. Indeed the Commission offered no explanation whatsoever for the apparent departure from the previous regulation. See 45 Fed. Reg. 15,080 at p. 15,089 (March 7, 1980).

This confluence of circumstances makes it evident that the action complained of here is not subject to the prohibition contained in section 111.20(a) of the Commission's regulations.

Indeed, in light of limited statutory authorization described above and in reading the regulation as a whole, it would appear that the Commission's inclusion of the term "complaint" in the regulation, along with the terms "notification" by the Commission and "investigation" by the Commission, was designed to preclude dissemination of the complaint by Commission personnel or others in a way that would disclose internal action taken by the Commission or its staff with respect to the complaint. In fact, as is discussed more fully in section III below, only in this manner can the regulation be reconciled with the General Counsel's determination in MUR No. 804, adopted by the Commission, that the First Amendment precludes application of the Act's confidentiality provisions in a manner that would prohibit public comment about a complaint. Thus, the General Counsel noted in that case:

> Comment by Mr. Guido and Common Cause on the complaint filed by them [the Petitioners]

appears to be within a First Amendment right and not within the prohibition of the statute.

Matter of Common Cause, Ken Guido, MUR No. 804 at 3.6/

Accordingly, the FCM's contention that the respondents have violated the Commission's regulations is without merit and must be rejected.

6/ The Commission's General Counsel based his conclusion on Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1978). And this conclusions was adopted by the Commission in dismissing the complaint in MUR 804 (78).

III. THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PROTECTS RESPONDENTS' RIGHT TO PUBLISH COMMENTS ABOUT THEIR COMPLAINT.

A. The First Amendment safeguards political discussion and the free exchange of ideas on public issues.

As just indicated in the prior discussion, FCM raises a substantial challenge to Respondents' First Amendment rights. Freedom of speech enjoys a protected status under the First Amendment to the Constitution of the United States. Any governmental action purporting limit the right of free expression must be considered:

> against the background of a profound national commitment to the principal that debate on public issues should be uninhibited, robust, and wide-open, ...

New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964); accord Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 839 (1978).

The repression of speech by government regulation is subject to strict scrutiny by courts because of the high value placed on freedom of expression. As the Supreme Court observed in Mills v. Alabama, 384 U.S. 214 (1966):

> Whatever differences may exist about interpretation of the First Amendment, there is practically universal agreement

> that a major purpose of that Amendment was to protect the free discussion of governmental affairs.

Id. at 218; accord Buckley v. Valeo, 424 U.S. 1, 64-5 (1976).

Without a doubt, the Respondents' comments upon and publication of the fact they had filed a complaint with the Commission against FCM -- a group actively involved in an effort to defeat an incumbent president -- constitutes precisely the type of protected speech which lies near the core of the First Amendment. FCM's strained interpretation of the Act and the Commission's regulations would sharply undercut the fundamental principles of freedom of expression contained in the First Amendment. We respectfully submit that in light of these principles the Commission must flatly reject FCM's contention.

B. Any asserted government interest in the confidentiality of complaints filed with the Commission is insufficient to warrant an abridgement of Respondents' right of free expression on a significant issue of public interest.

No governmental interest in preserving the confidentiality of a complaint filed with the Commission can easily justify an

encroachment on First Amendment guarantees.[7/] In Landmark Communications, Inc. v. Virginia, supra, information concerning a pending, confidential investigation by a state judicial review commission was published by a newspaper in alleged violation of a Virginia statute which was aimed at withholding such confidential information from the public domain. The Virginia Supreme Court held that the state's interest in preserving the confidentiality of judicial conduct investigations was sufficient to warrant imposing criminal penalties against individuals disseminating information about such investigations. The Supreme Court reversed the lower court's ruling, and it reiterated the fundamental teaching that the First Amendment protects the free discussion of governmental affairs. 435 U.S. at 838. The Court further held that a reviewing court must balance the purported state interest in confidentiality against the constitutionally-protected interest in free, unfettered discussion of public

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7/ Moreover, we are not aware that the Commission, by including the term "complaint" in the coverage of § 111.21(a), gave any consideration to the required balancing between the First Amendment rights and any governmental interest that might be involved. Cf. Branzburg v. Hayes, 408 U.S. 665, 739-40 (1972). Indeed in promulgating the regulation, the Commission made no reference to this critical point. See 45 Fed. Reg. 15,080 at 15,089. This further indicates that the Commission did not intend to affect first amendment rights.

issues guaranteed by the First Amendment. 435 U.S. at 838. Mr. Chief Justice Burger speaking for the majority concluded that:

> It can be assumed for purposes of decision that confidentiality of Commission proceedings serves legitimate state interests. The question, however, is whether these interests are sufficient to justify the encroachment on First Amendment guarantees which the imposition of criminal sanctions entails with respect to nonparticipants such as Landmark.
>
> * * *
>
> Admittedly, the commonwealth has an interest in protecting the good repute of its judges, like that of all other public officials; our prior cases have firmly established; however, that injury to official reputation is an insufficient reason "for repressing speech that would otherwise be free." (Emphasis added, citations omitted.)

435 U.S. at 841-42. See also Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) (rejecting an attempted state sanction on the publication of information in the public domain by virtue of its inclusion in court records.)

The Landmark decision, on which the Commission itself previously relied to approve conduct nearly identical to that of the Respondents, makes it abundantly clear that mere comments on the existence and nature of a complaint filed with Commission are protected speech under the First Amendment.

We respectfully urge that the ruling in Landmark must control in the instant case. Here, as indicated above, the question of the legality of expenditures in support of the Reagan candidacy by FCM and other alleged "independent" organizations has been a subject of serious public interest and concern for some time and has received extensive press coverage. The Carter-Mondale complaint to the Commission followed the Common Cause law suit by one day and preceded the Commission's law suit by only two weeks. All of these actions were widely reported. Under these circumstances, Respondents' mere publication of the fact they had filed a complaint and their brief comments on its nature are not sufficiently threatening to any legitimate governmental interest to overcome the jealously guarded constitutional safeguards referred to in the Landmark case. Surely in this instance, the balance falls in favor of free political discussion of presidential campaign financing against a technical consideration of confidentiality with respect to conduct that even the Commission itself has brought to the attention of the national media.

CONCLUSION

We respectfully submit that the Commission should find no violation of the Act or its regulations by the mere publication of the fact of the complaint and its general nature, under the circumstances described supra. Neither the Act nor the Regulations issued under it were intended to prohibit the conduct of which FCM complains. Any other result would improperly deprive Respondents' of their First Amendment rights.

Based on the foregoing facts, analysis and discussion, we respectfully move the Commission to dismiss the instant complaint and close the instant matter under review.

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RADIO/TV

APPENDIX A

August 11, 1980

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IN THIS ISSUE FCC holds up AM stereo; needs more info • NAB sets up political hot-line • Task Force on Radio Allocations meets to decide course of action • Senate passes bill prohibiting surprise newsroom searches • FCC might drop First Class licenses

New Member Service: A Political Hot-Line...

NAB will set up a special toll-free number for members to call with their political broadcasting questions. This service will be in operation from October 1 until the election.

Bill Ray, the former chief of the FCC's complaints and compliance division, and author of the Commission's primer on political broadcasting laws will man the phone. While Mr. Ray is not a lawyer and can't give you legal advice, he's had over two decades' experience and can provide you with some expert guidance in this area.

We'll have more information soon on the times the service will be in operation.

AM Stereo: FCC Needs More Information...

Reports of an AM stereo system in operation by Christmas have turned out to be premature. Last April, the FCC tentatively selected the Magnavox system from the five under consideration and ordered its engineering staff to review the data to justify or validate the selection of Magnavox. In the process of doing that, the staff found some weaknesses in the matrix (the scorecard used to choose a system) so the Commission has decided to go back and get data. This gives interested parties another chance to file comments. Comments in the docket have been closed since August, 1979.

In making the announcement, the FCC said it owed it "to the system proponents, broadcasters and the public to seek additional information so that it might carry out a thoroughly objective analysis."

In addition to seeking more information in the technical area, the Commission has some interest in hearing about the desirability of its making decisions of this nature as opposed to leaving them to the marketplace. The Commission is also soliciting comments on the possibility of a universal decoder being developed to permit reception of all five systems. Comment dates have not been announced.

The Commission's action is expected to delay the implementation of AM stereo for at least six months.

Radio Allocations Task Force Meets, Develops Plan...

NAB's Task Force on Radio Allocations met in Washington last week to develop an action plan for the orderly [illegible] radio. Task Force members heard a report on status of NAB

(continued on p. 2)

(continued from p. 1)
request to form a Joint Government/Industry Advisory Committee. Government Relations Senior Vice President Ken Schanzer reported that he was "pleased and encouraged" by indications from the Commission that it would establish this committee in September. NAB had asked the Commission to create a committee to research and analyze radio allocations issues on a coordinated, comprehensive basis so that the Commission's pending proposals for radio weren't adopted without serious deliberation.

The Task Force also hired broadcast engineer Jules Cohen, Washington, D.C. as a consultant. Cohen and Task Force members are looking at the kinds of research that may need to be done.

Broadcasters Called Upon To Air Cambodian Relief PSAs...

Father Theodore Hesburgh, co-chairman of the National Cambodian Crisis Committee, has written to NAB Chairman Tom Bolger, first, to thank him for broadcasters' help in the NCCC's hunger relief fund raising campaign, but also to ask for broadcasters' help once again.

Hesburgh wrote: "The efforts of corporate and labor leaders, governors and civic groups, (to raise $100 million) can be multiplied many times over with a highly successful campaign of public service announcements.... By the end of May, the Advertising Council distributed the NCCC television public service announcements, which feature three Cambodian refugees in this country, to all commercial, educational and network stations. The radio PSAs recorded by Pearl Bailey, Danny Kaye and Joanne Woodward went to 6,000 radio stations....

"By writing radio and television broadcasters, asking them to give prime-time consideration to airing the PSAs from now through October, you can make a critical difference.

"The National Association of Broadcasters has already gone the extra mile in this effort, both with Mr. Wasilewski's letter to TV broadcasters last winter and the campaign announcement at the NAB convention. But in the next six months, we will either witness the Cambodian people as they close the gap toward self-sufficiency, or we will see them stricken down again by famine. For this reason, I do hope that you will be able to help...."

Bolger responded that we will do "everything in our power to help in your very humane mission. If there is any specific project or help that seems advisable, please do not hesitate to let me know."

Mail Deadline For RPC Registration...

Friday, August 15, is the deadline for mailing Radio Programing Conference registrations. Persons who are planning on attending the conference who cannot be sure their registration application will arrive at the NAB in Washington by the 15th should plan on registering on-site at the Hyatt Regency New Orleans.

If you plan to register on-site, make your hotel reservations immediately by call either Jackie Frashier at the Warwick at 800-535-9141, Marie Keith at Howard Johnsons at 504-581-1600, or Libby Dorris at Le Pavillion at 504-581-3111.

Relief To End Newsroom Raids On The Way...

The Senate has unanimously passed a bill prohibiting surprise searches of newsrooms by law enforcement officials. NAB and seven other media organizations had written to each Senator asking him or her to pass the Privacy Protection Act which would make a subpoena and not a search warrant the preferred method for obtaining information.

The letters to the Senators said that legislation is needed to prevent a repetition of the warrant

procedure used to search KBCI-TV in Boise, Idaho and the **Flint Voice**, in Flint, Michigan recently. "We saw in Boise that a search of the premises ... conducted pursuant to a warrant and without judicial supervision is likely to get out of control."

A similar measure is pending in the House.

The other organizations joining NAB in this effort are: NBC, Association of American Publishers, American Society of Newspaper Editors, American Newspaper Publishers Association, RTNDA, CBS, Inc., and Society of Professional Journalists/Sigma Delta Chi.

FCC Considers Dropping First Class Licenses...

Last week's **HIGHLIGHTS** reported that the FCC abolished its Third Class permit. In a further deregulatory move, the Commission is considering dropping the First Class license and eliminating the exam. This means that the station licensee would be fully responsible for checking on the competency of its technicians.

The Commission said a reason for dropping this license is that there is evidence that the exam might not accurately measure an applicant's technical competence. Since there is no way the Commission can test people directly on transmitting equipment, it has decided that the best course of action might be to eliminate the exam.

The Commission also believes that its recent proposal to make random, in-depth investigations of stations' compliance with its rules would result in stations abiding by all of its regulations and provide incentives for them to hire competent staffs. This might further diminish the need for operator licensing.

The Commission noted that the exam does not account for experience and common sense and excludes competent people not skilled in taking exams.

Comments on this proposal are due in November.

"Good Sam" Awards Deadline Extended...

The American Advertising Federation has moved its deadline for receiving entries in its Good Sam competition to August 30.

The Good Sam awards will be given for excellence in public service advertising at the local as well as regional and national levels. Awards will be presented for radio and TV commercials, along with print and multimedia campaigns. All creators of public service advertising are eligible.

For more information, contact John Sivatko at the American Advertising Federation, (202) 659-1800.

We Win One...

A few months ago, the Citizens Communication Center wanted the FCC to require broadcasters to carry PSAs on the Commission's Consumer Assistance Office and its services. NAB opposed this proposal saying that it's up to the broadcasters to decide what PSAs are scheduled and when.

Last week the Commission rejected the petition for the reasons NAB had suggested. "It would be inappropriate to force broadcasters to air specific programs according to the Commission's desires," said the FCC.

NAB Answers Your Political Broadcasting Questions...

Broadcasters across the country have been receiving time requests for political ads sponsored by "independent" committees supporting Ronald Reagan. These ads, new to the political scene, are raising questions for broadcasters. Fueling broadcasters' uncertainty was a letter sent to television

(continued on p. 4)

(continued from p. 3)
broadcasters by the Carter/Mondale Reelection Committee, suggesting ''serious legal questions'' involving the planned ''massive'' purchase of time by the ''independent'' Reagan groups. The Reagan for President Committee responded with its own letter to broadcasters, countering the assertions of the Carter/Mondale letter and emphasizing the complete independence of the Reagan campaign from these groups.

Many political broadcast questions raised by the ads have not been answered by previous FCC rulings. Here are some guidelines, but keep in mind these questions have not been settled and that the nature of particular ads will affect your decisions on these issues.

- **Reasonable Access** — probably does not apply to these ads. ''Reasonable access'' would seem to be a right personal to the candidate, and not inclusive of ''independent'' advocacy for that candidate.
- **Equal Opportunities** — would apply if ads carried Mr. Reagan's identifiable voice or image. His opponents would probably not be entitled to free time since the ad was paid for by a political committee analogous to the candidate's campaign committee. This question, however, has not been ruled on by the FCC.
- If the ad does not contain Mr. Reagan's voice or image, the ''quasi-equal opportunities'' (Zapple doctrine) may come into play. This requires comparable time to be offered at comparable rates to supporters of Mr. Reagan's opponents. The FCC has never ruled that ''supporters,'' for Zapple purposes, must be ''authorized supporters.'' This too is an open question.
- **Fairness Doctrine obligations** — Applies if neither the equal opportunity provision or Zapple doctrine apply. If contrasting views on Presidential election issues are adequately presented in your overall programming, you do not need to make free time available to others to present contrasting views.
- **Personal Attack rules** — may apply where the ads contain an attack on the honesty, character or integrity of an opponent or other identified individual or group. The ''independent'' sponsoring group making the attack would probably not be considered as ''persons associated with the candidate in the campaign'' which would exempt such an attack. But such a personal attack made by Mr. Reagan contained within an ad by an independent group would be exempt from the rules.
- **Lowest Unit Charge** — it's unclear if this requirement would apply. This question comes only if an ad contains Mr. Reagan's voice or image. The Commission has never ruled on the issue in this context. It seems that lowest unit charge, like reasonable access, would be a right personal to a candidate and would not be available to independent groups. It appears that these ''Reagan'' groups are not requesting lowest unit charge rates.

We'll give you more information as situations develop.

NAB Asks Supreme Court To Deny Petition By Opponents Of Family Viewing . . .

NAB and other media organizations have asked the Supreme Court to deny a petition, filed by opponents of the family viewing hour, requesting the Supreme Court to review a lower court's decision.

Initially, the family viewing concept was ruled unconstitutional by a District Court judge. When this decision was appealed, a Court of Appeals said that the District Court was not the proper forum for deciding this issue and that the primary jurisdiction for such a decision was with the FCC. Opponents of the family viewing hour, which include the Writers Guild of America and Tandem Productions, filed a petition for rehearing, which was denied. Now these parties have asked the Supreme Court to review the Court of Appeals decision.

NAB argued that this case presents no issues warranting review by the Supreme Court. NAB also said that since it suspended enforcement of the family viewing policy, petitioners are not subject to ongoing harm. Therefore, their claim of urgent need for review is without foundation.

President

Senior Vice President for Broadcasting

Editor

Donna M. Semple
Editorial Assistant

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September 9, 1980

BY HAND DELIVERY

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Re: MUR 1275(80)

Dear Ms. Weissenborn:

Following up our telephone conversation of this morning, I am enclosing a typographically corrected copy of the Respondents' Statement Why The Complaint Fails To State A Violation Of The Act filed yesterday in the above-referenced matter under review.

Thank you for your courtesy. I look forward to speaking with you tomorrow.

Sincerely yours,

Jim McHale

James M. McHale
Counsel to Respondents

Enclosure

GCC#2578

80 SEP 8 P1: 22

BEFORE THE

FEDERAL ELECTION COMMISSION

In the Matter of the Carter-Mondale Reelection Committee, Inc.	)	
and	)	MUR 1275 (80)
Timothy G. Smith, its General Counsel,	)	
Respondents.	)	

RESPONDENTS' STATEMENT
WHY THE COMPLAINT FAILS TO STATE A VIOLATION
OF THE FEDERAL ELECTION CAMPAIGN ACT

Respectfully submitted,

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BEFORE THE

FEDERAL ELECTION COMMISSION

In the Matter of the Carter-Mondale Reelection Committee, Inc. and Timothy G. Smith, its General Counsel, Respondents.	)	MUR 1275 (80)

RESPONDENTS' STATEMENT
WHY THE COMPLAINT FAILS TO STATE A VIOLATION
OF THE FEDERAL ELECTION CAMPAIGN ACT

PRELIMINARY STATEMENT

The instant case involves the question of what limits, if any, the Federal Election Campaign Act ("FECA" or the "Act") places on public reference by a complainant to a complaint it has filed with the Commission. Respondents respectfully submit that, at least in the context of the instant case, neither the Act nor the Commissions' regulations prohibit Respondents or others from referring to the fact that they had filed a complaint and its general subject matter. Respondents further submit that any other result would run counter to the First Amendment's prohibition on governmental limitation of speech.

FACTS

A. Background

Following the Supreme Court's decision in Buckley v. Valeo, 424 U.S. 1 (1976), substantial public controversy has surrounded the issue of so-called "independent" expenditures in support of presidential candidates. Over the past year, this controversy has gravitated toward the numerous organizations that have been formed to support the candidacy of former Governor Ronald Reagan. See, for example, "Surge in Independent Campaign Spending," Congressional Quarterly, vol. 38, no. 24 pp. 1635-1639. Several such organizations have pledged themselves to support Mr. Reagan's candidacy for the presidency. The controversy surrounding these independent expenditures has led to several legal actions, including one instituted by the Commission itself.

B. The Common Cause lawsuit

July, 1980 marked a flurry of activity challenging the legality of the support by Complainant and other "independent" groups for Mr. Reagan's presidential campaign if Mr. Reagan's campaign committee were also to receive federal campaign funds. Common Cause, the citizens' lobby, filed a lawsuit on

July 1, 1980 in the United States District Court for the District of Columbia charging a close relationship between one of the "independent" groups supporting Mr. Reagan and the committee officially authorized to conduct his campaign. This lawsuit received widespread press coverage. For example, the Associated Press Wire Service story of July 1 reads in part as follows:

> Common Cause, a citizens' action group, today filed a federal lawsuit seeking to stop a committee from its announced intention of spending $20 million to $30 million in support of Ronald Reagan's presidential candidacy.
>
> * * * * * * * *
>
> Common Cause claimed that since Reagan as the "virtually certain" candidate of the Republican Party will receive $29.4 million of federal funds for the post-convention campaign, he cannot receive private funds.

(Emphasis added). The United Press International Wire Service story of July 1 described the lawsuit in similar terms. It reads in part:

> Common Cause today filed suit to block Republican and Conservative groups from raising and spending $55 million in an independent effort to elect Ronald Reagan president. The two groups have announced they will raise the funds in addition to the $29.6 million in Federal money Reagan can directly spend on his campaign.

> Announcing the suit, Common Cause Chairman Archibald Cox said the independent fund raising violates campaign reform laws and would "return us to the old days of Watergate abuse."
>
> Common Cause also wrote the Federal Election Commission asking it [to] oppose the request by the Schmitt group for an advisory opinion that their effort is legal. The FEC may act on that request Thursday.

(Emphasis added).

C. The Carter-Mondale FEC Complaint

The Carter-Mondale Reelection Committee (hereinafter "Respondent Committee" or the "Committee"), was the next to take legal action, challenging the "independent" backers of Mr. Reagan's campaign. On July 2, 1980, it filed a forty-one page complaint with the Commission requesting principally that the Commission "decline to certify Mr. Reagan and the Republican candidate for Vice President as eligible to receive payments under the Fund Act." (This complaint is in the Commission's files as MUR 1252 (80)). Prior to the actual filing of the complaint, Respondent Committee held a press briefing on the subject of "independent expenditures" on behalf of Mr. Reagan's campaign and the Committee's decision to complain to the Commission about these activities.

Press stories in this regard appeared in several newspapers. See, for example, the July 3, 1980 Washington Star, The New York Times, and The Los Angeles Times. And the July 12, 1980 Congressional Quarterly pointed out similarities between the Committee's complaint and the Common Cause lawsuit.

D. The Commission's lawsuit

Next, the Commission itself brought a lawsuit against the Fund for a Conservative Majority ("FCM" or the "Complainant") and other "independent" groups to challenge their expenditures to aid Mr. Reagan's presidential campaign. The Commission filed its suit on July 15, 1980. The Commission's complaint shared the general purpose of the action that Common Cause filed in Court and the Complaint that Respondent Committee filed with the Commission.

For practical purposes, the Commission's lawsuit summarized many of the same facts alleged in the Common Cause lawsuit and Respondent Committee's complaint to the Commission; and the Commission's lawsuit generally sought the same relief as those two actions. See The Congressional Quarterly of July 26, 1980. The Commission's complaint made specific reference to FCM's activities in support of the Reagan Campaign, and it named FCM as a defendant.

E. Respondents' Statement

By the end of the week of July 14, 1980, the legal controversy surrounding "independent" expenditures in support of the Reagan/Bush campaign was a significant public issue. In fact, as a direct result of the Common Cause and Commission lawsuits (filed July 1 and July 15 respectively), and the Respondent Committee's complaint to the Commission, the media gave widespread publicity to the fact that the Reagan/Bush campaign was about to receive $29.4 million in federal funds while simultaneously receiving the support of an approximately equal amount of private funds. The media noted that the Reagan campaign's support by these independent groups raised many controversial issues.

In that context, Respondents herein published their July 18, 1980 letter which made reference to their July 2 complaint to the Commission. The purpose of the letter was to insure that broadcasters were aware of the novel legal issues raised by the activities of the independent backers of the Reagan Campaign. The National Association of Broadcasters subsequently conveyed similar information to its members. (See pp. 3-4 of Appendix A.)

F. The Complaint

By letter of August 6, 1980, Complainant FCM specifically complained of the following language appearing in Respondents' July 18, 1980 letter:

> The Carter/Mondale Reelection Committee, Inc., the official and authorized campaign committee for President Carter, and the Democratic National Committee have filed a complaint with the Federal Election Commission against . . . so-called "independent groups," the Reagan for President Committee, and others alleging that the Federal Election Campaign Act will be violated if the Republican nominees receive public funding while at the same time receiving massive support from alleged "independent" bankers (sic.) 1/

1/ While Respondents' complaint to the Commission named FCM, the Respondents' letter at issue here did not do so. Indeed, the paragraph in Respondents' letter that is specifically complained of does not refer to any organizations by name. In another paragraph, Respondents' letter refers to "Citizens for Reagan in '80", which FCM in its complaint describes as "its project." This assertion by FCM is undocumented and leads to the conclusion that FCM is not the real party in interest. The complaint is thus subject to dismissal in this ground alone.

The Respondent's letter also did not refer to any independent Reagan for President group as "bankers." Rather it simply referred to independent "backers."

FCM claims that Respondents publishing the above paragraph "violated the provisions of 2 U.S.C. 437g(a)(12)(A) and of 11 C.F.R. 111.21." FCM also claims that Respondents "knowingly and willfully violated" this provision of the Act. This is the totality of their allegation.

We respectfully submit that the Respondents' action comes nowhere close to violating either the Act or the regulations; we base our conclusion on the following analysis.

DISCUSSION

I. RESPONDENTS' MERE DISCLOSURE THAT THEY HAD FILED A COMPLAINT WITH THE COMMISSION DOES NOT CONSTITUTE A VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT.

A. The Act does not prohibit comment upon or disclosure of the filing of a complaint.

Complainant FCM alleges that Respondents violated the Act, 2 U.S.C. 437g(a)(12)(A), by publishing a letter stating that they had filed a Complaint with the Commission regarding FCM's activities on behalf of the Reagan Campaign. FCM's complaint is without merit and in direct conflict with the plain language of the relevant portion of the Act. Section 437g(a)(12)(A) of that Act states in pertinent part that:

> 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 an investigation is made.

(Emphasis added.) This provision makes no reference to the term "complaint" nor does it explicitly state or imply that a complaint may not be disclosed without written consent of the party who is the subject of the Complaint. *A fortiori*, this provision does not restrain complainants from publicly stating they have filed a complaint.

B. The Legislative History Reinforces the Inapplicability Of The Act.

While the Federal Election Campaign Act of 1976 was amended in 1979, Congress re-enacted without change this provision of the Act.[2/] The House version of the 1979 amendments would have extended the Act's confidentiality protection to the complaint phase of the Commission's administrative proceedings.[3/] The House bill was sent to the Senate for consideration. On December 18, 1979, the Senate adopted and passed the House version of the 1979 amendments, with a crucial difference -- the Senate deleted the term "complaint" from 437g(a)(12)(A) of the Act. Thus, it is clear that the Senate rejected the House's inclusion of the term "complaint" in the confidentiality provision of the Act, prefering to retain virtually the same language that was used in 1976. The

---

2/ The provision now appearing at 2 U.S.C. 437g(a)(12)(A) appeared as 2 U.S.C. 437g(a)(3)(b) in the 1976 version of the Act.

3/ The House language originally provided:

> Any complaint filed under this section, or 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 who is the subject of such complaint. . .

Cong. Rec. 7625.

<u>Senate version, which excised the word complaint</u> was then sent back to the House and passed there on December 20, 1979 with the word "complaint" deleted.

Thus while Congress considered enlarging the scope of the Act's confidentiality restrictions to include complaints, as well as notifications and investigations, the 1979 amendments, as finally passed, did not contain such an amendment. Accordingly, we respectfully submit that the Act's confidentiality provision applies only to a notification or investigation by the Commission after it has found reason to believe that a violation of the federal election laws may have occurred.

C. <u>The Commission's Office of the General Counsel has already determined that the Act does not prohibit comment upon the filing of a complaint with the Commission.</u>

The Commission accepted its General Counsel's recommendation in <u>In the Matter of Common Cause, Ken Guido</u>, MUR 804 (78). This case convincingly demonstrates that the Act's confidentiality prohibitions do not extend to the mere publication of the <u>existence</u> of a <u>complaint</u> and the general point of the complaint. In MUR 804, the Commission adopted its General Counsel's Report which reasoned that:

> Moreover, in explaining the Bill [the Federal Election Campaign Act of 1976] Congressman Hayes stated "'[D]etails of

> the investigation are not to be made public without the written consent of the person being investigated.'" 122 CONG. REC. H2532 (1976).
>
> While Common Cause and Ken Guido [the Respondents] may have publicized the Complaint filed by Common Cause with the Commission, they have not made public action taken by the Commission with regard to the Complaint; they have not made public the Commission's "notification or investigation" of the Complaint.

MUR 804 at 2-3 (Emphasis added).

Similarly in In the Matter of Common Cause, Fred Wertheimer, MUR 270 (76), the Commission also accepted the recommendation of its General Counsel to dismiss a complaint regarding the disclosure of a complaint. There, the American Medical Political Action Committee alleged that Common Cause had violated the Act's confidentiality provisions by disseminating publicity concerning a complaint it had filed with the Commission. In recommending that no further action be taken by the Commission, the General Counsel's Office concluded that:

> "[t]he Act refers to notifications or investigations after the Commission has found reason to believe a violation has occurred. Therefore, it would appear that the prohibition of 2 U.S.C. 437g(a)(3)(B) is not triggered until the Commission has found reason to believe [that a violation has occurred] pursuant to 2 U.S.C. 437g(a)(2)."

MUR 270 at p. 2 (Emphasis added).

Thus, the Commission's own construction of the Act firmly establishes that the its confidentiality prohibitions do not restrain a person from stating he has filed a complaint with the Commission and generally describing his claim.

II. RESPONDENTS' STATEMENT THAT THEY HAD FILED A COMPLAINT DOES NOT VIOLATE THE COMMISSION'S REGULATIONS.

We respectfully submit that conduct permitted by the Act cannot be found to violate the very regulations that are based on the Act. However, we will address FCM's complaint that Respondents violated the regulations. The regulations state in pertinent part:

> Except as provided in 11 C.F.R. 111.20, 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 is filed, the notification sent, the investigation conducted, or the filing made.

11 C.F.R. § 111.21(a). Because the Act's confidentiality provision makes no reference to a "complaint," we seriously doubt the Commission would have intended its regulations implementing this provision to exceed the express limits set by Congress.4/ We also doubt the Commission intended this regulation to raise serious Constitutional questions.5/

4/ We see no basis to conclude that Congress intended to delegate to the Commission the authority to define new areas of prohibited conduct, or that the Commission intended to assume such additional authority. See notes 5 and 7, *infra*.

Any statute or regulation which purports to limit free expression guaranteed by the First Amendment to the United States Constitution must be read narrowly. Schneider v. Smith, 390 U.S. 17 (1968). In this context, the Commission's regulation cannot be construed as applicable to a situation where, as here: what is involved is reference to a complaint that itself concerns a subject of continuing public importance and debate; the reference is only to the fact of filing and the general substance of the complaint; the fact of filing and the substance of the complaint are already publicly known, so that the statement contained no information that was not already in the public domain; the allegations in the complaint were also entirely based on information previously in the public domain; and the Commission itself has found it necessary to make comparable reference to the complaint and its substance in pursuing its own litigation on the subject. This confluence of circumstances makes it evident that the action complained of here is not subject to the prohibition contained in section 111.20(a) of the Commission's regulations.

5/ In issuing 11 C.F.R. 111.21(a) on March 7, 1980, the Commission never stated that it intended to expand the scope of the previous regulation or exceed the plain limits of the statutory provision. Indeed the Commission offered no explanation whatsoever for the apparent departure from the previous regulation. See 45 Fed. Reg. 15,080 at p. 15,089 (March 7, 1980).

Indeed, in light of limited statutory authorization described above and in reading the regulation as a whole, it would appear that the Commission's inclusion of the term "complaint" in the regulation, along with the terms "notification" by the Commission and "investigation" by the Commission, was designed to preclude dissemination of the complaint by Commission personnel or others in a way that would disclose internal action taken by the Commission or its staff with respect to the complaint. In fact, as is discussed more fully in section III below, only in this manner can the regulation be reconciled with the General Counsel's determination in MUR No. 804, adopted by the Commission, that the First Amendment precludes application of the Act's confidentiality provisions in a manner that would prohibit public comment about a complaint. The General Counsel stated in that case:

> Comment by Mr. Guido and Common Cause on the complaint filed by them [the Petitioners] appears to be within a First Amendment right and not within the prohibition of the statute.

Matter of Common Cause, Ken Guido, MUR 804 at 3.[6/]

6/ The Commission's General Counsel based his conclusion on Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1978). And his conclusions was adopted by the Commission in dismissing the complaint in MUR 804.

Accordingly, the FCM's contention that the respondents have violated the Commission's regulations is without merit and must be rejected.

III. THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PROTECTS RESPONDENTS' RIGHT TO PUBLISH COMMENTS ABOUT THEIR COMPLAINT.

A. The First Amendment safeguards political discussion and the free exchange of ideas on public issues.

As just indicated in the prior discussion, FCM raises a substantial challenge to Respondents' First Amendment rights. Freedom of speech enjoys a protected status under the First Amendment to the Constitution of the United States. Any governmental action purporting limit the right of free expression must be considered:

> against the background of a profound national commitment to the principal that debate on public issues should be uninhibited, robust, and wide-open, ...

New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964); accord Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 839 (1978).

The repression of speech by government regulation is subject to strict scrutiny by courts because of the high value placed on freedom of expression. As the Supreme Court observed in Mills v. Alabama, 384 U.S. 214 (1966):

> Whatever differences may exist about interpretation of the First Amendment, there is practically universal agreement

> that a major purpose of that Amendment was to protect the free discussion of governmental affairs.

Id. at 218; accord Buckley v. Valeo, 424 U.S. 1, 64-5 (1976).

Without a doubt, the Respondents' comments upon and publication of the fact they had filed a complaint with the Commission against FCM -- a group actively involved in an effort to defeat an incumbent president -- constitutes precisely the type of protected speech which lies near the core of the First Amendment. FCM's strained interpretation of the Act and the Commission's regulations would sharply undercut the fundamental principles of freedom of expression contained in the First Amendment. We respectfully submit that in light of these principles the Commission must flatly reject FCM's contention.

B. Any asserted governmental interest in the confidentiality of complaints filed with the Commission is insufficient to warrant an abridgement of Respondents' right of free expression on a significant issue of public interest.

No governmental interest in preserving the confidentiality of a complaint filed with the Commission can easily justify an

encroachment on First Amendment guarantees.[7/] In Landmark Communications, Inc. v. Virginia, supra, information concerning a pending, confidential investigation by a state judicial review commission was published by a newspaper in alleged violation of a Virginia statute which was aimed at withholding such confidential information from the public domain. The Virginia Supreme Court held that the state's interest in preserving the confidentiality of judicial conduct investigations was sufficient to warrant imposing criminal penalties against individuals disseminating information about such investigations. The Supreme Court reversed the lower court's ruling, and it reiterated the fundamental teaching that the First Amendment protects the free discussion of governmental affairs. 435 U.S. at 838. The Court further held that a reviewing court must balance the purported state interest in confidentiality against the constitutionally-protected interest in free, unfettered discussion of public

---

7/ Moreover, we are not aware that the Commission, by including the term "complaint" in the coverage of § 111.21(a), gave any consideration to the required balancing between the First Amendment rights and any governmental interest that might be involved. Cf. Branzburg v. Hayes, 408 U.S. 665, 739-40 (1972). Indeed in promulgating the regulation, the Commission made no reference to this critical point. See 45 Fed. Reg. 15,080 at 15,089. This further indicates that the Commission did not intend to affect first amendment rights.

issues guaranteed by the First Amendment. 435 U.S. at 838. Mr. Chief Justice Burger speaking for the majority concluded that:

> It can be assumed for purposes of decision that confidentiality of Commission proceedings serves legitimate state interests. The question, however, is whether these interests are sufficient to justify the encroachment on First Amendment guarantees which the imposition of criminal sanctions entails with respect to nonparticipants such as Landmark.
>
> * * *
>
> Admittedly, the commonwealth has an interest in protecting the good repute of its judges, like that of all other public officials; our prior cases have firmly established; however, that injury to official reputation is an insufficient reason "for repressing speech that would otherwise be free." (Emphasis added, citations omitted.)

435 U.S. at 841-42. See also Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975) (rejecting an attempted state sanction on the publication of information in the public domain by virtue of its inclusion in court records.)

The Landmark decision, on which the Commission itself previously relied to approve conduct nearly identical to that of the Respondents, makes it abundantly clear that mere comments on the existence and nature of a complaint filed with Commission are protected speech under the First Amendment.

We respectfully urge that the ruling in Landmark must control in the instant case. Here, as indicated above, the question of the legality of expenditures in support of the Reagan candidacy by FCM and other alleged "independent" organizations has been a subject of serious public interest and concern for some time and has received extensive press coverage. The Carter-Mondale complaint to the Commission followed the Common Cause law suit by one day and preceded the Commission's law suit by only two weeks. All of these actions were widely reported. Under these circumstances, Respondents' mere publication of the fact they had filed a complaint and their brief comments on its nature are not sufficiently threatening to any legitimate governmental interest to overcome the jealously guarded constitutional safeguards referred to in the Landmark case. Surely in this instance, the balance falls in favor of free political discussion of presidential campaign financing against a technical consideration of confidentiality with respect to conduct that even the Commission itself has brought to the attention of the national media.

CONCLUSION

We respectfully submit that the Commission should find no violation of the Act or its regulations by the mere publication of the fact of the complaint and its general nature, under the circumstances described supra. Neither the Act nor the regulations issued under it were intended to prohibit the conduct of which FCM complains. Any other result would improperly deprive Respondents' of their First Amendment rights.

Based on the foregoing facts, analysis and discussion, we respectfully move the Commission to dismiss the instant complaint and close the instant matter under review.

Respectfully submitted,

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September 8, 1980

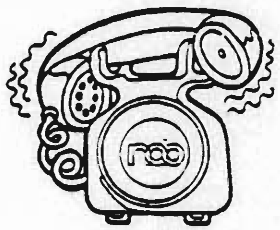
RADIO/TV

APPENDIX A

August 11, 1980

Volume VI
No. 31

IN THIS ISSUE FCC holds up AM stereo; needs more info • NAB sets up political hot-line • Task Force on Radio Allocations meets to decide course of action • Senate passes bill prohibiting surprise newsroom searches • FCC might drop First Class licenses



New Member Service: A Political Hot-Line . . .

NAB will set up a special toll-free number for members to call with their political broadcasting questions. This service will be in operation from October 1 until the election.

Bill Ray, the former chief of the FCC's complaints and compliance division, and author of the Commission's primer on political broadcasting laws will man the phone. While Mr. Ray is not a lawyer and can't give you legal advice, he's had over two decades' experience and can provide you with some expert guidance in this area.

We'll have more information soon on the times the service will be in operation.

AM Stereo: FCC Needs More Information . . .

Reports of an AM stereo system in operation by Christmas have turned out to be premature. Last April, the FCC tentatively selected the Magnavox system from the five under consideration and ordered its engineering staff to review the data to justify or validate the selection of Magnavox. in the process of doing that, the staff found some weaknesses in the matrix (the scorecard used to choose a system) so the Commission has decided to go back and get data. This gives interested parties another chance to file comments. Comments in the docket have been closed since August, 1979.

In making the announcement, the FCC said it owed it "to the system proponents, broadcasters and the public to seek additional information so that it might carry out a thoroughly objective analysis."

In addition to seeking more information in the technical area, the Commission has some interest in hearing about the desirability of its making decisions of this nature as opposed to leaving them to the marketplace. The Commission is also soliciting comments on the possibility of a universal decoder being developed to permit reception of all five systems. Comment dates have not been announced.

The Commission's action is expected to delay the implementation of AM stereo for at least six months.

Radio Allocations Task Force Meets, Develops Plan . . .

NAB's Task Force on Radio Allocations met in Washington last week to develop an action plan for the orderly [illegible] radio. Task Force members heard a report on status of NAB

(continued on p. 2)

(continued from p. 1)
request to form a Joint Government/Industry Advisory Committee. Government Relations Senior Vice President Ken Schanzer reported that he was "pleased and encouraged" by indications from the Commission that it would establish this committee in September. NAB had asked the Commission to create a committee to research and analyze radio allocations issues on a coordinated, comprehensive basis so that the Commission's pending proposals for radio weren't adopted without serious deliberation.

The Task Force also hired broadcast engineer Jules Cohen, Washington, D.C. as a consultant. Cohen and Task Force members are looking at the kinds of research that may need to be done.

Broadcasters Called Upon To Air Cambodian Relief PSAs . . .

Father Theodore Hesburgh, co-chairman of the National Cambodian Crisis Committee, has written to NAB Chairman Tom Bolger, first, to thank him for broadcasters' help in the NCCC's hunger relief fund raising campaign, but also to ask for broadcasters' help once again.

Hesburgh wrote: "The efforts of corporate and labor leaders, governors and civic groups, (to raise $100 million) can be multiplied many times over with a highly successful campaign of public service announcements . . . . By the end of May, the Advertising Council distributed the NCCC television public service announcements, which feature three Cambodian refugees in this country, to all commercial, educational and network stations. The radio PSAs recorded by Pearl Bailey, Danny Kaye and Joanne Woodward went to 6,000 radio stations . . . .

"By writing radio and television broadcasters, asking them to give prime-time consideration to airing the PSAs from now through October, you can make a critical difference.

"The National Association of Broadcasters has already gone the extra mile in this effort, both with Mr. Wasilewski's letter to TV broadcasters last winter and the campaign announcement at the NAB convention. But in the next six months, we will either witness the Cambodian people as they close the gap toward self-sufficiency, or we will see them stricken down again by famine. For this reason, I do hope that you will be able to help . . . ."

Bolger responded that we will do "everything in our power to help in your very humane mission. If there is any specific project or help that seems advisable, please do not hesitate to let me know."

Mail Deadline For RPC Registration . . .

Friday, August 15, is the deadline for mailing Radio Programing Conference registrations. Persons who are planning on attending the conference who cannot be sure their registration application will arrive at the NAB in Washington by the 15th should plan on registering on-site at the Hyatt Regency New Orleans.

If you plan to register on-site, make your hotel reservations immediately by call either Jackie Frashier at the Warwick at 800-535-9141, Marie Keith at Howard Johnsons at 504-581-1600, or Libby Dorris at Le Pavillion at 504-581-3111.

Relief To End Newsroom Raids On The Way . . .

The Senate has unanimously passed a bill prohibiting surprise searches of newsrooms by law enforcement officials. NAB and seven other media organizations had written to each Senator asking him or her to pass the Privacy Protection Act which would make a subpoena and not a search warrant the preferred method for obtaining information.

The letters to the Senators said that legislation is needed to prevent a repetition of the warrant

procedure used to search KBCI-TV in Boise, Idaho and the **Flint Voice**, in Flint, Michigan recently. "We saw in Boise that a search of the premises conducted pursuant to a warrant and without judicial supervision is likely to get out of control."

A similar measure is pending in the House.

The other organizations joining NAB in this effort are: NBC, Association of American Publishers, American Society of Newspaper Editors, American Newspaper Publishers Association, RTNDA, CBS, Inc., and Society of Professional Journalists/Sigma Delta Chi.

FCC Considers Dropping First Class Licenses...

Last week's **HIGHLIGHTS** reported that the FCC abolished its Third Class permit. In a further deregulatory move, the Commission is considering dropping the First Class license and eliminating the exam. This means that the station licensee would be fully responsible for checking on the competency of its technicians.

The Commission said a reason for dropping this license is that there is evidence that the exam might not accurately measure an applicant's technical competence. Since there is no way the Commission can test people directly on transmitting equipment, it has decided that the best course of action might be to eliminate the exam.

The Commission also believes that its recent proposal to make random, in-depth investigations of stations' compliance with its rules would result in stations abiding by all of its regulations and provide incentives for them to hire competent staffs. This might further diminish the need for operator licensing.

The Commission noted that the exam does not account for experience and common sense and excludes competent people not skilled in taking exams.

Comments on this proposal are due in November.

"Good Sam" Awards Deadline Extended...

The American Advertising Federation has moved its deadline for receiving entries in its Good Sam competition to August 30.

The Good Sam awards will be given for excellence in public service advertising at the local as well as regional and national levels. Awards will be presented for radio and TV commercials, along with print and multimedia campaigns. All creators of public service advertising are eligible.

For more information, contact John Sivatko at the American Advertising Federation, (202) 659-1800.

We Win One...

A few months ago, the Citizens Communication Center wanted the FCC to require broadcasters to carry PSAs on the Commission's Consumer Assistance Office and its services. NAB opposed this proposal saying that it's up to the broadcasters to decide what PSAs are scheduled and when.

Last week the Commission rejected the petition for the reasons NAB had suggested. "It would be inappropriate to force broadcasters to air specific programs according to the Commission's desires," said the FCC.

NAB Answers Your Political Broadcasting Questions...

Broadcasters across the country have been receiving time requests for political ads sponsored by "independent" committees supporting Ronald Reagan. These ads, new to the political scene, are raising questions for broadcasters. Fueling broadcasters' uncertainty was a letter sent to television

(continued on p. 4)

(continued from p. 3)
broadcasters by the Carter/Mondale Reelection Committee, suggesting "serious legal questions" involving the planned "massive" purchase of time by the "independent" Reagan groups. The Reagan for President Committee responded with its own letter to broadcasters, countering the assertions of the Carter/Mondale letter and emphasizing the complete independence of the Reagan campaign from these groups.

Many political broadcast questions raised by the ads have not been answered by previous FCC rulings. Here are some guidelines, but keep in mind these questions have not been settled and that the nature of particular ads will affect your decisions on these issues.

- **Reasonable Access** — probably does not apply to these ads. "Reasonable access" would seem to be a right personal to the candidate, and not inclusive of "independent" advocacy for that candidate.
- **Equal Opportunities** — would apply if ads carried Mr. Reagan's identifiable voice or image. His opponents would probably not be entitled to free time since the ad was paid for by a political committee analogous to the candidate's campaign committee. This question, however, has not been ruled on by the FCC.
- If the ad does not contain Mr. Reagan's voice or image, the "quasi-equal opportunities" (Zapple doctrine) may come into play. This requires comparable time to be offered at comparable rates to supporters of Mr. Reagan's opponents. The FCC has never ruled that "supporters," for Zapple purposes, must be "authorized supporters." This too is an open question.
- **Fairness Doctrine obligations** — Applies if neither the equal opportunity provision or Zapple doctrine apply. If contrasting views on Presidential election issues are adequately presented in your overall programming, you do not need to make free time available to others to present contrasting views.
- **Personal Attack rules** — may apply where the ads contain an attack on the honesty, character or integrity of an opponent or other identified individual or group. The "independent" sponsoring group making the attack would probably not be considered as "persons associated with the candidate in the campaign" which would exempt such an attack. But such a personal attack made by Mr. Reagan contained within an ad by an independent group would be exempt from the rules.
- **Lowest Unit Charge** — it's unclear if this requirement would apply. This question comes only if an ad contains Mr. Reagan's voice or image. The Commission has never ruled on the issue in this context. It seems that lowest unit charge, like reasonable access, would be a right personal to a candidate and would not be available to independent groups. It appears that these "Reagan" groups are not requesting lowest unit charge rates.

We'll give you more information as situations develop.

NAB Asks Supreme Court To Deny Petition By Opponents Of Family Viewing...

NAB and other media organizations have asked the Supreme Court to deny a petition, filed by opponents of the family viewing hour, requesting the Supreme Court to review a lower court's decision.

Initially, the family viewing concept was ruled unconstitutional by a District Court judge. When this decision was appealed, a Court of Appeals said that the District Court was not the proper forum for deciding this issue and that the primary jurisdiction for such a decision was with the FCC. Opponents of the family viewing hour, which include the Writers Guild of America and Tandem Productions, filed a petition for rehearing, which was denied. Now these parties have asked the Supreme Court to review the Court of Appeals decision.

NAB argued that this case presents no issues warranting review by the Supreme Court. NAB also said that since it suspended enforcement of the family viewing policy, petitioners are not subject to ongoing harm. Therefore, their claim of urgent need for review is without foundation.

Vincent T. Wasilewski, President
[illegible], Senior Vice President for Broadcasting
Patricia [illegible], Editor
Donna M. Semple, Editorial Assistant
[illegible] ...weekly (except for the week of April [illegible]) by the National Association of Broadcasters, 1771 N Street, N.W., Washington, D.C. 20036. Subscription $8 per year-included in membership dues. Second-class postage paid at Washington, D.C. and additional mailing places.

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
1111 19TH STREET, N. W.
WASHINGTON, D. C. 20036

SEYFARTH SHAW, FAIRWEATHER & GERALDSON
1111 19TH STREET, N.W.
WASHINGTON, D.C. 20036

BY HAND DELIVERY

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

9279-57

RECEIVED

80 SEP 3 P2:41

JAMES M. MCHALE
1111 NINETEENTH STREET, N. W.
WASHINGTON, D. C. 20036
(202) 463-2516

September 3, 1980

BY HAND DELIVERY

Ann Weisseborn, Esq.
Office of the General Counsel
Federal Election Commission
1425 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1275(80)

Dear Ms. Weisseborn:

This is to confirm our telephone conversations of August 26 and September 6 in respect to the above. First, please enter my appearance as counsel to both the Carter-Mondale Presidential Campaign, Inc. and its general counsel, Timothy G. Smith, Esq.

Second, I understand that our first pleading, a response to the complaint must be filed with your office on September 8, 1980. This response can be supplemented up to September 16, 1980 when you expect the Commission may take its first action on this MUR.

I very much appreciate the courtesy you have extended to me in our phone conversations, and I look forward to delivering our first response to you on September 8.

Respectfully yours,

James M. McHale
Counsel to Carter-Mondale Presidential Committee and Timothy G. Smith

cc: Timothy G. Smith, General Counsel
Carter-Mondale Presidential Committee

80 SEP 3 P3:21

RECEIVED

80 SEP 3 P2:41

BY HAND DELIVERY

Ann Weisseborn, Esq.
Office of the General Counsel
Federal Election Commission
1425 K Street, N.W.
Washington, D.C. 20463

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 19, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Timothy G. Smith, Esquire
c/o Carter/Mondale Reelection
Committee, Inc.
2000 L Street, N.W.
Washington, D.C. 20036

Re: MUR 1275(80)

Dear Mr. Smith:

This letter is to notify you that on August 15, 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 1275. Please refer to this number in all future correspondence.

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

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

This matter will 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.

If you have any questions, please contact Anne Weissenborn, the atrorney assigned to this matter at 202-523-5071. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

Enclosures
Complaint
Procedures

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:

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	945757	

(Always obtain signature of addressee or agent)

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

4. DATE OF DELIVERY

POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

1275

☆GPO 1977-0-249-595

PS Form 3811, Apr. 1977 RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 19, 1980

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Timothy D. Smith
General Counsel
Carter/Mondale Reelection
 Committee, Inc.
2000 L Street, N.W.
Washington, D.C. 20036

Re: MUR 1275(80)

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Sincerely,

Charles N. Steele
General Counsel

Enclosures
Complaint
Procedures

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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:

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	945960	

(Always obtain signature of addressee or agent)

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

4. DATE OF DELIVERY — POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: — CLERK'S INITIALS

☆GPO: 1977-0-249-595

1275 nw

PS Form 3811, Apr. 1977 — RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 19, 1980

Robert C. Heckman
Chairman
The Fund for a Conservative
 Majority
1022 Wilson Blvd
Suite 1401
Arlington, Virginia 22209

Dear Mr. Heckman:

This letter is to acknowledge receipt of your complaint of August 6, 1980, against the Carter/Mondale Reelection Committee and Timothy G. Smith 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 Commissiontakes 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

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)

RECEIVED
80 AUG 28 AM

2. ARTICLE ADDRESSED TO:
Robert Heckman

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. 945958 | INSURED NO.

(Always obtain signature of addressee or agent)
I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent
Karen M. Ronald

4. DATE OF DELIVERY

POSTAL ANNEX

5. ADDRESS (Complete only if requested)

RECEIVED

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

MUR 1275

PS Form 3811, Aug. 1978
RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

FCM
THE FUND FOR A CONSERVATIVE MAJORITY

RECEIVED
GCC # 254
80 AUG 15 AM 11:14
900 704

80 AUG 15 P4: 35

August 6, 1980

General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 10463

Dear Members of the Commission:

This letter constitutes a complaint filed with the Commission by the Fund for a Conservative Majority ("FCM"), a multi-candidate political committee, in accordance with 2 U.S.C. §437(g).

The records of the Commission will reflect the fact that the Carter/Mondale Reelection Committee, Inc., on July 2, 1980, filed a complaint with the Commission alleging that independent expenditures made by FCM and its project, "Citizens for Reagan in '80", (among others named in the complaint) on behalf of the election of presidential candidate Ronald Reagan, violate the conditions for eligibility for Mr. Reagan to receive payment of public funds from the United States pursuant to the Presidential Election Campaign Fund Act, 26 USC §§9001, et seq. That complaint has been designated MUR 1252.

Attached hereto is a copy of a letter, with attachments, dated July 18, 1980, prepared on the letterhead of the Carter/Mondale Presidential Committee, Inc., which bears the signature of Timothy G. Smith, general counsel for the Carter/Mondale Presidential Committee, Inc. Upon information and belief, the attached letter was sent nationwide to numerous media broadcasters.

Please note the second paragraph of the letter which states:

> The Carter/Mondale Reelection Committee, Inc., the official and authorized campaign committee for President Carter, and the Democratic

CHAIRMAN • Robert Heckman • DIRECTORS • Kenneth F. Boehm, Esq. • Jeffrey D. Kane
1022 WILSON BOULEVARD • SUITE 1401 • ARLINGTON, VIRGINIA 22209 • (703) 524-4400

RECEIVED

80 AUG 15 AM : 14

National Committee have filed a complaint with the Federal Election Commission against . . . so-called "independent groups," the Reagan for President Committee, and others alleging that the Federal Election Campaign Act will be violated if the Republican nominees receive public funding of their campaign while at the same time receiving massive support from alleged "independent" bankers.

FCM did not authorize Mr. Smith or the Carter/Mondale Committee to make public the complaint designated as MUR 1252. Accordingly, it appears that Timothy Smith and the Carter/Mondale Reelection Committee, Inc. may have violated the provisions of 2 U.S.C. §437g(a)(12)(A) and of 11 CFR §111.21. Those sections provide, 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). It is further alleged that Timothy Smith and the Carter/Mondale Reelection Committee, Inc. knowingly and willfully violated 2 U.S.C. §437g(a)(12)(A), and thus are subject to a penalty of not more than $5,000.00, under the provisions of 2 U.S.C. §437g(a)(12)(B).

Respectfully submitted,

Robert C. Heckman

Robert C. Heckman, Chairman

Sworn to before me this 11th day of August, 1980.

Notary Public
MY COMMISSION EXPIRES 6/12/84

CARTER/MONDALE PRESIDENTIAL COMMITTEE, INC.
1413 K STREET, N.W., WASHINGTON, D.C. 20005
(202) 789-7200

RECEIVED
80 AUG 15 AM 11:15

Robert S. Strauss, Chairman
Tim Kraft, National Campaign Manager
S. Lee Kling, Treasurer
Evan S. Dobelle, National Finance Chairman

July 18, 1980

Dear Broadcaster:

It has come to the attention of the Carter/Mondale Reelection Committee, Inc. that allegedly "independent" supporters of Ronald Reagan's campaign plan massive purchases of broadcasting time to air highly controversial spots, containing attacks on either the President, other leading Democrats, or the Democratic Party generally. The Wall Street Journal, for example, reported on June 19, 1980, page 1, that groups identified as "Americans for Change," "Citizens for Reagan in '80," "Americans for Reagan," and "The Ronald Reagan Victory Fund" are among those which intend to spend over $50 million to try to influence the outcome of the November election. (See also the attached New York Times editorial and a recent Associated Press article on the commericals apparently already being distributed by one of the groups.)

The Carter/Mondale Reelection Committee, Inc., the official and authorized campaign committee for President Carter, and the Democratic National Committee have filed a complaint with the Federal Election Commission against these so-called "independent groups", the Reagan for President Committee, and others alleging that the Federal Election Campaign Act will be violated if the Republican nominees receive public funding of their campaign while at the same time receiving massive support from alleged "independent" backers.

In addition, a lawsuit was recently filed by Common Cause against one of these groups challenging its independent status and charging that the proposed expenditures in support of Reagan's candidacy will seriously distort and undermine the plan for public financing of Presidential election campaigns enacted by Congress in 1974. Finally, the Federal Election Commission this week has filed its own action seeking a judicial ruling that would have the effect of prohibiting these groups from making their planned multi-million dollar expenditures while the Reagan campaign is also accepting more than $29 million in taxpayer funds. These cases are pending in the Federal District Court in Washington, D.C.

We are confident that these proceedings will establish that such groups are not permitted under the law to make such expenditures on behalf of a presidential candidate who also is receiving public financing. Further, we believe that it will be determined that the particular committees in question and their organizers are not, and cannot be, truly independent of the Reagan campaign.

However, in either event, the purchase of broadcasting time by the so-called "independent" groups under such circumstances raises serious legal questions which you should consider.

Even if some or all of these groups are deemed legally capable of making independent expenditures for Reagan as a matter of federal election law:

*They are not entitled to the reasonable access provision of Section 312(a)(7) of the Communications Act.

*The broadcast of programs dealing with controversial issues of public importance paid for by such "independent" groups may obligate you under the FCC's Fairness Doctrine to provide time without charge for the broadcast of opposing viewpoints.

*Any such program which constitutes a personal attack will obligate you, under the FCC rules, to notify the person or persons attacked and to offer them a free opportunity to respond.

*To the extent any such program involves a "political use" by a qualified candidate within the meaning of Section 315(a) of the Communications Act, you will be required to offer equal time to all other legally qualified candidates, and, to the extent that the political use was without cost to the candidate whose candidacy was promoted in the broadcast, you would be required to offer free time to all other legally qualified candidates. See Letter to Hon. Mike Monroney, 40 F.C.C. 251 (1952).

If, as claimed in the actions mentioned above, the groups in question are found to be acting in concert with the Reagan for President Committee or otherwise ineligible for the making of "independent expenditures," then:

*The purchase by them of broadcast time may involve serious violations of law that could potentially involve a participating station in litigation before courts and federal agencies.

*The purchase of time by such groups would obligate a station to provide equal opportunities to all opposing candidates and their affiliated supporters.

As is apparent from this letter, we believe that expenditures, by allegedly independent backers of one candidate, of massive funds for the purchase of broadcast time to influence the result of the Presidential Election in favor of that candidate is a direct threat to the delicately balanced system of campaign spending limitations and public financing mandated by Congress for the conduct of Presidential elections.

We hope you will give careful consideration to the problems inherent in use of the broadcast media for these purposes and, if you have any questions, we urge you to consult with your counsel before accepting requests for the purchase of political broadcast time by any group which is not the official, authorized committee of a qualified candidate.

Sincerely,

Timothy G. Smith

Timothy G. Smith
General Counsel

cc: Federal Communications Commission

Attachments

TGS:jm

Return of the Fat Cats

The cork has been popped off the campaign bottle by some prominent Republicans who call themselves "Americans for Reagan." They're out to raise $30 million in so-called "independent" political contributions and they don't care if it shatters the law's restraints on private election money. The electorate can brace itself for the return of the big spenders whose money talks and whose gifts are not forgotten. We're in for a noisy campaign, just when it seemed that election reform laws might let us lower our voices.

To give these highly organized individualists their due, they are probably within their constitutional rights. Congress tried to limit this kind of funding to $1,000 per person as part of a comprehensive Campaign Reform Act in 1974. It appropriated public funds for campaigning by the major party candidates provided they forgo private fund-raising and limit their spending to the ceilings set by Congress. The intention was to enforce the limit by charging candidates for every penny spent by anyone to advance their cause, except for $1,000 that individual citizens might choose to invest in electioneering by their own lights.

The Supreme Court, however, said in 1976 that the $1,000 limit on people not involved in a candidate's campaign was a violation of their First Amendment rights of free speech. The Justices brushed aside the warnings that large-scale "independent" giving could ruin the rest of the law and subvert the ban on huge private funds for Presidential campaigns. The Court held that "truly independent" expenditures, not coordinated with official campaign organizations, should not be forbidden without concrete evidence of abuse.

Will the 1976 conjecture of abuse become this year's reality? We fear so. These so-called independent givers want to price the 1980 Republican campaign at double the limits envisioned by Congress, more than matching the $29-million subsidy that their candidate will receive from public funds.

•

We worry about "Americans for Reagan" not from solicitude for President Carter. He enjoys an incumbency that is literally priceless, and displays no tenderness toward opponents. We worry for ourselves because of the deluge of television commercials that will leave the voter reeling but be effective enough to require a matching effort by other candidates. Thus will die the effort to spare our politics from the deals that are needed to raise such huge sums.

For the moment we are reduced to wondering how independent these independents really are — folks like Melvin Laird, Clare Booth Luce, Senator Harrison Schmidt of New Mexico, Senator Dave Durenberger of Minnesota, former Senator Carl Curtis of Nebraska, and John Harmer, Ronald Reagan's former lieutenant governor. They say they can prove to the Federal Election Commission, if necessary, that they have nothing to do with the formal Reagan campaign. If they can, they'll earn their constitutional protection but hardly the country's gratitude. Not every constitutional right is attractive or wise in its exercise.

The tension is basic to American society: a conflict between free political expression and equality of political opportunity. An imaginative reform law has tried to equalize the lung-power of the rich and not-so-rich by giving money to both sides in a Presidential race. Now one side wants to spend more, even at the risk of being labeled the party of the fat cats. Congress and the courts should monitor this sorry development. They will surely have to deal with the problem anew.

RECEIVED

80 AUG 15 AM 11:45

Two groups may spend $9 million for Reagan

Balt. Sun p. A7

Detroit (AP)—Two independent committees yesterday announced plans to raise as much as $9 million to spend in support of Ronald Reagan's presidential candidacy, beginning with television commercials right after his nomination.

The National Conservative Political Action Committee (NCPAC) previewed a series of 10 television commercials that it will begin airing in selected markets Friday and will run through the November 4 presidential election.

At the same time, Americans for Reagan, headed by Senator Jesse Helms (R, N.C.), said it has set a fund-raising goal of $4 million for the November election.

Terry Dolan, chairman of the NCPAC, said his group would spend at least $1 million and could spend as much as $5 million.

At least seven committees have announced plans to support Mr. Reagan's Republican candidacy with independent expenditures this fall. The Federal Election Commission disclosed plans last week to take legal action against the groups, claiming their activity violates legal restraints on campaign spending and contributions. But the committees insist they are operating legally and only exercising their constitutional right to free speech.

Most of the NCPAC television spots feature film clips from a Reagan campaign speech and man-on-the-street comments. Each one includes the slogan, "He'll make America great again."

Some, however, have very strong anti-Carter messages, including one that features the quote from President Carter, "Why not the best?" and then flashes pictures of Carter staffers who have left the administration under cloud or controversy.

Mr. Dolan said most of his committee's Reagan support is expected to be positive, but "we reserve the right and possibility that we will go very, very negative."

First showings of the commercials will be in the Midwest, but future airing will depend on the Reagan campaign strategy and market testing done for the committee by a professional pollster.

Although such committees have come under fire recently, Mr. Dolan said there was nothing illegal in coordinating independent support with what the official Reagan campaign is doing as long as there is no direct contact with the campaign.

Mr. Dolan also said his group would coordinate with other independent committees supporting Mr. Reagan.

Both Mr. Dolan and Tom Ellis, chairman of Americans for Reagan, also indicated that much of their effort may be directed at John B. Anderson, a Republican congressman who withdrew from the GOP primaries to run for president as an independent [illegible]

"Americans for Reagan will produce and broadcast TV commericals that make it clear that Mr. Anderson is close to the ultra-liberal Kennedy wing of the Democratic Party and clearly out of step with the voters," Mr. Ellis said.

Mr. Dolan said polling done for his group found that Mr. Anderson was taking more votes away from Mr. Reagan than from Mr. Carter in every state tested.

"We plan to go after John Anderson [illegible] that is required," Mr. Dolan said. "And we think it may be."

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Date Filmed 10/30/80 Camera No. --- 2

Cameraman SPC